

Review of Opinions or Confirmations

Part 37-00-41

This document should be read in conjunction with the following Tax and Duty Manuals:

- [Tax and Duty Manual Part 37-00-40](#) - *Large Cases Divisions: Opinions/Confirmations on Tax/Duty Consequences of a Proposed Course of Action*; and
- [Tax and Duty Manual Part 37-00-00a](#) - *The Revenue Technical Service*

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Executive Summary

The purpose of this manual is to set out Revenue policy on the maximum period of validity of Revenue opinions/confirmations and also to provide information in respect of a review of opinions/confirmations that were issued more than five years ago. This manual has been updated to provide guidance to taxpayers who wish to continue to rely on an opinion/confirmation issued by Revenue in the period between 1 January and 31 December 2013, in respect of a transaction, period or part of a period, on or after 1 January 2019. A taxpayer who wishes to continue to rely on such an opinion/confirmation is required to make an application for its renewal or extension on or before **29 March 2019**.

1. Revenue policy on maximum period of validity of opinions/confirmations

The circumstances in which an opinion/confirmation may be obtained from Revenue, and the procedures that must be complied with, are set out in Tax and Duty Manuals [Part 37-00-40](#) (for cases dealt with by Revenue's Large Cases Divisions) and [Part 37-00-00a](#) (for cases dealt with through Revenue's Technical Service).

Many opinions/confirmations provided by Revenue relate to once-off transactions and the question of their continuing validity does not arise. Where however, having regard to the matter on which it is provided, an opinion/confirmation is capable of being relied on by a taxpayer for a period of time, it is Revenue policy that the maximum period for which it may remain valid without being reviewed is **5 years**.¹ However, in some cases, a shorter period of validity may be specified by Revenue.

The validity period of an opinion/confirmation, whether 5 years or such shorter period as may have been specified by Revenue when providing the opinion, may become shorter because:

- An opinion/confirmation will only remain valid for so long as the facts and circumstances on which it is based have not changed and the relevant legislation and practice remain in place; and
- An opinion/confirmation can be reviewed by Revenue at any time, with a view to amendment or withdrawal, in the light of changes in the relevant facts, circumstances or other information, or where, in the absence of such changes, Revenue decides to reconsider its position.

¹ Or, where applicable, the equivalent length of time in accounting periods of the taxpayer concerned.

2. Review of Revenue opinions/confirmations

2.1. Reviews of opinions issued more than five years ago

In line with Revenue policy that opinions/confirmations have a maximum validity period of 5 years, Revenue published guidance in January 2017 and January 2018 in respect of a review of opinions/confirmations that were provided before 1 January 2012 and between 1 January and 31 December 2012 respectively. Information in respect of the review of opinions/confirmations issued before 1 January 2012 is set out in [2.2](#) and in [2.3](#) for opinions/confirmations issued between 1 January and 31 December 2012. This manual has been updated to provide guidance in respect of a review of opinions/confirmations that were issued by Revenue between 1 January and 31 December 2013 (see [2.4](#)).

2.2. Review of opinions/confirmations issued before 1 January 2012

On 26 January 2017, Revenue issued eBrief No. 08/2017 attaching guidance in respect of a review of opinions/confirmations issued prior to 1 January 2012 (the review guidance). The review guidance, which is included in [Appendix A](#), confirmed that taxpayers and tax practitioners could not continue to rely on any opinion/confirmation issued by Revenue prior to 1 January 2012 (and which had not already lapsed or ceased to have effect before 1 January 2017²) as respects any transaction, or the whole or part of any period, after 1 January 2017, unless by 30 June 2017 -

- evidence of the opinion/confirmation was supplied, being a copy of a written communication which originated from Revenue; and
- an application for the renewal or extension of the opinion/confirmation was made to the Revenue District dealing with the taxpayer's affairs.

The number and breakdown of applications received by Revenue for the renewal or extension of opinions/confirmations issued before 1 January 2012 are included in [Appendix B](#).

If an application for a renewal or extension of an opinion/confirmation issued prior to 1 January 2012 was not made in accordance with the review guidance, it cannot be relied on by any taxpayer or tax practitioner in respect any transaction, period or part of a period, after 1 January 2017.

² An opinion/confirmation could cease to have effect because of the expiry of a time limit included in the opinion/confirmation; changes in the relevant facts and circumstances; or changes in relevant law and published practice.

2.3. Review of opinions/confirmations issued between 1 January 2012 and 31 December 2012

On 19 January 2018, Revenue issued [eBrief No. 07/2018](#) informing taxpayers and tax practitioners of an update to this manual in respect of a review of opinions/confirmations issued by Revenue in the period between 1 January and 31 December 2012. A taxpayer who wished to continue to rely on any such opinion/confirmation as respects any transaction, or the whole or any part of any period, on or after 1 January 2018, was required to do the following by 30 March 2018:

- Supply evidence of the opinion/confirmation, being a copy of a written communication which originated from Revenue, and
- Lodge a full application for the renewal or extension of the opinion/confirmation, in accordance with the published procedures for obtaining an opinion/confirmation from Revenue, to the Revenue District dealing with the taxpayer's affairs.

If an application was not made for the renewal or extension of an opinion/confirmation issued by Revenue between 1 January and 31 December 2012 in accordance with the above procedures, it cannot be relied on by any taxpayer or tax practitioner in respect any transaction, period or part of a period, after 1 January 2018.

2.4. Review of opinions/confirmations issued between 1 January 2013 and 31 December 2013

2.4.1. Applications for renewal or extension of opinions/confirmations

Opinions/confirmations issued by Revenue in the period between 1 January and 31 December 2013 are subject to review. A taxpayer who wishes to continue to rely on any opinion/confirmation issued by Revenue in the period between 1 January and 31 December 2013 (and which has not already ceased to have effect before 1 January 2019) as respects any transaction, or the whole or part of any period, after 1 January 2019, is required to do the following by **29 March 2019**:

- Supply evidence of the opinion/confirmation, being a copy of a written communication which originated from Revenue, and
- Lodge a full application for the renewal or extension of the opinion/confirmation with the Revenue District dealing with the taxpayer's affairs. The application must be made in full compliance with Revenue procedures in relation to obtaining an opinion/confirmation from Revenue, as contained in Tax and Duty Manuals [Part 37-00-40](#) and [Part 37-00-00a](#).

2.4.2 Processing of applications

Renewal or extension applications will be dealt with in the same manner as any request for an opinion/confirmation made in accordance with the published guidance on obtaining an opinion/confirmation from Revenue, as set out in Tax and Duty Manuals [Part 37-00-40](#) and [Part 37-00-00a](#).

2.4.3 Status of opinions/confirmations pending a review of applications

Where a renewal or extension application has been made in full compliance with the criteria set out in [2.4.1](#), and provided there has not been a material change in the facts and circumstances on which the opinion/confirmation is based or it had not otherwise ceased to have effect, the opinion/confirmation will continue to apply until such time as Revenue has had an opportunity to review the application for its renewal or extension.

If having reviewed an opinion/confirmation on foot of an application for its renewal or extension, Revenue gives written notice of the withdrawal or amendment of the opinion/confirmation concerned, this notice will be stated to apply to transactions and chargeable periods (or part of a chargeable period) to the extent that they are subsequent to such notice.

2.4.4 Exchange of information with other tax authorities

An opinion/confirmation provided by Revenue, including the renewal or extension of an opinion/confirmation, may be subject to disclosure with other tax authorities in accordance with EU and OECD initiatives on exchange of information on "Tax Rulings". For information on the type of opinions/confirmations that may need to be exchanged, please refer to: Tax and Duty Manual [Part 35-00-01](#), *Revenue Arrangements for Implementing EU and OECD Exchange of Information Requirements in Respect of Tax Rulings*.

2.4.5 What happens if a renewal or extension application is not made?

All opinions/confirmations issued by Revenue between 1 January and 31 December 2013, and which had not already ceased to have effect, cannot be relied on by any taxpayer or tax practitioner in respect of any transaction, period or part of a period, after 1 January 2019 where an application for its renewal or extension is not made in accordance with [2.4.1](#).

Appendix A – Guidance issued by Revenue on 26 January 2017 in relation to a review of opinions/confirmations issued prior to 1 January 2012

This guidance was attached in eBrief No. 8 of 2017

Revenue Opinions/Confirmations

A. Revenue policy on opinions/confirmations

1. General

Revenue has published detailed guidelines on the provision of opinions/confirmations in respect of tax matters. Guidelines on opinions/confirmations relating to cases dealt with by Revenue's Large Cases Division (LCD) are contained in Tax and Duty Manual [Part 37-00-40 \(PDF, 138KB\)](#) (formerly Tax Briefing 4 of 2014). Guidelines relating to requests for opinions/confirmations submitted for non-LCD cases through the Revenue Technical Service (RTS) are available on the Revenue website at: [RTS Guidelines](#).

An opinion/confirmation will only be provided by Revenue where the issues are complex, information is not readily available or there is genuine uncertainty in relation to the applicable tax rules as set down in the legislation. An opinion/confirmation will provide Revenue's view of the application of tax law to a particular transaction or situation and will assist the taxpayer in filing a tax return as required under law.

2. Maximum period of validity of Opinions/Confirmations

Many opinions/confirmations given by Revenue relate to once-off transactions and the question of their continuing validity does not arise. Where however, having regard to the matter on which it is provided, an opinion/confirmation is capable of being relied on by the taxpayer for a period of time, it is current Revenue policy that the maximum period for which it may remain valid without being reviewed is **5 years**.³ However, in some cases, a shorter period of validity may be specified by Revenue. This policy applies to **all opinions/confirmations** regardless of when they were issued by Revenue.

³ Or, where applicable, the equivalent length of time in accounting periods of the taxpayer concerned.

Of note, it has always been the case that an opinion/confirmation will only remain valid for so long as the facts and circumstances on which it is based have not changed and the relevant legislation and practice remain in place. Furthermore, an opinion/confirmation can be reviewed by Revenue at any time, with a view to amendment or withdrawal, in the light of changes in the relevant facts, circumstances or other information, or where, in the absence of such changes, Revenue decides to reconsider its position.

B. Implementation of Revenue policy on the maximum period of validity of opinions/confirmations

1. Published Guidance

eBriefs No. 79/2016 (LCD opinions/confirmations) and No. 89/2016 (RTS Guidelines) confirm that LCD and RTS guidelines have recently been updated in line with this policy. Both sets of guidelines confirm that opinions/confirmations issued by Revenue will contain a provision setting out the maximum period for which the opinion/confirmation may be valid is 5 years, or such shorter period as may be specified by Revenue. After the maximum validity period, whether 5 years or less, an application for a renewal or extension must be made, in accordance with published guidelines, if the taxpayer wishes the opinion/confirmation to continue.

2. Opinions/confirmations issued by Revenue more than 5 years ago

All opinions/confirmations issued by Revenue are subject to a maximum validity period of 5 years, or such shorter period as may have been specified by Revenue when providing the opinion/confirmation. In line with this policy, all opinions/confirmations that were issued more than 5 years ago, and which taxpayers wish to continue to rely on, are subject to review. As taxpayers and tax agents are best placed to decide, having regard to taxpayers' individual facts and circumstances, whether they are continuing to rely on opinions/confirmations more than 5 years after their issue⁴, Revenue requires taxpayers to notify Revenue of opinions/confirmations that they are relying on, where they wish to continue to do so.

Accordingly, as respects any transaction, or the whole or part of any period, after 1 January 2017, taxpayers and practitioners may not continue to rely on any opinion/confirmation, which was issued before 1 January 2012 (and had not already lapsed or ceased to have effect before 1 January 2017⁵), unless they have -

- supplied evidence of the opinion/confirmation, being a copy of a written communication which originated from Revenue, and

⁴ A taxpayer may no longer be relying on an opinion/confirmation because, for example, the facts and circumstances on which it was based no longer apply.

⁵ An opinion/confirmation could cease to have effect because of the expiry of a time limit included in the opinion/confirmation without renewal of the opinion/confirmation; changes in the relevant facts and circumstances; or changes in relevant law and published practice.

- lodged a full application for the renewal or extension of the opinion/confirmation with the Revenue District dealing with the taxpayer's affairs

by 30 June 2017.

Renewal and extension applications must comply with the requirements contained in Tax and Duty Manual [Part 37-00-40 \(PDF, 138KB\)](#) and the [RTS Guidelines](#), as appropriate.

3. What happens after a taxpayer has supplied evidence of the opinion/confirmation and makes an application for its renewal or extension by the required date of 30 June 2017?

Acknowledgement of receipt

The Revenue District dealing with the taxpayer's affairs will provide an early acknowledgement of the receipt of each application for the renewal or extension of an opinion/confirmation. That acknowledgement will confirm that where certain terms are met (see following paragraph), the opinion/confirmation will continue to have effect until Revenue has – following a full review of the application – provided a written response. This response will either accept, accept with amendments, or reject the renewal or extension application.

Terms on which the opinion/confirmation continues to have effect pending a review of an application

Once evidence of the opinion/confirmation has been provided and a renewal or extension application in compliance with Tax and Duty Manual [Part 37-00-40 \(PDF, 138KB\)](#) or the [RTS Guidelines](#) (as appropriate) has been made by 30 June 2017, and provided there has not been a material change in the facts and circumstances on which the opinion/confirmation is based or it had not otherwise ceased to have effect, the opinion/confirmation will continue to apply until such time as Revenue has had an opportunity to review the application for its renewal or extension. This is appropriate as opinions/confirmations do no more than clarify Revenue's interpretation and application of the law to particular facts and circumstances.

Where, on reviewing an opinion/confirmation on foot of an application for its renewal or extension, Revenue gives written notice of the withdrawal or amendment of the opinion/confirmation concerned, this notice will be stated to apply to transactions and chargeable periods to the extent that they are subsequent to such notice.

Reviews of applications

Revenue will complete reviews of applications and respond to taxpayers or their tax agents on a timely basis. Following the 30 June 2017 end-date for renewal or extension applications, an estimated date of response will be provided by Revenue

to each applicant, taking account of the overall number of applications received and, as respects the particular renewal or extension application, the relative complexity of the issues involved.

4. What happens if evidence of an opinion/confirmation is not supplied and an application for its renewal or extension is not made by the required date of 30 June 2017?

In those circumstances an opinion/confirmation, which had not already ceased to have effect, cannot be relied on by the taxpayer from 1 January 2017. A taxpayer might decide not to make a renewal or extension application because, for example, the matter on which the opinion/confirmation has been provided was subsequently clarified in published guidance. In those circumstances, and having regard to published guidance on opinions/confirmations, seeking a renewal or extension of the opinion/confirmation would not be appropriate.

5. Has Revenue already commenced a review of opinions/confirmations that were issued more than 5 years ago?

Yes, Revenue has already commenced a review of opinions/confirmations that were issued more than 5 years ago and, as part of this process, has made contact with some taxpayers. Therefore, in the normal course, some taxpayers may have been contacted by Revenue about opinions/confirmations before making an application for the renewal or extension of an opinion/confirmation and before the 30 June 2017 deadline for making such an application. Where a taxpayer has been contacted by Revenue regarding a review of an opinion/confirmation that was issued prior to 1 January 2012, before 30 June 2017 and before the taxpayer has made any application for the renewal or extension of it, then unless in the course of correspondence with Revenue the taxpayer has made a written application to renew or extend the opinion/confirmation, the taxpayer should still follow the procedures set out in B.2 above if the taxpayer wishes to continue to rely on the opinion/confirmation after 1 January 2017.

6. Examples of types of opinions/confirmations that are within the scope of the review

All opinions/confirmations issued by Revenue before 1 January 2012 and which a taxpayer wishes to continue to rely on after 1 January 2017 are subject to review. The taxpayer must supply evidence of any such opinion/confirmation and make a renewal application no later than 30 June 2017.

Examples of the types of opinions/confirmations that a taxpayer might wish to continue to rely on include opinions/confirmations relating to:

- The existence or non-existence of a permanent establishment in the State;
- Profit attribution or transfer pricing methodology;
- Trading status; and

- Residence status.

The above list is only intended to illustrate some examples of opinions/confirmations that may have continuing relevance. There is no intention that it should read as an exhaustive list of opinions/confirmations that are within the scope of this review.

C. Exchange of information with other tax authorities

In accordance with EU and OECD initiatives on exchange of information on "Tax Rulings", any opinion/confirmation provided by Revenue, including a renewal or extension of an existing opinion/confirmation, may be subject to disclosure to other tax authorities. For information on the type of opinions/confirmation that may need to be exchanged under these provisions, please refer to: Tax and Duty Manual [Part 35-00-01 \(PDF, 333KB\)](#).

Update since publication

Following the publication of this guidance on 26 January 2017, the RTS Guidelines became Tax and Duty Manual [Part 37-00-00a](#). For ease of reference, where RTS Guidelines are referred to, updated links to Tax and Duty Manual Part 37-00-00a have been included.

Since publication, Large Cases Division has become two divisions, Large Corporates Division and Large Cases – High Wealth Individuals Division.

Appendix B – Number of applications received for the renewal or extension of opinions/confirmations issued prior to 1 January 2012

Revenue received applications to renew or extend 60 opinions/ confirmations issued prior to 1 January 2012 that *prima facie* meet the criteria set out in the review guidance. Of this total, 46 of the applications were made in respect of taxpayers that are dealt with by Revenue's Large Corporates Division and Large Cases – High Wealth Individuals Division (formerly, together, Large Cases Division). The breakdown of requests by tax head/ tax issue is as follows:

Corporation tax	20
Income tax (including PAYE)	14
VAT	14
Stamp Duty	4
Capital Gains Tax	3
Dividend Withholding Tax	3
Professional Services Withholding Tax	1
Excise	1
Total	60