

TAX DISPUTES & ENQUIRIES

Decoding the Code - *the new Code of Practice for Revenue Compliance Interventions*

The Code of Practice for Revenue Compliance Interventions

In recent years, the Irish Revenue Commissioners (**Revenue**) Code of Practice for Revenue Compliance Interventions (the **Code**) has been an evolving document subject to review and modification on an ongoing basis. While the Code is not law itself, it reflects taxpayer rights that are already enshrined in law.

7 MIN READ

The Code outlines how Revenue will conduct an intervention and ensures uniformity in how Revenue deals with taxpayers. Ultimately it ensures that taxpayers have a yardstick to measure fairness against. Ireland operates a self-assessment system – this means certain taxpayers are responsible for filing their own tax returns and for ensuring that they are compliant with Ireland’s tax laws. For this reason, it is important for taxpayers to be familiar with Revenue’s Code.

Revenue has released an updated version of the Code which contains a new Compliance Intervention Framework (the **Framework**). The revised Code identifies changes in how Revenue’s compliance function will operate from 1 May 2022 onwards. We anticipate that Revenue will adopt a more structured approach to ensuring compliance by taxpayers which will continue the trend of recent years.

The revised Code provides for significant changes in how Revenue will engage with taxpayers. The opportunities for taxpayers to make an unprompted qualifying disclosure have been reduced.

Revenue’s new approach to compliance

The Framework provides for three new levels of compliance interventions. From 1 May 2022, all Revenue compliance interventions notifications will reference whether the intervention is a Level 1, 2 or 3 intervention.

Level 1

Taxpayers who are subject to a Level 1 intervention (e.g. a notice or reminder) have an opportunity to self-review and self-correct errors before Revenue takes further action.

During a Level 1 intervention, the taxpayer can (where necessary) voluntarily correct their tax affairs without penalty. One important change is that submitting an amended tax return through Revenue Online Services (ROS) will no longer be deemed as notifying Revenue. Taxpayers must now separately notify Revenue, either in writing or on ROS, to detail any underpayment of tax and related interest charges within the time limit. Failure to notify Revenue may result in the taxpayer being subject to penalties.

Taxpayers should be aware of the consequences of not engaging with Revenue at this early stage. Taxpayers

subject to a Level 1 intervention still have an opportunity to make an unprompted qualifying disclosure (i.e. a full disclosure of the tax underpayment, accompanied by full payment of the liability/interest). An unprompted qualifying disclosure reduces penalties and avoids publication of a taxpayer’s name on Revenue’s public Tax Defaulters List. The opportunity to make an unprompted qualifying disclosure is lost if an intervention escalates beyond Level 1.

Level 2

There are two Level 2 interventions: Revenue audits and ‘risk reviews’.

There has not been any change in how Revenue selects cases for Level 2 intervention. Revenue will continue to use Revenue’s electronic risk and analysis system (**REAP**) and real time risk analytics.

The Revenue audit process is also largely unchanged under the revised Code. However, the ‘risk review’ is a new creation. The risk review is a focused intervention examining a particular risk or issue in a tax return where a full audit is not warranted. A risk review will generally be a paper based intervention but can also be accompanied with a physical visit or teleconference meeting.

Risk review is akin to what was formerly known as an ‘aspect query’ (which will cease to exist from 1 May 2022).

A taxpayer can only make a prompted (rather than unprompted) qualifying disclosure after a Level 2 intervention notice is issued. This is an important distinction because an unprompted disclosure protects the taxpayer from both publication and prosecution as well as minimising the level of penalty.

There is also a tight timeframe from making the disclosure. Taxpayers have 28 days to make a disclosure following notice of a Level 2 intervention.

A risk review is in essence the same as an audit, albeit with a narrower scope. Taxpayers will only have one opportunity to make a prompted qualifying disclosure for a specific tax head and tax period under inquiry. Therefore an accurate review of the tax head in its entirety for the period should be carried out at an early stage. A diligent and prudent taxpayer should not consider a risk review in isolation but should consider all matters under the tax head under inquiry.

A risk review may subsequently be escalated to an audit, which may involve widening

the scope of the intervention for other tax heads and periods. The taxpayer will receive 28 days’ notice to make a prompted disclosure with respect to any new tax heads covered by the audit notice but not with respect to the tax heads previously covered by the risk review. For example, where the scope of a risk review is PAYE and PRSI for the 2021 year and subsequently, the additional information provided during the risk review gives rise to an audit notification with respect to VAT, the taxpayer will only have an opportunity to make a prompted qualifying disclosure in respect of VAT and the opportunity to make a prompted disclosure in relation to the initial tax head and period (PAYE/PRSI for 2021) will end at this stage.

Level 3

Level 3 is the most serious level of intervention and relates to investigations. The initiation of an investigation indicates that Revenue believes that there has been serious tax or duty evasion, or a Revenue offence that may lead to a criminal prosecution has been committed. There have not been substantial changes to this level of intervention. As was the case prior

to the revision of the Code, taxpayers are not entitled to make a qualifying disclosure in respect of the matters under investigation.

Intervention progression

The classification of interventions from Levels 1 to 3 will assist taxpayers to assessing their disclosure options, which we have set out in the table below.

Level	Unprompted Qualifying Disclosure	Prompted Qualifying Disclosure
Level 1	✓	✗
Level 2	✗	✓
Level 3	✗	✗

The categorisation of interventions by level, however, does not necessarily mean that a level 2 or level 3 intervention will be preceded by a level 1 intervention. The Code makes clear that a level 2 or level 3 intervention can be initiated without any previous notification. The Revised Code states that an intervention can be escalated to a higher level or escalated within a level.

KEY CHANGES TO NOTE

01

Taxpayers can now make a qualifying disclosure in respect of offshore tax matters.

02

Publication on the Revenue Tax Defaulters List will now occur where the amount of underpayment exceeds €50,000 (previously €35,000).

03

A self-correction of a tax return via ROS must now be accompanied by a written notification to Revenue.

04

Taxpayers now have a minimum of 28 days to respond to an audit (previously 21 days).

05

A notice of intention to make a prompted disclosure must be made within 21 days (previously 14 days).

What can taxpayers do?

Revenue carried out close to half a million interventions in each of 2020 and 2021. In light of increased Revenue scrutiny and its new approach to interventions, now is an ideal time for taxpayers to review their tax affairs and ensure their internal compliance systems are in good order.

Regular reviews of taxpayers' affairs and the importance of early detection are recurring themes throughout the Code. Revenue have emphasised the advantages of correcting errors early and on a voluntary basis. This highlights the need for taxpayers to be proactive in reviewing their tax affairs, and if necessary and appropriate, opt for self-correction or the disclosure procedures to avoid incurring significant penalties, prosecution and/or suffering the reputational risks associated with featuring on the Revenue's public Tax Defaulters List. If, following a proactive review, a taxpayer is uncertain of the strength of their position and wishes to seek tax advice that will be protected by legal professional privilege, it is important to seek advice from a practicing lawyer.

For more information on this topic, please contact [Paul Fahy](#), Partner, [Enda Hurley](#), Partner, [Cian Ryan](#), Solicitor, [Katya Atkinson](#), Solicitor or any member of A&L Goodbody's Tax Disputes & Enquiries [Team](#).

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