

Summary of Internal & External Review Decisions issued in 2022

	Type of Review	Summary of Request	Decision	Summary of Reviewer's findings
1.	Internal	Request for Review: of Revenue's determination that a Proprietary Director of the company is not an eligible employee of the company for the purposes of the Employee Wage Subsidy Scheme (EWSS).	Against Customer	Decision: The Reviewer commented that Revenue had set out in their correspondence the relevant legislation and their interpretation thereof, and the underlying facts of the case are not disputed. The parties disagree on whether the complainant is entitled to avail of the scheme. Eligibility for the scheme is clearly set out in legislation and a large body of published guidance. An employer can therefore claim EWSS for proprietary directors from the 1st of September 2020 if the employer meets the eligibility criteria for the EWSS. The Reviewer noted that the complainant was not an eligible employee with the company for EWSS purposes, i.e. not on the payroll of the business during the period 1 July 2019 and 30 June 2020.
2.	External	Request for Review: of Revenue's determination that a proprietary director of the company and a connected party are not considered to be eligible employees for the purposes of admission to the Employee Wage Subsidy Scheme (EWSS).	Against Customer	Decision: Whilst having sympathy for the complainant's predicament, he concluded that Revenue had set out in its correspondence the relevant legislation and its interpretation thereof, and the underlying facts of the case do not seem to be disputed. Revenue has thus prima facie properly applied the law in opining that the directors did not qualify for EWSS. Under the CS4 complaints protocol, an external reviewer will only intervene on a legal matter if Revenue's stance is ' <i>clearly incorrect</i> '.
3.	External	Request for Review: of Revenue's overall handling of a VAT audit in respect of 2016, primarily due to the delay in dealing with technical matters.	Against Customer	Decision: The Reviewer found in favour of Revenue on the substantive issue. The External Reviewer notes that the complaint essentially stems from changes made by Revenue in 2011 to the rate of VAT applicable to dairy-based smoothies, restricting zero rating to just milk based products. Under the CS4 complaints protocol, an External Reviewer will only intervene on a legal matter if Revenue's stance is ' <i>clearly incorrect</i> '.
4.	External	Request for Review: of Revenue's actions in the conduct of an audit intervention.	Against Customer	Decision: The Reviewer stated that had Revenue been provided with all relevant records this should have been a relatively straightforward income tax audit covering one year. However, delays were primarily caused by the taxpayer's "...slow drip-feeding of incomplete information to Revenue, with

				numerous 'chaser letters' being issued by them...". This in turn led to Revenue issuing estimated assessments which were not appealed by the taxpayer.
5.	External	Request for Review: of a complaint alleging that Revenue did not act on instructions from the taxpayer that the agent appointed by them was no longer acting on their behalf for Income Tax purposes.	Against Customer	Decision: The Reviewer noted that the taxpayer had appointed agents for Income Tax purposes in 2014 and subsequently, also appointed the same agents for PAYE purposes in 2016. He further noted that the taxpayer had instructed Revenue in January 2018 that the agents were no longer acting for the taxpayer in respect of PAYE. The agents however, remained registered as representing the taxpayer for Income Tax purposes until the taxpayer formally notified Revenue of their removal in February 2020. Revenue may only act in such matters, strictly in accordance with the taxpayer's specific instructions as notified to them. The reviewer has therefore found that Revenue cannot be faulted as the taxpayer's full intentions were not made known to them in January 2018. Revenue was therefore obliged to continue to act in accordance with the instructions of your agents in respect of Income Tax matters until their formal removal from that role. Accordingly, the reviewer has determined that no intervention by him is warranted, and he has therefore found in favour of Revenue.
6. & 7.	External	Request for Review: of Revenue's decision that the relieving provisions of Section 586 TCA 1997 (Company amalgamations by exchange of shares) did not apply in this case.	Against Customer	Decision: The Reviewer found that there is no known precedent for the claim put forward by the taxpayers and, in fact, there is a precedent for Revenue's position. The External Reviewer found that the content of the reputable publications referenced by the taxpayers provides, on its own, only very limited, even hearsay, evidence that Revenue has allowed CGT relief in cases with a similar fact pattern to this case. He has also noted that the response by Revenue to the taxpayers FOI requests has not identified any precedent for the taxpayer's position and that the response by Revenue to the FOI requests has identified a precedent for Revenue's position. On that basis, the Reviewer finds against the taxpayers and in favour of Revenue.
8.	External	Request for Review: of Revenue's determination that the company is ineligible to avail of the provisions of the Covid Restrictions Support Scheme (CRSS) in respect of a certain period.	Against Customer	Decision: The Reviewer opined that Revenue have clearly complied with the tax legislation (i.e., TCA 1997) in strictly applying the eight week claims limitation and hence he cannot support the complaint. He noted that whether or not there was 'wriggle room' in the Covid lockdown regulations to let the taxpayers legally access their premises for an

				administrative purpose is not something the External Reviewer can opine on; this is a legal matter for the taxpayer's ongoing appeal with the Tax Appeals Commission (or Courts) to resolve rather than an External Reviewer.
9.	External	Request for Review: of Revenue's decision to deny the application of Revenue's Force Majeure (Covid-19) concession to the taxpayer's residence position for a particular year. The Agent had also complained about the process of the Stage 2 Local Review in this case.	Against Customer	Decision: The Reviewer found against the taxpayer in respect of both elements of his complaint. In relation to Revenue's decision that the 'force majeure' concession did not apply, he noted, among other things, that under the double taxation treaty with Ireland the tie-breaker provision may have applied in favour of the other country. He also noted that the taxpayer exceeded the 183 day residency limit in the year. He also pointed out that whether or not a tax concession announced by the Revenue Commissioners has any enforceable legal substance is not a question that can be dealt with by an External Reviewer as it is a matter that is appropriate for the Tax Appeals Commission or the Courts. In respect of the Stage 2 Local Review, the The External Reviewer has not seen any evidence of non-compliance with Revenue's Complaint and Review Procedures.
10.	Internal Review	Request for Review: of Revenue's decision that the taxpayer was only partially entitled to entry to the Temporary Wage Subsidy Scheme (TWSS) in respect of a particular division and must therefore repay some of the monies paid out by Revenue under the scheme.	Against Customer	Decision: The Reviewer determined that the claim made by the company for the period April to June 2020 was incorrect and that only staff directly linked to the particular division are in fact eligible; TWSS claimed on behalf of other employees should be repaid. The Reviewer noted that he understands the constraints under which the company operates and accepts the points they have raised about Government grants and funding, but the legislation and guidance is clear in this instance, and he is satisfied that these employees are not eligible.
11.	External	Request for a Review: of Revenue's decision that a proprietary director was not eligible for the Employment Wage Subsidy Scheme (EWSS).	Against Customer	Decision: The Reviewer notes that whilst he expresses sympathy with the customers predicament, he has concluded that Revenue have set out in their correspondence the relevant legislation and their interpretation thereof, and the underlying facts of the case do not seem to be disputed. He determined that Revenue have prima facie properly applied the law in concluding that the proprietary director did not qualify for EWSS, and no discretion is included in the legislation for them to act otherwise.

12.	External	Request for Review: of Revenue's decision to exclude a proprietary director from entry to the Employment Wage Subsidy Scheme (EWSS).	Against Customer	Decision: The Reviewer found that Revenue had “prima facie” applied the law properly, in concluding that the proprietary director did not meet the criteria necessary, to qualify for entry to the EWSS. He also referenced the fact that no discretion on the matter is permitted under the legislation to allow Revenue to find otherwise. The Complaint and Review Procedures make provision for an external reviewer to intervene on a legal matter only in circumstances where it is found that Revenue’s stance is ‘clearly incorrect’. As the External Reviewer has not found that Revenue’s stance in this instance is 'clearly incorrect' he may not intervene.
13.	External	Request for Review: of Revenue's decision that the company is ineligible for the Employment Wage Subsidy Scheme (in particular if it is a new business).	Partially Revised	Decision: The Reviewer noted that Revenue are of the opinion that there was no new business created for Employment Wage Subsidy Scheme (EWSS) purposes when the Company commenced its operations in late 2019 however, the External Reviewer determined that this is taking too narrow a view on what activities constitute a business in his opinion. The External Reviewer determined that there is insufficient detail in the papers seen by him to enable him to perform such a review and thus recommended that the Company duly prepares a summary to clarify differences between its two business models, and then promptly reviews it with Revenue to see if a consensus can be reached. Revenue accepted this recommendation.
14.	External	Request for Review: of Revenue's overall handling of an audit intervention. The taxpayer requested that the audit be discontinued on the basis of the delay in it being progressed by Revenue.	Against Customer	Decision: The Reviewer noted that both parties accept that the audit to date had been progressed in an unacceptable manner and that this delay had caused the complainants undue concern while trying to run their business in very difficult circumstances. The External Reviewer has recommended therefore that a practical and pragmatic approach by both sides should help in finalising matters.
15.	External	Request for Review: of with Revenue's failure to respond to the complainant's queries resulting from the seizure by Revenue of a consignment of e-cigarette products from the taxpayer.	In Favour of Customer	Decision: The Reviewer determined that notwithstanding working restrictions brought about during the Covid-19 pandemic, and the relatively low value of the goods seized, the customer’s case had not been dealt with in accordance with the standards set out in Revenue’s Customer Service Charter. The Reviewer noted that Revenue have apologised for the way in which the customer’s case was handled and he trusts that all the customer’s concerns have now been dealt with by Revenue.

16.	Internal	Request for Review: of Revenue's decision that a proprietary director was not eligible for the Employment Wage Subsidy Scheme (EWSS).	Against Customer	Decision: The Reviewer commented that eligibility for the scheme is clearly set out in legislation and a large body of published guidance. An employer can therefore claim EWSS for proprietary directors from 1 September 2020 if the employer meets the eligibility criteria for the EWSS; the proprietary director is on the payroll, and wages were paid to the proprietary director which were reported to Revenue on the payroll at any stage between 1 July 2019 and 30 June 2020. The claimant does not meet the necessary criteria and is therefore not an eligible employee of the company for EWSS purposes as he was not on the payroll of the business during the period 1 July 2019 and 30 June 2020.
17.	External	Request for Review: of Revenue's position on the eligibility of the company for the Employment Wage Subsidy Scheme (EWSS).	Against Customer	Decision: In reaching his decision, the Reviewer noted that the purpose of EWSS and other emergency legislation was to support Irish businesses in surviving the pandemic and avoid mass unemployment. The Guidelines issued (and periodically updated) by Revenue were intended to assist businesses to apply the rules in the legislation, not replace them, and the examples given therein are clearly not comprehensive.
18.	External	Request for Review: of Revenue's decision that the company is ineligible for the Employment Wage Subsidy Scheme (EWSS). The complaint primarily concerns Revenue's refusal to accept the application of an 'other reasonable basis' (instead of the standard turnover/orders test) to demonstrate the impact of the pandemic on the business.	Against Customer	Decision: The Reviewer determined that Revenue's decision to treat the business conducted by the Company as being a continuation of that previously carried on as a sole trader, is in accordance with the Guidelines and is not seen as unreasonable. The External Reviewer determined that the legislation in section 28B sets out the criteria whereby proprietary directors can qualify for EWSS and that this only permits directors who were on an employer's payroll duly reported to Revenue at any time in the period from 01 July 2019 to 30 June 2020 to qualify for assistance which would rule out the taxpayer in this case.
19.	External	Request for Review: of Revenue's position on the eligibility of the company for the Employment Wage Subsidy Scheme (EWSS).	Against Customer	Decision: The Reviewer noted that the customer had not demonstrated that the Company's business is sufficiently different to, and differentiated from, that of the sole trader so as to constitute a new business for EWSS purposes; per the legislation, the comparative period for the turnover test is thus based on 2019 actual sole trader results (and not later projections), that there is no indication that Revenue's actions may be contrary to the legislation; and finally that the legality of Revenue's Guidelines is set out in section 28B subsections 2(a)(i) and 20 of

				the legislation, and the Guidelines clearly state that EWSS (and its eligibility criteria) attaches to the trade, not the legal ownership thereof.
20.	External	Request for Review: of Revenue's decision that a director of the company does not meet the necessary criteria to qualify for the Employment Wage Subsidy Scheme (EWSS).	Against Customer	Decision: In his decision, the Reviewer noted that EWSS legislation provides for different eligibility criteria for proprietary directors than it does for other employees. Whilst expressing sympathy with the complainant's predicament, the External Reviewer concluded that Revenue had set out in their correspondence the relevant legislation and their interpretation thereof, and the underlying facts of the case do not seem to be disputed; Revenue have thus prima facie applied the law properly in concluding that the agent's client did not qualify for EWSS, and no discretion is included in the legislation for Revenue to act otherwise.
21.	External	Request for Review: into the overall handling of the customer's tax affairs during a particular period of time.	In Favour of Customer	Decision: The Reviewer found in favour of the customer. He determined that the delay of nearly 6 years in dealing with the customer's request for a Stage 2 Local Review under Revenue's Complaint and Review Procedures, as set out in Revenue information Leaflet-CS4 was extraordinary, unacceptable, and inexcusable. He noted that Revenue accepts that it must have a duty of care in dealing with taxpayers and found that regrettably this has not been evident in the customer's case. The External Reviewer requested that Revenue consider if it is possible to grant to the customer a particular credit for relevant year(s). Revenue accepted the request to review this case.
22.	External	Request for Review: of Revenue's decision that a particular individual is not an eligible employee of the business for the purposes of the Employment Wage Subsidy Scheme (EWSS).	Against Customer	Decision: The Reviewer determined that EWSS legislation provides for different eligibility criteria for proprietary directors than it does for other employees. Whilst expressing sympathy with the complainant's predicament, the External Reviewer concluded that Revenue had set out in their correspondence the relevant legislation and their interpretation thereof, and the underlying facts of the case do not seem to be disputed; Revenue had thus prima facie applied the law properly in concluding that the complainants did not qualify for EWSS, and no discretion is included in the legislation for Revenue to act otherwise.
23.	External	Request for Review: of Revenue's position on the eligibility of the company for the Employment Wage	Against Customer	Decision: The Reviewer found that Revenue acted within its legislative powers in cancelling the Company's EWSS registration in this case.

		Subsidy Scheme (EWSS) in respect of certain periods 'on the basis that the company was allegedly unfairly deregistered for EWSS by Revenue.		
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