

Summary of Internal & External Review Decisions issued in 2021

	Type of Review	Summary of Request	Decision	Summary of Reviewer's findings
1.	External	Request for Review: of Revenue's refusal to allow the claimant, in determining its VAT recovery position, to apply the principles as set out in a letter from Revenue to the Institute of Chartered Accountants in Ireland.	Against Customer	Decision: The Reviewer found that the letter on which the complainant has relied on, in support of its position on reducing its reverse charge VAT liabilities, cannot reasonably be interpreted in a manner that covers the particular circumstances of this case. He further stated that there are no arguments based on the fundamental economic nature of the transactions carried out by the complainant, that could justify excluding certain trades in calculating trade count thereby, giving a higher Input VAT Recovery Rate.
2.	External	Request for Review: of the refusal by Revenue to grant an authorisation on foot of an application by the company for authorisation as Proprietor Warehousekeeper and Approval of Tax Warehouse.	Against Customer	Decision: The Reviewer found in favour of Revenue. The Reviewer noted that in accordance with Revenue's Complaint and Review Procedures an External Reviewer will only intervene when Revenue's actions are clearly contrary to legislation. The Reviewer considered the findings of Revenue's Local Reviewer under Stage 2 of the Procedures and the points which were raised in the original complaint and further submissions made by the complainant. Having concluded his examination, the External Reviewer was satisfied that the findings of the Local Reviewer were reasonable and made after full consideration of the issues involved. The External Examiner could find no evidence in the submissions made by the complainant that would alter that opinion. He therefore decided that no intervention by him was warranted as Revenue's actions were in accordance with the legislation.
3.	External	Request for Review: of the position taken by Revenue that a financial year refund cannot be processed because of the provisions of Section 865 of the Taxes Consolidated Act 1997 (Repayment of Tax).	Against Customer	Decision: The Reviewer found in favour of Revenue. The Reviewer concluded that no intervention was required as Revenue had not applied the legislation incorrectly.

4.	External	<p>Request for Review: of Revenue's decision to refuse VAT repayment claims. The customers believe that Revenue are wrong in stating that the input credit cannot arise other than in the period when the service is provided. The point at issue is when the right to claim input credit crystallizes.</p>	<p>Against Customer</p>	<p>Decision: The Reviewer found in favour of Revenue. The Reviewer pointed out that as the agent's argument was largely based on case law, it is not the role of the External Reviewer to adjudicate on points of law as this function is proper to the Tax Appeals Commission (TAC).</p>
5.	External	<p>Request for Review: of Revenue's decision not to amend the customers tax assessment to take account of erroneous information received by him in response to his query in relation to the correct maximum tax exemption figure applicable under Joint Assessment.</p>	<p>In favour of Customer</p>	<p>Decision: The Reviewer found in favour of the customer as the erroneous information provided by Revenue had contributed to him overpaying tax that might otherwise have been avoided. The Reviewer also considered that the taxpayer partly contributed to the matter as he had relied solely on the information provided by the Revenue official. Given the circumstances of this case the Reviewer recommended that Revenue should compensate the taxpayer by making a payment to him equal to one half of the amount involved. Revenue accepted the core finding in the External Reviewer's Report but did not accept the recommendations on redress as there is no legal basis for making redress payments.</p>
6.	External	<p>Request for Review: of Revenue's decision that a domestic employee (such as childminders, housekeepers, gardeners) does not satisfy the conditions for participation in the Temporary Wage Subsidy Scheme (TWSS) and that all wage subsidy amounts refunded in respect of the employee concerned are therefore repayable to Revenue.</p>	<p>Against Customer</p>	<p>Decision: The Reviewer found in favour of Revenue. In order to benefit from the wage subsidy, a 'specified employee' needs to be employed by and work for the affected business. The absence in TWSS legislation of a specific exclusion that was subsequently included in EWSS legislation rendering domestic employments ineligible, can be used to interpret TWSS eligibility. The Reviewer does not consider Revenue's opinion to be incorrect.</p>

7.	External	Request for Review: of Revenue's decision, following a compliance check, that the company was ineligible for the Temporary Wage Subsidy Scheme (TWSS) and to seek recoupment of subsidies paid under the scheme between March 2020 and June 2020.	In favour of Customer	Decision: The Reviewer found in favour of the customer. He concluded that the company did qualify for admittance to the scheme when it applied at the end of March 2020. Subsequently, the company experienced a recovery with an increase in turnover during May. The Reviewer therefore determined that the company should only be required to repay monies claimed under the TWSS scheme for all periods from June 2020 onwards.
8.	External	Request for Review: of Revenues decision to disallow the Employment Wage Subsidy Scheme (EWSS) claim for September 2020 based "solely on the contents of S28B(3) of the Act.	Against Customer	Decision: The Reviewer found in favour of Revenue. Revenue has set out its interpretation of the relevant legislation whereby all businesses registering for the assistance have to comply with section 28B subsection (3) EMPI 2020 before they are admitted to the scheme. Under Revenue's Complaint and Review Procedures an External Reviewer may only intervene on a legal matter if Revenue's stance is ' <i>clearly incorrect</i> '. The External Reviewer does not consider that this is an instance where Revenue's stance warrants his intervention.
9.	External	Request for Review: of Revenues decision to disallow a claim under Section 114 TCA 1997 for Radon Remediation costs.	Against Customer	Decision: The Reviewer found in favour of Revenue. In relation to the allowability of radon remediation costs, the Reviewer found that these do not meet the requirements under Section 114 TCA 1997 to be expended "wholly, exclusively and necessarily" in the performance of an employment and therefore are not allowable as a deduction for tax purposes.
10.	External	Request for Review: of Revenue's decision to seek repayment of amounts paid to the company under the Temporary Wage Subsidy Scheme (TWSS) for two months in 2020.	Against Customer	Decision: The Reviewer found in favour of Revenue. The Reviewer did not accept that the methodology used by the complainants was in accordance with the requirements of the scheme. The Reviewer referenced the conditions set out in the 'Employer Eligibility and Supporting Proofs' guidance issued by Revenue in this regard. The Reviewer does not consider Revenue's opinion to be incorrect.

11.	External	Request for Review: of Revenue's decision that the proprietary directors of the company are ineligible for inclusion in the Employment Wage Subsidy Scheme (EWSS).	Against Customer	Decision: The Reviewer found in favour of Revenue. The Reviewer concluded that Revenue had set out the relevant legislation and their interpretation thereof, in correspondence with the claimant and noted that the underlying facts of the case do not seem to be disputed. The Reviewer pointed out that in accordance with Revenue's Complaint and Review Procedures, an External Reviewer will only intervene on a legal matter if Revenue's stance is ' <i>clearly incorrect</i> '. The Reviewer does not consider Revenue's opinion to be clearly incorrect and will therefore not intervene.
12.	External	Request for Review: of Revenue's decision that the company was not entitled to receive payments under the terms of the Temporary Wage Subsidy Scheme (TWSS) and is required to repay payments made by Revenue.	Against Customer	Decision: The Reviewer found against the company. The Reviewer stated that Revenue publications around the time of the launch of the scheme, and thereafter, clearly set out the qualifying conditions for TWSS, including that the business had to be expecting at least a 25% reduction either in the turnover of the business or in customer orders in quarter 2, 2020. As the company could not demonstrate that it met the qualifying conditions in accordance with the legislation and Revenue Guidance, the Reviewer found that it did not qualify for the scheme.
13.	External	Request for Review: of Revenue's decision that the company was not entitled to receive payments under the terms of the Temporary Wage Subsidy Scheme (TWSS) and is required to repay payments made by Revenue.	Against Customer	Decision: The Reviewer found in favour of Revenue. The Reviewer opines that legislation and Revenue guidance around the time the scheme was launched, and thereafter, clearly set out the qualifying conditions for TWSS, including that the business had essentially to be expecting a >25% turnover/ orders reduction in quarter 2, 2020. As the company could not demonstrate that it met the qualifying conditions in accordance with the legislation and Revenue Guidance, the Reviewer found that it did not qualify for the scheme.
14.	Internal	Request for Review: of Revenue's decision that the company was not entitled to avail of any Temporary Wage Subsidy Scheme (TWSS) payments.	Against Customer	Decision: The Reviewer determined that the taxpayer did not demonstrate a reduction in either expected or actual turnover/orders of the magnitude specified in the legislation and related Revenue guidance. He has therefore found against the company and determined that a claim for TWSS payments was incorrect and that payments made by Revenue should be repaid.

15.	External	<p>Request for Review: the customer has complained about the level of service that he received when trying to register his vehicle in December 2019. He has also complained about the Revenue VRT calculator on the Revenue website and the limited range of vehicle models covered. He is also seeking recovery of costs from Revenue that he incurred in returning the vehicle to the UK following the customer's decision not to pay the VRT and instead sell the vehicle in question.</p>	<p>In Favour of Customer</p>	<p>Decision: The Reviewer found in favour of the customer. Specifically, the Reviewer has found that as a result of the poor level of service, which Revenue has accepted, that the customer incurred a loss and as a result the Reviewer has recommended that some basis be found to compensate the customer appropriately.</p>
16.	Internal	<p>Request for Review: of Revenue's decision that the business was ineligible for the Employment Wage Subsidy Scheme (EWSS) during 2020 and that all subsidy monies paid to the years end must be repaid to Revenue.</p>	<p>Against Customer</p>	<p>Decision: The Reviewer found in favour of Revenue. The Reviewer is satisfied that the customer's business was in existence prior to October 2019 and that the turnover test is appropriate. The Reviewer agrees with Revenue's conclusions that the customer is not eligible for the EWSS scheme for the 2020 pay dates on the basis that the eligibility criteria were not met.</p>
17.	External	<p>Request for Review: of Revenue's determination that a proprietary director of the company is not a qualifying employee of the company for the purposes of eligibility to the Employee Wage Subsidy Scheme (EWSS).</p>	<p>Against Customer</p>	<p>Decision: The Reviewer found in favour of Revenue. He noted that no payroll filings (under Regulation 10 of the Income Tax (Employment) Regulations 2018), as required by the EWSS legislation, were made in the requisite period and therefore, the director does not meet the necessary criteria to be considered an 'eligible employee' for the purposes of the EWSS.</p>

18.	External	<p>Request for Review: of Revenue's handling of the customer's case during the course of an audit and the subsequent decision by Revenue to raise an amended assessment disallowing a claim for a particular tax relief. The customer's view was that it was inappropriate of Revenue to request a cheque in settlement of the assessment together with interest and penalties.</p> <p>The customer had appealed this amended assessment to the Tax Appeals Commission (TAC) who had made a determination in his favour.</p>	Partly Revised	<p>Decision: The Reviewer found in favour of Revenue on the substantive matter of the audit and found that Revenue had reasonable grounds for examining whether the share buyback and share transfers qualified for the reliefs claimed. He has also noted that the Appeal Commissioner was quite clear on that matter in his determination. He has however, also found in favour of the complainant on certain other matters. He noted that there were unacceptable delays by Revenue in finalising the matters and that the demand letter to the customer's agent requesting a cheque in settlement of the liabilities should not have been sent.</p>
19.	External	<p>Request for Review: of Revenue's determination that the company was not eligible for the Temporary Wage Subsidy Scheme (TWSS) and seeking recoupment of all monies paid.</p>	Against Customer	<p>Decision: The Reviewer found in favour of Revenue on the matter as the complainants have not demonstrated a reduction in turnover of the magnitude specified in the legislation and related Revenue Guidance, and thus their claim for TWSS was incorrect. He has noted that Revenue publications around the time the scheme was launched, and expanded thereafter, clearly set out Revenue's interpretation of the qualifying conditions for TWSS (as they were instructed to do in the legislation), including that a business had essentially to be expecting a >25% turnover/ orders reduction in quarter 2, 2020. Revenue expect this to be measured against quarter 1 2020 or quarter 2 2019, and they state that 'any other reasonable basis' can only be considered if the 'turnover test' cannot be applied – and it clearly can be applied in this instance. In the External Reviewer's opinion, Revenue's approach does not 'clearly breach the legislation' (the criteria set in leaflet CS4) and thus he will not intervene on the matter.</p>