

High Wealth and Financial Services Division: Opinions/Confirmations on Tax/Duty Consequences of a Proposed Course of Action

Part 37-00-40a

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Note: This manual is currently subject to review and may not reflect up-to-date position. Most recent version.

1 Introduction

On occasion, taxpayers and their agents may need to contact High Wealth and Financial Services Division (HW&FSD) 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 HW&FSD will provide opinions/confirmations in advance of a transaction and to ensure that any requests for opinions/confirmations are dealt with by HW&FSD as efficiently as possible.

The procedures for seeking an opinion/confirmation on a significant transaction under the Enhanced Compliance Engagement (ECE) Framework operated by HW&FSD are set out in the Tax and Duty Manual - [High Wealth and Financial Services Division: Enhanced Compliance Engagement \(ECE\) Framework](#). The ECE framework is available to High Wealth Individual (HWI) taxpayers whose tax affairs are managed within HW&FSD. HWIs are taxpayers whose net asset value is estimated to be \geq €20m.

The procedures for seeking an opinion/confirmation in respect of a proposed transaction, event or business activity as respects non-HW&FSD cases are set out in the Tax and Duty Manual [Part 37-00-00a](#) and [Part 37-00-40](#). The procedures in Tax and Duty Manual Part 37-00-00a apply in relation to opinions/confirmations sought by taxpayers whose affairs are dealt with in one of Revenue's National Operational Divisions (namely, Business Division, Medium Enterprises Division and Personal Division). The procedures in Tax and Duty Manual Part 37-00-40 apply in relation to opinions/confirmations sought by taxpayers whose affairs are dealt with in Large Corporates Division.

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

2 HW&FSD Cases

With the exception of the cases covered at paragraphs 3 and 7 below, all requests for opinions/confirmations from taxpayers/agents are dealt with in the appropriate Revenue Branch in HW&FSD. Requests for an opinion/confirmation must be submitted:

- (a) in the case of a HWI taxpayer, to the relevant Branch manager,
- (b) in the case of a Financial Services taxpayer who is not participating in the Cooperative Compliance Framework, to HWFSDiv@revenue.ie using My Enquiries via ROS, and
- (c) in the case of a taxpayer who is participating in the Cooperative Compliance Framework, directly in writing to the dedicated Case Manager assigned to that taxpayer (a Revenue approved secure electronic channel of communication may be used for this purpose).

Applications which do not follow the above procedures or applications made in any other way could result in delays for which Revenue will not accept responsibility. All applications for an opinion/confirmation made in accordance with this paragraph must comply with the requirements of section 9 of this manual.

The procedures provide for consultation, if necessary, by HW&FSD with the Revenue Legislation Service (RLS) before any opinions/confirmations are issued by HW&FSD. The RLS has primary responsibility within Revenue for interpreting tax/duty legislation and providing advice on policy or technical issues to Revenue Divisions. The only valid communication from Revenue in respect of any particular application is that issued by the HW&FSD Branch responsible for the case. It should be noted that Revenue may decline to issue an opinion/confirmation as regards to a proposed transaction.

3 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. Revenue has published separate guidelines on the operation of Ireland's bilateral advance pricing agreement programme. These are contained in Tax and Duty Manual [Part 35-02-07](#).

4 Requirements for Requesting an Opinion/Confirmation

Revenue's website, in particular publications such as **Tax and Duty Manuals**, outlines 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, and 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 HW&FSD 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.

5 Tax Avoidance

Opinions/confirmations will not be given where HW&FSD are 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 HW&FSD 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 HW&FSD provide 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.

6 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 8 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 their tax return. Where a genuine expression of doubt is made, a taxpayer 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 generally be published on the matter.

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

- 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.

7 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. These should continue to be addressed to the relevant areas.

8 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 be, at maximum, 5 years or the equivalent length of time in accounting periods of the taxpayer concerned. A shorter period of application may apply in some cases¹ 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.

9 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,

¹ Opinions/confirmations given in relation to VAT are by reference to a particular transaction and an interpretation of VAT legislation. They are therefore unlikely to have continuing validity.

- 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, and not required to fulfil exchange of information requirements (see below), should not be included in any application for an opinion/confirmation.

Additional mandatory information where exchange of information requirements apply is set out in Section 2.1 of TDM [Part 35-00-01](#).

Form RTS 1A

A taxpayer or tax agent applying to HW&FSD for an opinion/confirmation in accordance with sections 2 and 4 of this manual, must complete and submit a Form RTS 1A (a copy of which is included in Appendix A). The taxpayer or tax agent should ensure that the completed Form RTS 1A also includes the information outlined above. This procedure must be followed in all cases.

10 Time Frame

Where a transaction is subject to a specific deadline, HW&FSD 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.

However, in order to ensure that an opinion/confirmation is provided by Revenue in good time to taxpayers/agents and that HW&FSD 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 time span. 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.

11 Excluded Cases

The procedures outlined in this guidance note apply only to cases that are dealt with in HW&FSD, and do not apply to:

- Companies whose tax affairs are dealt with in Large Corporates Division, Business Division, Personal Division or Medium Enterprises Division.
- Any taxpayer (whether an individual, a company or other entity) that is under enquiry 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 and other Compliance Interventions) by Revenue.

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Appendix A

Form RTS 1A

To be completed by the person seeking an opinion/confirmation	
Taxpayer / Company Name	
Address/Business Address	
Tax Reference	
Revenue Division	
Agent	
Submitting Agent	
Tax/Duty Heads involved (IT, CT, CAT, CGT, VAT, RCT, Stamp Duty, etc)	
Full facts of the case in relation to the issue or transaction, including the purpose of the transaction(s) and details of any prior or further steps involved	
Details of the specific doubt arising on the proposed tax treatment of the transaction(s) and the exact uncertainty on the application of the relevant legislation upon which clarity is required	
Relevant legislative provision(s)	
Details of relevant case law	
Details of your full technical analysis and research	
Your conclusions on the interpretation of the application of the legislative provisions	
Have copies of contracts and other relevant material been included?	
Have all facts in the matter been disclosed in full?	

Is the submission the subject of a compliance enquiry of any kind?	
Is the submission requested in connection with any form of tax planning by the agent or the taxpayer?	
<p>Does this interpretation relate to subject matter to which exchange provisions apply?*</p> <p>If yes, confirm all supporting documents are included</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>

*Guidance on rulings that are subject to exchange provisions is available in Tax & Duty Manual [Part 35-00-01](#).

Appendix B

Exchange Of Information Requirements:

Additional Mandatory Information To Be Provided When Requesting An Opinion/Confirmation

- Where the taxpayer is not resident in the State, their country of tax residence.
- Name of group to which taxpayer belongs, if applicable.
- Name and country of residence of any other party or parties involved in the transaction or situation.
- Details of any information included in the request that should not be disclosed due to the fact that it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process.
- Where the opinion comes within scope of the EU Directive, the following information will need to be provided:
 - an indication of whether there are any tax implications that may be of relevance for the tax authorities of another Member State. Where it is considered that the opinion is not of relevance to the tax authority of any other Member State please indicate why this is the case. Revenue may seek additional information in this regard; and
 - the identity of the affected entities in each of the EU Member States mentioned above, including full legal name, address (should include city and country) and tax reference number, where known. **Note:** Where the entity is a PE this should be specified.
- Where the opinion comes within scope of the OECD framework, the following information will need to be provided:
 - where the company is part of a multi-national group, the country of residence of the immediate and ultimate parent companies and the identity of each of these companies, including full legal name, address (should include city and country) and, where known, any relevant reference number; and
 - the country of residence of all other related parties (as specified in Table 1 in section 3.1), the reason why they are considered related (i.e. % holding) and the identity of each of these parties including full legal name, address (should include city and country) and, where known, any relevant reference number. **Note:** Where the entity is a PE this should be specified.