

[37.0.40] Large Cases Division: Opinions/Confirmations on Tax/Duty Consequences of a Proposed Course of Action

September 2016

1. Introduction

Large Cases Division (LCD) has for some time promoted and operated a Cooperative Compliance Framework as a mutually beneficial mechanism for managing the relationship between large businesses and Revenue. Under this Framework both parties work together to achieve the highest possible level of voluntary compliance across all the taxes/duties which a large business has to pay. The Framework recognises the mutual interest both parties have in being as certain as possible about tax/duty liabilities and tax/duty positions and in ensuring that there are no surprises in any later review of these liabilities or positions by Revenue. The most important feature of the relationship is the common understanding between the parties on the action that both the business and Revenue need to take to ensure that high levels of compliance are achieved and maintained.

The Cooperative Compliance Framework offers each participating business a regular dialogue with Revenue to provide long-term certainty to the business in relation to its tax/duty exposures, together with an ability to predict with reasonable confidence what Revenue's position will be in relation to particular tax/duty issues of interest to the business.

Separately from the cooperative compliance framework, taxpayers and their agents may sometimes need to contact LCD to seek an opinion/confirmation from Revenue that the taxpayer's/agent's analysis of the tax/duty consequences of a proposed course of action or in respect of a specific transaction is acceptable to Revenue.

The purpose of these Guidelines is to outline the circumstances in which LCD will provide opinions/confirmations in advance of a transaction and to ensure that requests for opinions/confirmations are dealt with by LCD as efficiently as possible. Opinions/Confirmations will be provided, where appropriate, whether or not a taxpayer is participating in Cooperative Compliance.

These Guidelines update the Guidelines set out in Tax Briefing No. 48 of 2002 on "Revenue Opinions" to take account of the considerable restructuring that has taken place in Revenue and also to take account of changes in tax/duty legislation since 2002.

These Guidelines will be applied strictly and taxpayers/agents must follow them closely if delays are to be avoided.

These Guidelines apply to requests for opinions/confirmations received in LCD on or after 9 May 2014.

2. Non-LCD Cases

The procedures for seeking an opinion/confirmation in respect of a proposed transaction, event or business activity as respects non-LCD cases are set out in the Guidelines on Revenue's Technical Service to Practitioners and Business Taxpayers. These procedures apply in relation to opinions/confirmations sought by taxpayers whose affairs are dealt with in any one of Revenue's four Regional Divisions (namely, Dublin Region, East South East Region, South West Region and Border, Midlands and West Region). If the taxpayer's affairs are dealt with by one of Revenue's Regions, requests for a opinion/confirmation, with all the relevant details, should be submitted to the Queries Management Officer (QMO) for the Revenue District (subdivision of Regional Division) dealing with the taxpayer's affairs. Where a request for an opinion/confirmation is accepted by the QMO in accordance with the published criteria, it is referred to the expert in the Revenue Technical Service for consideration.

3. LCD Cases

With the exception of the cases covered at **paragraphs 4, 5 and 9** below, all requests for opinions/confirmations from taxpayers/agents are dealt with in the appropriate Revenue District in LCD. Requests for an opinion/confirmation must be submitted directly to the Case Manager in the Revenue District in LCD who is responsible for the taxpayer in question. Applications made in any other way could result in delays for which Revenue will not accept responsibility.

The procedures provide for consultation, if necessary, by LCD with the Revenue Legislation Service (RLS) before any opinions/confirmations are issued by the Case Manager in LCD. The RLS has primary responsibility within Revenue for interpreting tax/duty legislation and providing advice on policy or technical issues to Revenue Districts. Except as outlined at **paragraphs 4, 5 and 9**, an agent/taxpayer should not contact the RLS directly for the purposes of seeking a confirmation/opinion in respect of a specific transaction. Any such direct approach is likely to significantly delay Revenue's consideration of the opinion/confirmation sought. The only valid communication from Revenue in respect of any particular application is that issued by the Case Manager in LCD responsible for the case. It should be noted that Revenue may decline to issue an opinion/confirmation as respects a proposed transaction.

4. New Foreign Direct Investment

In the case of new foreign direct investment projects, where the taxpayer concerned does not have an Irish tax registration, applications for tax/duty opinions/confirmations in advance of establishment in Ireland should be addressed to Business Taxes Policy and Legislation Division, Corporation Tax Branch, Dublin Castle, Dublin 2. This includes cases that, on establishment, would be managed by one of Revenue's Regions.

However, where a taxpayer, which is currently dealt with by LCD requires opinions/confirmations in relation to an activity to be carried on by a new subsidiary or a new branch any request should be made to the Case Manager in LCD dealing with the taxpayer's affairs.

5. Tax Treaty Issues

Requests for opinions/confirmations on complex issues to do with the interpretation of double tax treaties should be addressed to Tax Treaties Branch, International Tax Division, Dublin Castle, Dublin 2.

6. Requirements for Requesting an Opinion/Confirmation

Revenue's website, in particular *Revenue Tax Briefings* and *eBriefs*, and other publications, such as *Tax and Duty Manuals*, *Statements of Practice*, outline Revenue's position on a wide range of technical tax/duty issues.

Consequently, there should be a very limited number of circumstances where a taxpayer/agent should require an opinion/confirmation from Revenue in advance of a transaction or event actually taking place.

Any opinion/confirmation in relation to a proposed transaction or business activity is appropriate **only where the circumstances are complex, or unusual, or information is not readily available, or there is genuine uncertainty in relation to the interpretation or application of the relevant tax/duty rules.**

Requests for an opinion/confirmation in advance of a transaction taking place will only be accepted by Case Managers where:

- the issues are complex, unusual or uncertain and the taxpayer/agent requires clarification of the tax/duty treatment of the proposed transaction or business activity,
- clarification of the issue is not already in the public domain,
- the request is specific to a particular named taxpayer and relates to an actual proposed (rather than hypothetical) transaction, and
- all the relevant information and facts have been provided to enable an opinion/confirmation to be given.

Generally, requests will not be accepted where the matter is straightforward and the taxpayer/agent is simply looking for a letter of comfort from Revenue of a position or issue which can be readily established from existing published information and is not in doubt.

It is important to bear in mind that Revenue will not take on a role which is primarily that of the tax/duty advisor in relation to the taxpayer

7. Tax Avoidance

Opinions/Confirmations will not be given where the Case Manager is of the view that the proposed transaction is part of a scheme or arrangement the purpose of which or one of the purposes of which is the avoidance of tax/duty. This also applies if Revenue is of the view that the transaction in respect of which an opinion/confirmation is sought is to facilitate the avoidance of tax/duty by a third party.

Where Revenue is of the view that tax avoidance may be involved any communication from Revenue will be confined to a statement that "the opinion/confirmation sought cannot be given as the transaction may involve, directly or indirectly, or may facilitate, directly or indirectly, tax avoidance".

Where a Case Manager provides an opinion/confirmation on the tax/duty consequences of a proposed course of action it will be subject to the transaction not involving, directly or indirectly, or facilitating, directly or indirectly, tax avoidance.

8. Pre-Transaction Opinions/Confirmations

The purpose of providing opinions/confirmations is to provide clarity and certainty in relation to the applicable tax/duty rules so that a taxpayer can file a correct tax return and comply fully with its tax/duty obligations. While opinions/confirmations are not binding on Revenue, and it is open to Revenue officials to review the position when a transaction has been completed and all the facts are known, generally Revenue will follow an opinion/confirmation once it can be shown that-

- all relevant information was disclosed either at the time the application was made or following a request from Revenue for further clarification, and
- the transaction as actually implemented did not diverge or deviate from that which was outlined in the information provided in relation to the request for the opinion/confirmation .

Please refer to **paragraph 10** for further details relating to the review/reconsideration of an opinion/confirmation.

Where, following a review or further consideration, Revenue revises its position, the taxpayer will be given notice of the revised position. In such a case, Revenue will not seek to retrospectively apply a tax/duty charge once it can be shown that all relevant information was disclosed either at the time the application was made or following a request from Revenue for clarification and that the information as then disclosed does not diverge from the actual facts.

It is also open to a taxpayer to form a different opinion or to take a different position to an opinion/confirmation provided by Revenue and to file a tax return under the self-assessment system based on such opinion/position. In such a case, a taxpayer may wish to consider making an expression of doubt on its tax return. Where a genuine expression of doubt is made a company will be protected from interest charges in respect of the period up to Revenue amending the assessment. In such a case, tax is due within 30 days of the amendment of the assessment.

Taxpayers must bring any material change in the facts or circumstances that could affect an opinion/confirmation to the Case Manager's attention so that the opinion/confirmation provided can be reviewed. In such a case, the opinion/confirmation provided will either be reconfirmed or withdrawn and the taxpayer notified accordingly. Any opinion/confirmation provided will be given on the basis that, in the absence of any notification to Revenue of a material change in the facts or circumstances, the opinion/confirmation will be deemed to have been withdrawn by Revenue with effect from the time of such change and no reliance whatever should be placed on the opinion/confirmation from such time.

Opinions/Confirmations given in a particular case or as respects a particular transaction should not be relied on in any other case or in respect of any other transaction (even, except where expressly stated in the opinion/confirmation, an identical transaction to be undertaken by the same taxpayer) as opinions/confirmations given relate to cases with a unique or specific set of circumstances.

Where Revenue considers that an opinion/confirmation is likely to have a wider application or to set a precedent, a practice or guidance note will be published on the matter.

There is no pre-determined or exhaustive list of events or transactions for which a opinion/confirmation may be obtained in advance, but typically opinions/confirmations are given for the following events or transactions:

- whether proposed VAT apportionment methodologies are in compliance with VAT Regulations,
- whether a combination of supplies from a single supplier is considered to be a composite supply or a multiple supply for VAT purposes,
- where the place of supply is located in the case of certain cross border transactions,
- whether transfer of business relief applies for VAT purposes where one company proposes to take over all or part of the business of another company,
- transfer of assets intra-group or under a scheme of company reconstruction or amalgamation — entitlement to tax deferral in respect of chargeable gains,
- exemption from tax in respect of gains on certain share disposals,
- whether particular business activities are regarded as trading or non-trading,
- eligibility of proposed expenditure for capital allowances,
- whether a business activity constitutes a permanent establishment,
- availability of interest relief for loans applied to acquire share capital in, or provide loan finance to, a trading company or a company holding shares in a trading company,

In addition, advice and assistance in the preparation of formal applications for approval to enter into certain customs regimes (such as inward proposing, processing under customs control, etc.) will be provided.

9. Advance Clearance Required Under Legislation/Practice

For certain transactions/reliefs, the governing legislation or published administrative practice requires that Revenue clearance or approval be given in advance of the transaction taking place for a particular tax relief or tax treatment to apply to the transaction. In addition, in order for some statutory provisions to apply a formal election is required to be made and sent to Revenue.

There are a limited number of transactions that are subject to these requirements.

The following transactions require advance Revenue clearance or require a formal election to be made and sent to Revenue under existing legislation or practice in relation to tax/duty:

- Relief for investment in renewable energy (*section 486B TCA 1997*). Applications should be addressed to Business Taxes Policy and Legislation Division, Incentives and Financial Services Branch, Dublin Castle, Dublin 2.
- Relief for investment in films (*section 481 TCA 1997*). Applications should be addressed to Business Taxes Policy and Legislation Division, Incentives and Financial Services Branch, Dublin Castle, Dublin 2.
- Employment and Investment Incentive Scheme (*Part 16 of the TCA 1997*). Applications should be addressed to Business Taxes Policy and Legislation Division, Incentives and Financial Services Branch, Dublin Castle, Dublin 2.
- Election to the tonnage tax scheme in respect of qualifying activities of a shipping company (*Part 24A TCA 1997*). Applications should be addressed to Business Taxes Policy and Legislation Division, Business Income Tax Branch, Dublin Castle, Dublin 2.
- Application of capital gains tax deferral for certain intra-group transfers in the case of a non-EU resident group (*section 617 TCA 1997*). Applications should be addressed to the appropriate LCD Case Manager.
- Application for VAT Group authorisation (*section 15 VATCA 2010*). Notification should be made to appropriate LCD Case Manager.
- Application for authorisation to zero rate supplies to qualifying businesses (*section 56 VATCA 2010*). Application should be addressed to the appropriate LCD Case Manager.
- Eligibility for tax relief for donations to approved bodies (*section 848A TCA 1997*). Applications should be addressed to Collector General's Division, Charities Branch, Government Offices, St. Conlon's Road, Nenagh, Co. Tipperary (Telephone 067 63400 or Lo call 1890 666333; Fax 067 32916; and email charities@revenue.ie.)
- Application of dividend withholding tax and exemptions to relevant distributions (*Chapter 8A (section 172A -172M) of Part 6 of, and Schedule 2A to, TCA 1997*). Applications should be addressed to Collector General's Division, Dividend Withholding Tax Branch, Government Offices, St. Conlon's Road, Nenagh, Co. Tipperary (Telephone 067 63400 or Lo call 1890 666333; Fax 067 33822, email infodwt@revenue.ie.)

- Application for approval of a Customs Warehouse. Application should be addressed to LCD's Customs Unit.

Where an opinion/confirmation and/or a formal advance Revenue clearance and/or a formal election is required on a range of issues, all issues should be included in one application to be made to the LCD Case Manager who will coordinate Revenue's responses and arrange for a single reply to issue to the taxpayer/agent on all matters.

10. Duration of Opinion/Confirmation

Where appropriate an opinion/confirmation will contain a provision setting out the period for which the opinion/confirmation will apply. This period will normally be 5 years or the equivalent length of time in accounting periods of the taxpayer concerned. A shorter period of application may apply in some cases and where such a shorter application period is to apply this will be expressly specified in the opinion/confirmation. At the end of the period of application of an opinion/confirmation a taxpayer who wishes the opinion/confirmation to continue in force must reapply, following the procedures set out in these Guidelines, for a renewal or extension of the opinion/confirmation.

In addition, an opinion/confirmation will only remain valid for so long as the facts and circumstances on which the opinion/confirmation is based continue to exist and the relevant legislation and practice remains in place. An opinion/confirmation can be reviewed at any time by Revenue, with a view to amendment or withdrawal, in the light of relevant facts, circumstances or other information changing or where Revenue decides to reconsider its position. The amendment or withdrawal will have effect from the time when the facts, circumstances or other information changed or the taxpayer is notified by Revenue that it has reconsidered, and changed, its position.

11. Information to be Provided

The type of information that a taxpayer must provide when seeking an advance opinion/confirmation in relation to a proposed transaction, includes:

- the name and tax reference number of the taxpayer requesting the opinion/confirmation and of any other party involved,
- a description of the details and purpose of each proposed transaction,
- a description of the business activity,
- specification of the tax/duty issues for which a Revenue opinion/confirmation is sought,
- details of the relevant legislation and the taxpayer's or agent's analysis or interpretation of its application to the specific transaction or activity,
- relevant case law and precedents, and
- the implications of the transaction or activity for the tax/duty liability of the taxpayer.

Extraneous details and information, not relevant to the technical tax point on which an opinion/confirmation is sought, should not be included in any application for an opinion/confirmation. The inclusion of such material may result in the application

being returned for amendment which could cause a delay in Revenue responding to the application.

12. Time Frame

Where a transaction is subject to a specific deadline, LCD will make every effort to ensure that a reply issues before the deadline provided that an application is made in sufficient time in advance of a particular deadline to allow Revenue to fully consider the point at issue. This will apply particularly in the case of a taxpayer who participates in the Co-operative Compliance Framework.

However, in order to ensure that an opinion/confirmation is provided by Revenue in good time to taxpayers/agents and that LCD has sufficient time to consider the tax/duty consequences of a transaction or of a particular course of action and consult as necessary across Revenue, taxpayers/agents should, **except in exceptional circumstances**, submit the case and all requisite information and details **at least, and preferably earlier than, 4 weeks before the date of the proposed transaction**. Failure to meet this requirement may mean that an opinion/confirmation will not issue in good time.

The reference to "exceptional circumstances" relates to **wholly unforeseen events or circumstances** that require the taxpayer concerned to seek an opinion/confirmation from Revenue within a shorter timespan. In such cases, taxpayer/agents should be aware that there can be no guarantee that any response, either positive or negative, will be provided by Revenue within the required timespan.

13. Excluded Cases

The procedures outlined in this guidance note do not apply to:

- Individuals whose tax affairs are dealt with in LCD's, High Wealth Individuals & Professionals District. Please note that requests for opinions/confirmations from professional firms will be considered where the request relates to a transaction to be undertaken by the professional firm itself.
- Any taxpayer (whether an individual, a company or other entity) that is under enquiry by LCD for possible tax avoidance.
- Any taxpayer (whether an individual, company or other entity) that is under investigation (as this term is understood for the purposes of the Code of Practice for Revenue Audit) by Revenue.