Address by Frank Daly, Chairman of the Revenue Commissioners, Ireland at the Confédération Fiscale Européenne International Conference on Professional Affairs

Sofitel Brussels Europe, 20 November 2007

Tax Advisers - Undermining or enhancing the tax system?
Tax Advisers, Revenue Authorities and Taxpayers - Relationships and Interactions

Last year the OECD launched a Study on the Role of Tax Intermediaries. The intention of this conference is to consider how the issues debated in this context will affect the development of the relationships between Revenue Authorities, Tax Advisers and Taxpayers.

Introduction

Good Afternoon Ladies and Gentlemen.

Firstly a word of thanks to Andrew Clarke for the invitation to speak at today's conference. As Andrew knows I greatly value opportunities for dialogue with intermediaries and tax practitioners at all levels - local, national and international. Your attendance here today is a reflection of the importance of the Conference theme and, dare I say it, of the fact that, while playing on different sides, we are both in the same game.

Tax Intermediaries Study

I want to compliment Chris and the Study Team on the impressive progress that has been achieved in such a short space of time – it is just over a year since the Seoul Declaration was signed - and on the excellent communication channels that have been developed with key players in this process. These channels are the foundation for a successful study and it is clear that they are operating effectively. The papers that have been produced to date by the Study team are extremely encouraging: all of the consultation and discussion has paid off – what is emerging is a sophisticated and balanced appreciation of the issues and some very sound thinking on the way forward.

[This Study is aiming to be much more than the usual comparative-type study of the tools and techniques used by different countries that is sometimes produced by the OECD. Behind this study there is a real agenda to support the interaction between Revenue Authorities, Business and Tax Intermediaries – something that is important for each of these stakeholders in each OECD country. Each of these stakeholder groupings indeed has important responsibilities in building citizen confidence in our tax systems by demonstrating that those systems operate effectively, fairly and transparently.]

From Ireland's perspective, we are happy with the way the study is progressing. We particularly like the focus on creating a more positive environment for the interface between Revenue Authorities, Business and Intermediaries – what is being labelled the "enhanced relationship". In Ireland, we have long recognised that Intermediaries and Business play key roles in the effective functioning of our tax system. With Intermediaries in particular, we have worked hard over the past 15 years or so to move on from an adversarial relationship, which was sometimes characterised perhaps by distrust and even suspicion on both sides. We are now, I believe, in "a better place" which is characterised by consultation and engagement and which is anchored to a considerable degree in mutual trust and understanding. [I hesitate to use the phrase "collaboration" – it is sometimes misconstrued!]

Today I would like to give you an overview of how we have reached this "better place" and our view of some of the benefits that are to be gained there.

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TALC

I do not think we would have reached this "better place" without some formal structures to support the relationship between Revenue and Intermediaries and which allow us to consult constructively on important issues - even where we start from very different positions. This formal interaction is mainly effected through a forum entitled the Tax Administration Liaison Committee (TALC) which has been in existence in Ireland since 1989. This unique group involves senior representatives from The Irish Taxation Institute, the main Accountancy Bodies, the Incorporated Law Society of Ireland and of course, the Revenue Administration.

[Indeed I am happy to see some of the key figures from TALC, past and present, here today (including CFE President Andrew Clarke, ITI President, Joan O'Connor and Chief Executive, Mark Redmond).]

The main objective of TALC is to provide a standing consultative forum for the exchange of views on tax administration issues. The committee holds regular plenary meetings and also works through sub-committees dealing with specific issues. Each of the parties in TALC is free to bring items forward for discussion on any subject relating to the practicalities of tax policy implementation. It's important to say that TALC is not simply reactive – for example while there are subcommittees dealing with audit, collection and technical agendas, there is also a subcommittee dealing with simplification and within that subcommittee Intermediaries have brought forward proposals of their own for simplifying the system and reducing the compliance burden.

Intermediaries are also consulted via TALC and otherwise when we in Revenue are drawing up our three-year Statements of Strategy (strategic plans). This allows the Intermediaries to influence us in the broad strategic direction that we will take in the administration of the Irish tax system.

We regularly hold bi-lateral meetings and seminars with representatives of the various intermediary professional bodies and, either through TALC or otherwise, we engage in consultation on specific topics. The existence of these structured consultation mechanisms allows consultation this to happen at very short notice and has created a climate in which both sides, Revenue and Intermediaries, feel comfortable about engaging openly and constructively to our mutual benefit.

Tax professionals sometimes ask hard questions which Revenue Administrations may not have asked themselves and, which these Administrations may need to confront. This ultimately is of benefit to the Administrations as it focuses them on addressing difficult issues, which can remain unsurfaced if there is not a climate which is receptive to searching questions and to criticism.

Our general philosophy then is that it's good to talk; it's even better to talk early; talking surfaces issues **before** they become problems; issues are easier to deal with than problems!

But then again we're Irish – we like talking anyway!

The Potential Influence of Tax Interemediaries on Tax Compliance

All tax systems depend on acceptance by the general population that the system is equitable, transparent and administered effectively. Public opinion in this area is vital and the attitudes and actions of Intermediaries (and indeed Business and the Revenue Authority) strongly influence peoples' perception of the extent to which equity, transparency and effectiveness are hallmarks of their tax system.

Equally importantly Intermediaries have huge potential to influence the tax compliance behaviour of their clients – for good or ill. From a Revenue perspective the upside of this is the support Intermediaries give to taxpayers who increasingly seek to work within, not just the letter, but the spirit of the law. The downside of this potential to influence, of course, is the temptation which some intermediaries continue to dangle in front of taxpayers in the form of aggressive tax planning options – more on that later.

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Cooperative Compliance

I've been concentrating on Intermediaries but let me now move on for a few minutes to the Irish Revenue's relationships with taxpayers. Four years ago we underwent a major organisational restructuring designed to enhance the delivery of services to our compliant customers and, most importantly, to sharpen our focus on the non-compliant. By re-shaping the organisation around our customer base we have provided focussed and integrated services and we have better-targeted compliance interventions across the range of taxes and duties.

We focus on large corporate and high net worth individual taxpayers through a new Large Cases Division which was designed to deliver benefits to these taxpayers through improved customer service and responsiveness and to Revenue through more effective consolidated risk assessment and management of our largest tax paying sector. Our experience to date has been that the interaction between the new Division and the senior management of large business in Ireland is providing a valuable channel for constructive dialogue. The new relationship is building an environment of trust where issues can be opened and resolved in a professional manner.

The vehicle for this new relationship is our programme of Cooperative Compliance Agreements. The essence of these agreements is that large business commits to positioning tax compliance as an important element of corporate governance and to implementing a range of tax compliance controls. In return Revenue commits to providing businesses with enhanced levels of service, support with tax interpretation dilemmas and, as we develop confidence in their internal compliance, a lighter touch. In other words, the 80 plus businesses who are now engaging with us in cooperative compliance get certainty in relation to their tax exposures in return for institutionalising good compliance practices.

This audience well knows that, throughout the world, corporate governance and risk management are increasingly important issues for business. Worldwide, regulatory compliance and particularly tax compliance has moved way up the agenda for both financial and reputational reasons. The Irish cooperative model that we are advancing and variants of it in other countries is increasingly a feature of the relationship between large business and revenue administrations internationally.

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Professional Risk Analysis

Almost every position we take now in Ireland in relation to both large and small business is based on very professional risk analysis. We have a sophisticated electronic rules-based system that selects potential high-risk cases by matching accounts information with information in other Revenue systems and with business intelligence. This system (REAP) is increasingly pointing up cases and areas of high risk in small to medium size business and with individual case profiling is informing risk analysis in the larger cases. This has led to more focused audits and, of course, to much less intervention or lighter touch intervention in cases which are broadly tax compliant.

The cooperative compliance programme and the face to face contact with the management of larger business is also hard-edged to the extent that the debate is frequently about areas of risk or potential risk. Indeed the compliance reviews being conducted by businesses on foot of our new approach are provoking both voluntary disclosures and requests for interpretation guidance. Seeing what we have seen over the past few years I sometimes wonder if the market of the future for tax advice will be in the area of providing certainty rather than adventurous planning which may unravel at a high cost.

It's also important to say that contrary to some initial impressions, our new relationship with business is not in any way intended to marginalise tax intermediaries in their roles in relation to their clients and Revenue. The dialogue with business that Revenue has developed operates in parallel with its traditional relationship with tax intermediaries. The role of the intermediary continues to be valued and respected. Cooperative compliance agreements do not magically simplify the tax code or eliminate filing obligations. In practice much of the discussion on tax risk analysis and on the formulation and implementation of action plans for tax risk management involves tripartite contact between Revenue, Business and their Tax Intermediaries.

Tax Planning Strategies

There is, of course, one area in which our changing relationships with business may impact on the relationship between Intermediaries and their clients. That is in the area of tax planning strategies. In the new climate which is emerging in Ireland we expect a degree of openness in relation to these strategies. Indeed this area of tax planning and openness is at the heart, not just of what we're doing in Ireland, but also at the heart of the Intermediaries Study that is providing the theme for today's conference. So perhaps a few minutes of general reflection might be worthwhile.

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Tax systems – fair and equitable

Most people I speak to make it very clear that the main criterion by which they judge whether our tax system in Ireland is fair and equitable is by reference to whether people "pay what they should".

Now this is a simple sentence which I suspect means different things to different people!

Probe further about what "pay what they should" means and you will be told "it's the bit they should have paid but didn't".

Probe further and you will find that this is down to tax evasion and increasingly to tax avoidance/aggressive tax planning/unacceptable tax minimisation arrangements - terms that it seems are becoming somewhat interchangeable, perhaps because the nettle of definition is so difficult to grasp!

Now tax evasion is a black and white affair – it is always inexcusable. But what about avoidance/aggressive planning/unacceptable minimisation? (Let's call it avoidance for short)

Well if evasion is black and white the mists really descend when avoidance is mentioned - the perspective quickly becomes grey and obscured. Yet these days any discussion of fairness in a tax system cannot avoid discussion of this area.

It is, as I've hinted, difficult to define avoidance – in layman's terms it might be described as either manipulation of tax law or exploitation of gaps or unintended consequences to give a benefit or have an effect which was clearly never intended by the legislature. The degree to which there is known uncertainty in a tax position being taken and where there is not open disclosure of that known uncertainty is also relevant.

[Avoidance is somewhere then on the spectrum between evasion (always wrong) and legitimate tax planning (always right). Some commentators refine the definition a little – acknowledging a difference between so-called "aggressive" avoidance and (presumably) "ordinary" avoidance – although I note with some amusement that antonyms for "aggressive" include "friendly" and "submissive"!]

Defenders of aggressive avoidance put the case that tax is merely a matter of law. They argue that "if it's legal then it's ethical" and that other values or morality are irrelevant.

But are they?

I believe most people would find it hard to accept the proposition that just because something can be shown (or artificially structured) to fit within the strict letter of the law it then doesn't really matter if it clearly offends against the spirit and purpose of the law or against the intention of the legislature.

I believe in fact that the majority of people act by reference to principles or standards which are not defined in Acts of Parliament but which are based on values derived from a sense of social and civic responsibility and from the "norms" of the community of which they are part. Their actions have regard to an unwritten code (call it a moral one if you wish) that is influenced by these wider principles at the expense of a principle of mere personal gain or advantage.

Avoidance then, no less so than evasion, offends because of the real sense of unfairness it generates and because it undermines the intentions of democratically elected Governments whose programmes are based on expected Exchequer funding – almost all of which comes from projected tax revenues.

No doubt many of you here today will not subscribe to my views on this – fair enough. There is however another point to be made which takes a different tack to the moral/ethical argument. It's a more pragmatic or even strategic one.

None of us - Revenue, Intermediaries, Business - operates in a vacuum. What we do has consequences, or to put it another way every action can provoke a reaction. There is always a tipping point.

Governments, who may judge that their programmes are being undermined by artificial depression of their tax revenues or Revenue Administrations who see their carefully constructed legislation creatively sabotaged will, to put it bluntly, hit back. So even if you don't buy the moral/ethical argument, what about the strategic one – the one perhaps where pragmatism or, dare I say it, even enlightened self-interest kicks in?

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I leave those points with you.

The Enhanced Relationship

It is of course early days in the new relationships we are building in Ireland especially with Business. To justify the cost for Business and Revenue of such intensive relationships the investment needs to pay off for both parties. Fundamentally the Irish Revenue is of the view that most business wants certainty in relation to tax and that tax intermediaries want to lead their clients towards such certainty. We believe an enhanced relationship is the right approach to maximising such certainty and also to maximising compliance.

Risk Rating Intermediaries

Against a backdrop of a generally positive view of the attitudes and role of Intermediaries, we in Ireland shared your reservations on the risk rating of intermediaries that was broached in the early papers of the Study. There is no simple approach to this. Given the complexities and diversity of existing relationships between Tax Authorities and Intermediaries and indeed all the other factors affecting it, some of which I have already mentioned, the concept of risk rating is an entire project in itself. For these reasons we are pleased to see that this recommendation does not form part of the present proposals. This is not to say that Revenue Administrations should not consider some form of risk weighting where clients of particular intermediaries consistently surface with aggressive tax avoidance schemes or with returns that do not fall within comparable sector or industry norms.

I would also add that we shared your concerns that the duty of Intermediaries to their clients in representing their interests (including challenging Revenue interpretations) and giving best advice should be emphasisied in the Study and I believe that it will.

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Looking Forward to Capetown and Beyond

It's early days yet to be definitive about detailed conclusions from the Seoul Study in advance of the meeting of FTA Commissioners in Capetown in January. Progress is good in working towards the aim of the "win win win" outcome for Business, Intermediaries and Revenue which has been a guiding principle of the OECD Intermediaries Study and from which the ultimate winner will be our societies.

It is important to me that the study recognises that each national Revenue Authority should have the flexibility to develop the enhanced relationship in a way that is compatible with their domestic circumstances, and particularly with their own capacity to deliver on their side of the bargain.

It is also important to acknowledge that, regardless of the quality of the Revenue Authority/Intermediary/Business relationship, Revenue Authorities remember that taxpayers do have the right to seek to vindicate their rights within the law and that Intermediaries have key role to play in this.

I certainly believe in the enhanced relationship and I'm convinced of benefits for all parties. Business and Intermediaries will benefit from greater certainty, openness, impartiality and the improved commercial awareness of Revenue Administrations. Revenue Administrations will improve their effectiveness by prioritising and assigning their resources according to risk. The conclusions being drawn by the Study will support our strategies and those of others in bringing certainty to the tax system and in tackling aggressive tax avoidance.

Conclusion/ Thanks

Chairman, for today's Conference title you posed the provocative question as to whether tax advisers undermine or enhance the tax system?

I hope it's clear from my talk that in Ireland we believe firmly that they enhance it!

Intermediaries in Ireland would be nervous if I gave them unstinting praise – although generally they deserve it. We have been very well served in Ireland by this dedicated and professional group which operates to high standards of ethics and professional regulation and whose role in promoting economic development and investment should never be underestimated.

I said at the beginning that we are all in the same game and I even believe that, when it comes to the fundamentals, we are very much on the same side. We want your clients to comply with the legal tax requirements. We may on occasion have differing goals and employ different approaches. There are times when there will be tensions. There will certainly be times when we disagree – no doubt for example about where the line is between tax efficient business planning and avoidance - although I would suggest that most of the time all sides know where that line is and when a particular strategy has crossed it!

It's best to openly acknowledge these tensions and consider how we can work to minimise their impact on our relationship. I firmly believe that co-operation and mutual understanding are far more productive than antagonism. I believe that a working relationship, defined by mutual respect, by a recognition of the absolute validity of each other's roles and a willingness on both sides to engage in open dialogue can only be to the benefit of all. We can learn from each other, work together and solve problems together without compromising either side.

We can be partners rather than adversaries in advancing fair, effective and transparent tax systems that achieve norms and standards that promote compliance, encourage investment and bring clarity and common sense to what is a complex but absolutely fundamental area of life.

Chairman, the high level of constructive engagement we have seen throughout the Tax Intermediaries Study from CFE and elsewhere, and not least today's event, demonstrates your commitment to an enhanced relationship and common objectives. I thank you and your members for that and everybody here for listening to me this afternoon.

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