Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

Code of Practice for Revenue Audit

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

To serve the community

by fairly and efficiently

collecting taxes and duties and

implementing Customs controls

CODE OF PRACTICE FOR REVENUE AUDIT | Page

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Introduction

Introduction

It is a fundamental principle of Self Assessment tax systems that returns filed by compliant taxpayers are accepted as the basis for computing tax liabilities. Revenue promotes compliance with the tax system by vigorous pursuit of those who do not file returns, by auditing selected returns and by taking appropriate action against tax evaders. Revenue challenges aggressive tax avoidance schemes and unintended use of legislation that threaten tax yields and the perceived fairness of the tax system.

Revenue audits can be a burden to people and may cause some disruption to their business. It is, therefore, essential that audits be conducted in an efficient, courteous and professional manner. Auditors will adopt an even-handed and professional approach in speech and behaviour during the audit process.

Customer Service Charter

The Customer Service Charter at Appendix 1 sets out the fundamental elements of the service that taxpayers are entitled to and what Revenue expects of taxpayers.

What taxes and duties are covered?

This Code of Practice covers Income Tax, Corporation Tax, Capital Gains Tax, Exit Taxes, VAT, Capital Acquisitions Tax, Excise Duties, Vehicle Registration Tax, Stamp Duties, Customs Duties, Income Levy, PRSI (both employers and employees), Health Contributions, Environmental Levy, Training Levy and includes all forms of withholding that apply to any of these taxes.

References to tax in this Code include references to duties and levies, and a reference to a tax return is to be construed accordingly.

Tackling non-compliance

Revenue carries out a programme of compliance interventions that minimise the burden on the compliant taxpayer and tackle, in a thorough and effective way, the non-compliant taxpayer. This approach involves taking account of all the risks that apply to a taxpayer across all taxes and duties. Revenue priority is to recover any unpaid tax, along with interest and penalties as efficiently as possible.

Cases are selected for intervention based on the presence of various risk indicators. The type of intervention to be undertaken will be the one considered to be the most appropriate to change the behaviour of the taxpayer. Revenue's risk-based approach involves assigning auditors to tackling those cases featuring highly in our risk ranking system. This risk analysis approach may also result in Revenue focusing on one tax or duty in the case of a particular person or sector.

Revenue has a multi-faceted approach to tackling non-compliance and amongst the activities carried out are:

- Audits (including risk selected audits, random audits and re-audits)
- Investigations
- Non-audit interventions.

Non-Audit Interventions

Each Revenue intervention is intended to be in the form which is most efficient in terms of time and resources, and which imposes the least cost on the taxpayer, whilst addressing the perceived risk. Consequently, not all Revenue interventions take the form of formal audits. Revenue carries out the following **non-audit** interventions:

- Profile interviews
- Assurance checks (including aspect queries)
- Pursuit of returns from non-filers
- Sectoral reviews
- Joint Investigation Unit (JIU) visits involving other agencies, including National Employment Rights Authority (NERA) and Department of Social Protection (DSP)
- Site Visits.

Non-audit interventions are described in more detail at **Appendix IV**.

Risk Evaluation Analysis and Profiling – REAP

REAP is Revenue's risk analysis system. It risk-rates Revenue's customer base providing coverage across all the main taxes and duties. 'Risk' in this context means the risk posed to Revenue's core business of 'collecting the right tax and duty at the right time'. REAP has been designed to analyse a vast amount of data (including third party data) that Revenue has on tax and duty cases and to attribute scores based on the level of risk they pose. It prioritises cases based on risk, enabling Revenue to target its attention on those who need it most and minimising contact with compliant customers. It focuses on a customer's track record rather than single returns; it ensures fairness by applying the same rules to all cases.

These rules have been derived from the collective knowledge and experience of Revenue auditors.

Reviews of Specific Trades, Professions or Economic Sectors

Revenue's annual compliance programme also includes the examination of cases from specific economic sectors. Risk features are identified. Lessons learned from selected cases are then applied to the sector as a whole, focusing on those taxpayers displaying the risk features. The REAP risk model is adjusted to take account of sector-specific risks. The normal audit rules, as set out in this code, apply to audits conducted as part of sectoral projects.

Projects can range from unannounced compliance visits to full comprehensive audits. In many instances, Revenue will have gathered intelligence on a sector in advance from a number of sources, including the Risk Evaluation Analysis and Profiling (REAP) system, results from other enquiries and audits in the sector, local knowledge, or information from third parties, including suppliers. A project may simply focus on all businesses in one geographic location. In some instances, taxpayers in a sector will be asked to "self-review" prior to receiving an audit notification. They are asked to review their returns, paying particular attention to certain areas of risk that Revenue has identified. Revenue treats any qualifying disclosures submitted as a result of self-review as unprompted qualifying disclosures with significant reduction of tax penalties. (See Paragraph 2.9)

Operation of the revised Code

This Code of Practice will come into effect from 1 October 2010 as regards audits that are notified on or after that day. As regards audits, notice of which had been given, but which had not been settled before 1 October 2010, the taxpayer may choose whether the settlement is made under the terms of this Code or the Code of Practice for Revenue Auditors 2002. The penalties, if applicable, will be determined by whether the default occurred before, on, or after the 24 December 2008.

Chapter 1

Overview of Revenue Audit

- *Definition and objectives of a Revenue Audit*
- *Overview of a Revenue Investigation*
- *Notification of a Revenue Audit/Investigation*

1. OVERVIEW OF REVENUE AUDIT

1.1 Objective of the Revenue Audit

The primary objective of the customer service, compliance, audit and prosecution programmes is to promote voluntary compliance with tax and duty obligations.

The audit programme is mainly concerned with detecting and deterring non-compliance. Its range of functions includes:

- Determining the accuracy of a return, declaration of tax liability or claim to repayment
- Identifying additional liabilities or other matters requiring adjustments, if any
- Collecting the tax, interest, and penalties, where appropriate
- Identifying cases meeting criteria for publication in the tax defaulter's list under the provisions of Section 1086 Taxes Consolidation Act, 1997
- Specifying remedial action required to put taxpayers on a compliant footing where errors or irregularities are discovered during the course of an audit
- Considering what procedural or other changes are necessary to eradicate evasion activities
- Where strong indications of serious tax evasion emerge in cases, referring them to Investigations & Prosecutions Division (IPD) to evaluate suitability for prosecution
- Verifying compliance with both Customs legislation and Excise legislation, checking the accuracy and completeness of data entered in customs declarations, including those made under simplified procedures.

1.2 Definition of Revenue Audit

A Revenue audit is an examination of:

- A tax return
- A declaration of liability or a repayment claim
- A statement of liability to Stamp Duty
- The compliance of a business with tax and duty legislation.

An examination may involve looking at all the risks in a particular case or may focus on a single issue.

It also includes, where appropriate in any particular case, and also in cases where returns have not been submitted, an examination of an individual's or a company's books, records and compliance with tax obligations so as to establish the correct level of liability. It may also involve collection of arrears of tax with a view to putting the taxpayer on a correct tax compliance footing.

Apart from randomly selected cases (see 1.3 below), audits are generally based on informed selections from the risk profiling of cases, including computer-assisted profiling as well as local knowledge. Audit cases may also be selected for examination of a particular sector or scheme.

An audit may be carried out by an individual auditor or by a team of auditors depending on the size and complexity of the case, the need for specialist expertise and the number of Revenue Districts participating in the audit.

1.3 Random Audit Programme

The main focus of Revenue will continue to be on selecting cases for audit based on the presence of various risk indicators and other information available. In addition to the risk-based programme Revenue undertakes an annual Random Audit Programme. The objectives of this programme, are to measure and track compliance with tax legislation and ensure that all taxpayers may be selected for a Revenue audit.

1.4 e-Auditing

The term 'e-Audit' and 'e-Auditing' are used to describe the use of computer programmes in the interrogation of records and data stored on electronic systems. There is no distinction between records kept in a traditional manner and records kept using one or more of the many electronic systems available commercially.

Audits may involve an examination of the electronic systems used in the course of the business and the electronic copying and downloading of electronic data for analysis. This does not change the nature of a Revenue audit, it merely allows the auditor use computer-assisted audit techniques on customer's data. Generally, Revenue auditors will request the taxpayer to provide reports and data files of a specific nature in electronic format.

All digital information extracted will be stored on encrypted storage devices in accordance with safeguards outlined in Revenue's data security policy and ICT guidelines. In this way, confidential taxpayer data is protected.

Revenue auditors use a variety of electronic support tools and techniques, however, audit notification letters will generally advise the taxpayer if it is intended to use extensive e-auditing techniques. Some standard electronic checks are part of most audits and these do not require advance notification in the same way.

The taxpayer is expected to fully co-operate with the Revenue auditor. This includes providing reasonable assistance in obtaining or retrieving information or data stored electronically.

1.5 Unannounced Visits

Revenue compliance staff will not normally call to a taxpayer's business without a prior appointment. In some instances, where the officer happens to be on business in the neighbourhood of the taxpayer's business premises, he or she may call unannounced. In such circumstances the officer will advise that, if the visit is inconvenient in any way, it can be re-scheduled for a more suitable time and date.

However, in cases where a programme of spot-checks takes place on record keeping or on the accuracy of electronic cash registers or other "point of sale" technology, then notice need not be given. In these programmes it is normal to visit all businesses in a particular shopping centre, street or town. See also paragraph 1.7 (b) in relation to unannounced visits in the context of a Revenue investigation.

1.6 Revenue Investigations

An investigation is an examination of a customer's affairs where Revenue has strong concerns of serious tax offences having occurred.

Where strong indications of serious tax evasion are known in relation to a customer, the case will not normally be the subject of a Revenue audit but rather the subject of a Revenue investigation. A number of investigation cases may lead to criminal prosecution. Where, in the course of an audit, an auditor encounters strong indicators suggesting a serious tax offence, he or she will advise the taxpayer that an investigation may be undertaken. Continuation and completion of the audit/investigation will be managed in conjunction with Investigations and Prosecutions Division.

An investigation is generally initiated by advising the customer in writing that his or her tax affairs are under investigation. The investigation letter will specify the period of the investigation and the action required from the customer and this will be related to the information that Revenue possesses.

The specified period will not preclude the auditor from extending the period of the investigation if further information emerges. For example, the customer may be requested to produce all books and records relating to the investigation period for examination by a named auditor on a specified date and time.

A customer who receives an investigation letter may make a disclosure but will no longer be able to benefit from the following:

- The opportunity to make a qualifying disclosure
- The avoidance of publication if the final settlement meets the publication criteria of Section 1086 Taxes Consolidation Act, 1997

- Assurance from Revenue that the case will not be investigated with a view to referral for criminal prosecution.

1.7 Notification of a Revenue Audit or Investigation

a) Notification of a Revenue Audit

Twenty one days notice of a Revenue audit is generally given to both the taxpayer and his or her agent.

All letters issued to a taxpayer or agent will clearly indicate the nature of the Revenue intervention. The scope of the intervention will also be set out, and will range from a single issue for a specific period or year to a comprehensive audit for a number of years.

Where a Revenue audit is to be scheduled, the letter issued will include the wording: *“Notification of a Revenue Audit”*

As and from the date of issue of a “Notification of a Revenue Audit” letter (that is the date shown on the letter) to the taxpayer or agent, the opportunity to make an ‘unprompted qualifying disclosure’ is no longer available. The taxpayer can however make a ‘prompted qualifying disclosure’ before the examination of the books and records begins.

If tax defaults arise in a director-owned company, it is usually for the benefit of one or more of the directors. Consequently, an audit of a director-owned company includes an audit of the directors’ tax affairs. In such situations, all parties subject to the audit will receive a notification of a Revenue audit.

b) Notification of a Revenue Investigation

Where a Revenue investigation is being notified, the letter issued will include the wording: *“Notification of a Revenue Investigation”*

As and from the date of a “Notification of a Revenue Investigation” letter (that is the date shown on the letter) to the taxpayer or agent, the opportunity to make any type of ‘qualifying disclosure’ is no longer available.

There are situations where Revenue investigations are regarded as on-going without formal notification to the taxpayer; such investigations are outlined in paragraph 2.10.

Exceptionally, Revenue auditors engaged in the investigation of serious tax evasion, may visit a taxpayer’s place of business without advance notice. Revenue legislation confers specific non-routine powers for use in counteracting tax and duty evasion and obstruction of an investigation. Use of tax powers and the specific actions proposed will have been discussed with and approved by an authorised senior Revenue officer in advance.

c) Other Revenue Interventions

In all other circumstances where a letter is issued to the taxpayer or agent, the Revenue intervention to be carried out is neither an audit nor investigation and consequently does not restrict the taxpayer’s right to make an unprompted qualifying disclosure.

Chapter 2

Regularising Tax and Duty Defaults

- *Self-Correction*
- *Adjustments which can be made without Penalty*
- *No Loss of Revenue Procedures*
- *Disclosures to Revenue and the benefits of Qualifying Disclosure (from 2.6)*
- *Maintenance of Adequate Records*

2. REGULARISING TAX AND DUTY DEFAULTS

2.1 Regularising tax and duty affairs

There is an advantage to a taxpayer in reviewing his or her tax and duty affairs regularly. If irregularities are evident, they should be quantified and reported to Revenue. This can save money in reaching a settlement with Revenue. Taxpayers may regularise their affairs in a number of ways:

- Self-correction
- Declaring an Innocent Error
- Making a Technical Adjustment
- Making a 'No Loss of Revenue' claim
- Making a Qualifying Disclosure.

2.2 Self-correction

Revenue wishes to facilitate taxpayers who discover errors after submission of the relevant tax returns and who wish to regularise the position. To encourage taxpayers to regularly review their compliance position, Revenue will allow taxpayers "self-correct" returns without penalty subject to the following conditions:

- The taxpayer must notify Revenue in writing of the adjustments to be made
- The taxpayer must include a computation of the correct tax and statutory interest payable
- A payment in settlement must accompany the submission (See paragraph 4.8 in relation to payments)
- For bi-monthly/quarterly/half-yearly remitters of VAT, if the net underpayment of VAT for the period being corrected is less than €6,000, the amount of the tax can be included (without interest or notification to Revenue) as an adjustment on the next corresponding VAT return following that in which the error was made.

The following time limits will apply in respect of self-correction:

- For "chargeable persons" the self-correction must take place within twelve months of the due date for filing the return
- For VAT, the self-correction must take place before the due date for filing the Income Tax or Corporation Tax return for the chargeable

period within which the relevant VAT period ends

- For the PAYE/PRSI/Income Levy annual return, the self-correction must take place within twelve months of the due date for filing the annual return
- For Relevant Contracts Tax, the self-correction must take place within twelve months of the due date for filing the annual return
- Self-correction for CAT must take place within twelve months of the due date for filing the return.

The benefit of self-correction will not apply if Revenue has notified a taxpayer of an audit or contacted the taxpayer regarding an investigation relating to his or her tax affairs. Nor will the benefit of self-correction apply if the proposed correction relates to an instance of deliberate behaviour, which also featured in any period prior to the self-correction period. In practice this means that a taxpayer cannot make a combination of a qualifying disclosure and a self-correction for recurring deliberate behaviour.

Self-correction in accordance with this section will not result in an audit. However, an audit of the return may arise based on normal selection procedures.

Once the time limits for self-correction listed above have lapsed the taxpayer may still be entitled to the benefit of making a ‘qualifying disclosure’.

2.3 Innocent Error

A penalty will not be payable in respect of a tax default and will not be sought by an auditor if the auditor is satisfied, having consulted where in doubt, that the tax default was not deliberate and was not attributable in any way to the failure by the taxpayer to take reasonable care to comply with his or her tax obligations.

Factors that will be considered in deciding whether a penalty does not arise include:

- Whether the amount of tax is less than €6,000
- Whether the auditor concludes that the taxpayer has provided for, and implemented, the keeping of proper books and records so as to fulfil tax obligations
- The frequency with which errors, which individually could be viewed as innocent, occur. Repeatedly making errors, indicating that the appropriate level of care is not being exercised, would place the default in the *Careless behaviour without significant consequences/Insufficient care* category or higher. (For categories of default, and their consequences, see Chapter 4)

- The previous compliance record of a customer. A good compliance record is a factor to be taken into account in deciding whether reasonable care has been exercised. Conversely, a poor compliance record could indicate a general carelessness as regards tax matters
- Where the error being corrected is immaterial.

Statutory interest will be applied.

Stamp Duty

A penalty payable under Section 14 of the Stamp Duties Consolidation Act, 1999 is not excused under "innocent error" but may be subject to mitigation as provided for in the Act.

2.4 Technical Adjustments

Technical adjustments can be described as adjustments to liability that arise from differences in the interpretation or the application of legislation.

For a technical adjustment not to attract a penalty, the auditor must be satisfied that;

- due care has been taken by the taxpayer, and
- the treatment concerned was based on an interpretation of the law, which could reasonably have been considered to be correct.

The treatment of the position taken by a taxpayer in relation to a particular item depends on a number of factors such as:

- The complexity of the technical issue and the relevant legislation
- The court decisions and published Appeal Commissioner decisions that are relevant to the point at issue, i.e. the amount of legal precedent available
- The guidance available to the taxpayer, including Revenue Statements of Practice and Tax Briefing, relevant eBriefs on the Revenue website and access to Revenue Technical Services
- The tax implications of the decision taken. A taxpayer who takes a position on a matter that has significant tax consequences is expected to take due care.

Matters that are well established in case law and precedent will not be entertained as technical adjustments.

Statutory interest will be applied.

2.5 No Loss of Revenue

Maintaining the integrity of the tax system

Taxpayers have sought to justify their failure to correctly operate the tax system by claiming that a loss of revenue does not arise. Notwithstanding the fact that there may be no net loss of revenue in some cases, Revenue has a clear responsibility to ensure the correct operation of the tax system. Non-operation or incorrect operation, if allowed to continue without sanction, would erode the integrity of the tax system. In addition, it increases the risk of revenue loss and can give a business an unfair advantage over its competitors. The non-charging of VAT and the failure to deduct RCT, for example, will result in the next customer in the chain, or the subcontractor, having a greater liability to discharge to Revenue. Revenue is bound to assume, unless or until the contrary is proven, that non-operation of tax systems leads to revenue loss and must be penalised. Revenue does not envisage many claims from taxpayers in relation to 'no loss of revenue' but is aware that in certain exceptional cases a 'no loss of revenue' situation can arise.

The following provisions provide a broad framework within which 'no loss of revenue' claims can be dealt with in relation to VAT and RCT.

General failure to operate tax system

Claims for 'no loss of revenue' concessional treatment will not be considered where there is general failure to operate the tax system.

Onus of proof to the satisfaction of Revenue

In all cases the onus is on the taxpayer to provide evidence to conclusively demonstrate to the satisfaction of Revenue that there is no loss of revenue. Where this onus of proof is not met, the 'no loss of revenue' arrangements will not apply.

'No Loss of Revenue' claims will not be accepted in any of the following circumstances:

- Where the default is in the *deliberate behaviour* category
- Where there is general failure to operate the tax system
- Where 'no loss of revenue' is not proven to the satisfaction of Revenue
- Where the taxpayer has not co-operated
- Where the default is in the *careless behaviour* category, and there is neither a qualifying disclosure nor co-operation.

Treatment where 'no loss of revenue' is clearly demonstrated

In cases that are not excluded by the criteria set out above, Revenue is prepared to treat 'no loss of revenue' cases as follows:

(i) **Tax will not be collected** where a taxpayer claims that a 'no loss of revenue' situation arises in their case, and proves it to the satisfaction of Revenue, including the provision of supporting documentation.

Statutory interest may be sought, but this will be limited to any period during which there was a temporary loss of revenue.

This treatment will only apply to the extent that 'no loss of revenue' has been proved to the satisfaction of Revenue.

Penalties will be charged by Revenue in accordance with the table below.

(ii) **Innocent error and Technical adjustments.** A penalty will not be applied where the non-operation of the tax is due to innocent error. That is to say that, the taxpayer otherwise took reasonable care to comply with his or her tax obligations.

Non-application of a penalty will only be considered where the non-operation of the tax was based on an accepted 'technical adjustment'. See Paragraphs 2.3 and 2.4 for factors to be taken into consideration.

Determining the appropriate level of penalty

Among the considerations taken into account in a 'no loss of revenue' claim are:

- The general compliance record of the taxpayer and the level of co-operation provided
- Whether the failure was an isolated incident or whether the taxpayer made a 'no loss of revenue' claim previously
- Whether adequate steps have been taken to prevent a recurrence
- Whether a 'no loss of revenue' qualifying disclosure has been made.

In cases where 'no loss of revenue' is claimed, the taxpayer should make a 'no loss of revenue' qualifying disclosure, advising Revenue of the tax default. The penalties to be charged are outlined in the penalty table included in paragraph 2.5.1 hereunder.

There is no right of appeal against Revenue's refusal to accept a 'no loss of revenue' claim.

2.5.1 Penalties charged for No Loss of Revenue Tax Default

<table>
<tr><th>NO LOSS OF REVENUE (NLOR) TAX DEFAULT</th><th>CATEGORY OF DEFAULT</th><th colspan="2">NO LOSS OF REVENUE QUALIFYING DISCLOSURE</th></tr>
<tr><td colspan="2">All ‘careless behaviour’ no loss of revenue tax defaults where there is a ‘qualifying disclosure’</td><td>Prompted qualifying disclosure and co-operation</td><td>Unprompted qualifying disclosure and co-operation</td></tr>
<tr><td>First qualifying disclosure in this category</td><td>Careless behaviour</td><td>Lesser of
6% or
€15,000</td><td>Lesser of
3% or
€5,000</td></tr>
<tr><td>Second qualifying disclosure in this category</td><td>Careless behaviour</td><td>Lesser of
6% or
€30,000</td><td>Lesser of
3% or
€20,000</td></tr>
<tr><td>Third or subsequent qualifying disclosure in these categories</td><td>Careless behaviour</td><td>Lesser of
6% or
€60,000</td><td>Lesser of
3% or
€40,000</td></tr>
<tr><td></td><td></td><td></td><td></td></tr>
<tr><th>NO LOSS OF REVENUE (NLOR) TAX DEFAULT</th><th>CATEGORY OF DEFAULT</th><th colspan="2">CO-OPERATION ONLY</th></tr>
<tr><td>All careless behaviour no loss of revenue tax defaults where there is no ‘qualifying disclosure’</td><td>Careless behaviour</td><td colspan="2">Lesser of
9% or
€100,000</td></tr>
<tr><td colspan="4">Notes: No Loss of Revenue Tax Default</td></tr>
<tr><td colspan="4">Claims for ‘no loss of revenue’ will not be considered where there is general failure to operate the tax system or where there is no co-operation by the taxpayer</td></tr>
<tr><td colspan="4">The tax will not be collected where it is proven by the taxpayer, to the satisfaction of Revenue, that there is no loss of revenue to the Exchequer</td></tr>
<tr><td colspan="4">Interest will be charged, but only for the period of any temporary loss of revenue</td></tr>
<tr><td colspan="4">A penalty may be charged in all cases except where the “innocent error” or “technical adjustment” criteria are met. The maximum penalty is €100,000.</td></tr>
<tr><td colspan="4">‘No loss of revenue’ cases, where a qualifying disclosure is not made, may be subject to prosecution</td></tr>
</table>

2.6 Qualifying Disclosure

It should be borne in mind that audit settlements reflect a number of factors:

(i) Was there a qualifying disclosure? (See paragraph 2.7)

(ii) Was the qualifying disclosure prompted or unprompted?

(iii) What category of tax default took place?

Tax default is divided into the following categories;

- deliberate behaviour
- careless behaviour with significant tax consequences and
- careless behaviour without significant tax consequences.

(iv) Whether or not the taxpayer co-operated in the conduct of the audit.

The concepts of ‘qualifying disclosure’, ‘prompted qualifying disclosure’ and ‘unprompted qualifying disclosure’ are key features in determining the level of a civil penalty payable in settlements between taxpayers and Revenue.

Making a qualifying disclosure entitles the taxpayer to a significant reduction in the penalty applying to any tax settlement. Penalty Table 1, paragraph 4.6.2, shows how the factors outlined above interact in calculating tax-geared penalties in an audit settlement where the default took place **on or after** 24 December 2008.

Penalty Table 2, paragraph 4.6.4, shows the calculation of tax-geared penalties for tax defaults that occurred **prior to** 24 December 2008.

The importance of making a qualifying disclosure and the timing of a qualifying disclosure are both evident in these tables.

A taxpayer who makes a qualifying disclosure will not be investigated with a view to prosecution and will not have his or her tax settlement published in the list of tax defaulters in accordance with Section 1086 Taxes Consolidation Act 1997.

There are statutory definitions of –

- a qualifying disclosure
- a prompted qualifying disclosure, and
- an unprompted qualifying disclosure.

2.7 Definition of a ‘Qualifying Disclosure’

A ‘qualifying disclosure’ is a disclosure of complete information in relation to, and full particulars of, all matters occasioning a liability to tax that give rise to a penalty, **is made in writing, is signed by or on behalf of the taxpayer** and is accompanied by:

a) A **declaration**, to the best of that person’s knowledge, information and belief, that all matters contained in the disclosure are correct and complete

b) A **payment** of the tax or duty and interest on late payment of that tax or duty.

In addition –

- all qualifying disclosures (prompted and unprompted) in the *deliberate behaviour/deliberate default* category of tax default must state the amounts of **all liabilities to tax and interest, in respect of all taxheads and periods,** where liabilities arise, as a result of deliberate behaviour, that were previously undisclosed

- in the case of a prompted qualifying disclosure in the *careless behaviour/gross carelessness/insufficient care* category of tax default, the qualifying disclosure must state the amounts of **all liabilities to tax and interest in respect of the relevant taxhead and periods** within the scope of the proposed audit
- in the case of an unprompted qualifying disclosure in the *careless behaviour/gross carelessness/insufficient care* category of tax default, the qualifying disclosure must state the amounts of **all liabilities to tax and interest in respect of the taxhead and periods** that are the subject of the unprompted qualifying disclosure.

2.7.1 Related Liabilities

The auditor may also pursue related liabilities for taxheads or periods that are not within the initial scope of the audit and the benefits of prompted qualifying disclosure will be extended to these liabilities.

2.7.2 Liabilities not within the initial scope of the audit

In cases not involving *deliberate default/deliberate behaviour,* if the Revenue auditor draws the attention of the taxpayer to issues not within the initial scope of the audit, without formally extending the audit, the taxpayer will have the benefit of an unprompted qualifying disclosure in respect of any liabilities disclosed in relation to such issues.

2.7.3 Qualifying Disclosure and Calculation of Penalties

A qualifying disclosure does not need to make any reference to penalties or state the amount of the penalties due. On receipt of a qualifying disclosure, the auditor will agree the penalties with the taxpayer and will obtain payment of the full amount of the settlement to include tax, duty, interest and penalties.

2.7.4 Qualifying Disclosure and Payment

One of the conditions of a qualifying disclosure is that the liability due **MUST** be paid. A real, genuine and accepted proposal to pay the agreed liability (involving payment or an agreed phased payment arrangement made in accordance with Revenue's instalment arrangement procedures) will satisfy the payment criteria for a qualifying disclosure. Where the taxpayer fails to honour a phased payment arrangement, and Revenue are satisfied that the disclosure and intention to pay were not bona fide, the disclosure will be deemed not to be a qualifying disclosure. Revenue reserves the right to initiate or pursue an investigation with a view to a criminal prosecution in such cases.

2.7.5 Qualifying Disclosure and Non-Publication

For all tax defaults, irrespective of the date the tax default occurred, a qualifying disclosure as defined in paragraph 2.7 will enable the taxpayer to secure the benefits of non-publication.

2.7.6 Qualifying Disclosures and Prosecution

Where the taxpayer makes a prompted qualifying disclosure or an unprompted qualifying disclosure, Revenue will not initiate an investigation with a view to prosecution of the taxpayer. A taxpayer may be investigated with a view to prosecution where a disclosure of tax defaults is not a qualifying disclosure.

2.7.7 Qualifying Disclosures and Companies

An audit of a parent company or a subsidiary company may necessitate the audit of other companies within a group. If the company being audited has not been advised that an audit covers other companies within the group, the audit notice does not prevent such other group companies from making an unprompted disclosure. However if notification of audit to another company within the group has already issued, then any disclosure made by that other company would be considered to be a prompted qualifying disclosure.

2.8 Definition of a 'Prompted Qualifying Disclosure'

A 'prompted qualifying disclosure' means a qualifying disclosure that has been made to the Revenue Commissioners or to a Revenue officer in the period between-

a) the date on which the person is notified by a Revenue officer of the date on which an audit will start, and

b) the date that the audit starts.

'The date on which the person is notified' is the date of the audit notification letter.

In practice this means that a prompted qualifying disclosure is a disclosure made after an audit notice has issued from Revenue but before an examination of the books and records or other documentation has begun. Where a desk audit notification has issued, examination of the books and records will be regarded as having commenced on the day after the period of notice has expired.

2.9 Definition of an 'Unprompted Qualifying Disclosure'

An 'unprompted qualifying disclosure' means a qualifying disclosure that the Revenue Commissioners are satisfied has been voluntarily furnished to them;

a) before any audit or investigation had been started by them or by a

Revenue officer into any matter occasioning a liability to tax, or

b) where the person is notified by a Revenue officer of the date on which an audit or investigation into any matter occasioning a liability to tax of that person will start, before that notification.

In practice this means that an ‘unprompted qualifying disclosure’ is a disclosure that is made before the letter notifying the taxpayer of an audit is issued (that is, before the date on which the letter of notification was issued) or before the commencement of an investigation.

2.10 Exclusions – disclosure not regarded as a Qualifying Disclosure

A disclosure made by a taxpayer shall not be a qualifying disclosure where any of the following circumstances apply:

a) If before the disclosure is made, a Revenue officer had started an audit or investigation into any matter contained in that disclosure and had contacted or notified that person, or a person representing that person,in this regard

b) If matters contained in the disclosure are matters -

   (i) that have become known, or are about to become known, to the Revenue Commissioners through their own investigations or through an investigation conducted by a statutory body or agency

   (ii) that are within the scope of an inquiry being carried out wholly or partly in public, or

   (iii) to which the person who made the disclosure is linked, or about to be linked, publicly.

   The matters referred to in (b)(i) above include investigations of a class of cases such as Ansbacher cases, Moriarty Tribunal cases or Mahon Tribunal cases.

c) If the disclosure made by the person is incomplete by reference to the conditions as set out in paragraph 2.7

d) If the disclosure is given verbally. A verbal disclosure is not regarded as a ‘qualifying disclosure’. A qualifying disclosure must be in writing.

2.11 Second, Third and Subsequent Qualifying Disclosures

It is inappropriate (in situations where the 5-year rule does not apply - see paragraph 2.12) that penalties should be similarly reduced or mitigated on foot of qualifying disclosures of recurring tax defaults in the categories of *deliberate behaviour, deliberate default*, and *careless behaviour with significant consequences/gross carelessness.*

(i) **Second Qualifying Disclosures - Calculation of Penalties**

For *deliberate behaviour* and *careless behaviour* defaults that occurred on or after 24/12/2008 - See Penalty Table 1, paragraph 4.6.2

For *deliberate default* and *gross carelessness* defaults that occurred before 24/12/2008 – See Penalty Table 2, paragraph 4.6.4.

(ii) **Third and Subsequent Qualifying Disclosures - Calculation of Penalties**

For *deliberate behaviour* and *careless behaviour* defaults that occurred on or after 24/12/2008 - See Penalty Table 1, paragraph 4.6.2

For *deliberate default* or *gross carelessness* defaults that occurred before 24/12/2008 - See Penalty Table 2, paragraph 4.6.4.

A qualifying disclosure of tax defaults, which are tax defaults that occurred before a change in ownership (within the meaning of Paragraph 1, Schedule 9, Taxes Consolidation Act, 1997) of a company, will be disregarded in considering the application of this section to a qualifying disclosure made after the change of ownership, in so far as tax defaults disclosed after the change of ownership occurred after that change.

2.12 The 5-year Rule regarding Qualifying Disclosures

If a taxpayer makes no additional qualifying disclosures within five years of a previous qualifying disclosure, any future qualifying disclosure is treated as a first qualifying disclosure.

In this context, it should be noted that:

- A qualifying disclosure can only be a second qualifying disclosure if there was a liability to the specific taxhead in the first qualifying disclosure

  Example: If the previous qualifying disclosure was in respect of VAT only and the current qualifying disclosure is in respect of Corporation Tax, then the current qualifying disclosure is to be regarded as a first qualifying disclosure

- Qualifying disclosures in the *careless behaviour without significant consequences/insufficient care* category are never counted when calculating the number of qualifying disclosures made by a taxpayer. These categories are intended to cater for defaults of a minor nature.

2.13 Period to prepare a Qualifying Disclosure

To secure an agreed period of time in which to prepare and make a qualifying disclosure, notice of intention to make a qualifying disclosure must be given to Revenue by the taxpayer.

Unprompted Qualifying Disclosure

In the case of an unprompted qualifying disclosure, the notice of the intention to make a disclosure must be given before:

- Notification of a Revenue audit is issued, or
- Contact with the taxpayer has been made by Revenue regarding a Revenue investigation relating to his or her tax affairs.

Prompted Qualifying Disclosure

The majority of prompted disclosures will be submitted in the period between the date of the notification of audit and the commencement of the audit.

In the case of a prompted qualifying disclosure, if an additional 60 days to prepare the disclosure is required, the notice of intention to make a disclosure must be given within 14 days of the day of issue of the notification of audit.

A person who has given notice within the time allowed of his or her intention to make a qualifying disclosure will be given 60 days in which to quantify the shortfall and to make the relevant payment. This period of 60 days will begin from the day on which the notice of intention to make a qualifying disclosure was given and will be communicated to the taxpayer in writing by Revenue. The 60-day period allows the taxpayer or his or her agent to contact Revenue to discuss any matters arising, including the category of default on which the penalty is to be based.

The preceding paragraphs set out a time limit for agreeing a period within which a qualifying disclosure may be prepared (without the risk of the taxpayer being notified of an audit or the commencement of the examination of the books and records where the taxpayer has already been so notified) and the duration of that period.

2.14 Examination of Qualifying Disclosures

Revenue examines a selection of unprompted qualifying disclosures for accuracy. In the event of such examination, the taxpayer must provide full co-operation to continue to avail of the relevant treatment. Where the case is not selected for examination, the taxpayer will be advised that, based on the information available at the time of writing, Revenue does not propose to make any further enquiries into past liabilities of the taxpayer.

Revenue examines all prompted qualifying disclosures to verify the details disclosed. The taxpayer must provide full co-operation during the course of the examination to continue to avail of the relevant treatment. If discrepancies are discovered as a result of such an examination, these will not negate the prompted qualifying disclosure provided that the discrepancies are not significant.

The examination of a qualifying disclosure is regarded as a Revenue audit and the Code of Practice for Revenue Audit applies.

2.15 Qualifying Disclosures – Requirements Summary Chart

Category of Default	Type of Qualifying Disclosure	Requirement for a Qualifying Disclosure (accompanied by payment of tax, duty and interest)
Deliberate behaviour or Deliberate default	Prompted and Unprompted	State the amounts of **all liabilities to tax and interest, in respect of all taxheads and periods** where liabilities arise, as a result of deliberate behaviour
Careless behaviour or Gross carelessness or Insufficient care	Prompted	State the amounts of **all liabilities to tax and interest in respect of the relevant taxhead and periods**, within the scope of the proposed audit
Careless behaviour or Gross carelessness or Insufficient care	Unprompted	State the amounts of **all liabilities to tax and interest, in respect of the taxhead and periods** that are the subject of the qualifying disclosure
A Qualifying Disclosure does not need to state the amount of the penalties due. Penalties will be subsequently agreed and paid.		
The tax, duty and interest owed must be paid.		
Full explanation and particulars in relation to how the chargeable amounts not previously disclosed arose, must be included.		
A statement, including computations, together with disclosure of estimates used, if any, of the amount of tax, duties, PRSI and Levies due for each period concerned must be included.		
Where any tax return was made or submitted by a person, neither deliberately nor carelessly, and it comes to that person's notice that it was incorrect, then, unless the error is remedied without unreasonable delay, the incorrect return shall be treated as having been deliberately made or submitted by that person [Section 1077 E (9) TCA 1997].		

2.16 Co-operation Only – No Qualifying Disclosure

Where no qualifying disclosure is made, a reduction in the penalties charged is still granted where a taxpayer co-operates fully during the course of the audit or investigation.

Where co-operation has not been given throughout the audit, the penalty mitigation for co-operation will be reduced or withheld altogether, as appropriate.

Co-operation includes the following:

- Having all books, records and linking papers, however held, available for the auditor at the commencement of the audit
- Having appropriate personnel available at the time of the audit
- Responding promptly to all requests for information and explanations

- Responding promptly to all correspondence
- Prompt payment of the audit settlement liability.

Examples of lack of co-operation include:

- Refusing reasonable access to the business premises
- Refusing reasonable access to the business records, including linking papers
- Failing to provide the auditor, during the course of the audit, with information known to the taxpayer which would be used in determining whether a tax underpayment arises
- Delays by the taxpayer in the course of the audit where there was no reasonable excuse for those delays.

See also paragraph 3.4 regarding *Obstruction*.

Auditors will provide any assistance required by taxpayers to enable them to co-operate with the audit, including allowing them reasonable time to reply fully to correspondence.

2.17 Capital Gains Tax Valuations – Penalties

Valuations that cannot be supported and which are determined to be baseless arise from time to time in Capital Gains audits. Spurious valuations lead to prolonged correspondence, delays in finalising audit settlements and claims that penalties should not be applied on the basis that the opinion of a professional valuer has been obtained. In the absence of relevant supporting evidence, a professional opinion will not, of itself, prevent the application of penalties. It is acknowledged that it may be difficult for taxpayers to obtain accurate valuations depending on the prevailing economic environment.

Notwithstanding the guidelines in relation to Categories of Tax Default, where reliable evidence, whether from comparable transactions or otherwise, has not been supplied in support of the taxpayer's valuations, penalties are mitigated by reference to the following criteria:

- Ascertain the difference ("A") between the valuation figure finally agreed ("B") and the figure proposed by the taxpayer
- If A is not greater than (B X 30%), the case is to be deemed to be a case to which no penalty is applicable
- If A is greater than (B X 30%) but not greater than (B X 50%), a penalty is payable and the category of tax default for the purpose of reduced or mitigated penalties is *careless behaviour without significant consequences or insufficient care*

- If A is greater than (B X 50%) but not greater than (B X 60%), a penalty is payable and the category of tax default for the purpose of reduced or mitigated penalties is *careless behaviour with significant consequences or gross carelessness*
- If A is greater than (B X 60%), a penalty is payable and the category of tax default for the purpose of reduced or mitigated penalties is *deliberate behaviour or deliberate default.*

2.18 Capital Acquisitions Tax and Stamp Duty Valuations

The Capital Acquisitions Tax and Stamp Duties legislation provide for surcharges for under-valuations of property in Section 53 CAT Consolidation Act, 2003 and Section 15 and 16 Stamp Duties Consolidation Act, 1999 respectively.

2.19 Arrears of Declared Taxes And Duties

In order to improve tax compliance under all taxheads, auditors require payment of all unpaid tax on record together with the payment due in the audit settlement. Auditors also pursue all outstanding tax returns together with any related liabilities and penalties.

2.20 Maintenance of Adequate Records

The obligation to keep proper records rests with the taxpayer. Records must be of a sufficient standard to give a full and accurate account of the business so that correct tax liabilities can be calculated. In all cases where substantial inadequacies are found in the records, the provisions of the appropriate sections are brought to the attention of taxpayers. Linking documents drawn up when preparing the accounts are part of the taxpayer’s books and records as defined in Section 886 Taxes Consolidation Act, 1997.

Cash Registers

An information leaflet on record keeping for all businesses that use a cash register or an electronic point of sale (EPOS) system is available on the Revenue website.

http://www.revenue.ie/en/tax/vat/leaflets/cash-registers-info-leaflet.pdf

Appendix V outlines the legislation under which taxpayers are obliged to maintain proper records.

Chapter 3

The Revenue Audit

- *Location and conduct of a Revenue Audit*
- *Scope of the audit*
- *Re-Audit of cases previously audited*
- *Procedures where there are indications of a serious tax offence*

3. THE REVENUE AUDIT

3.1 Location of Audit

Unless otherwise justified, the audit is carried out at the taxpayer's place of business. Where there are a number of businesses or locations, the audit is undertaken at the principal place of business. As part of the audit process, auditors may visit some or all of the locations where the business is carried on.

In the case of companies, the audit normally takes place at the principal place of business, rather than at the Registered Office address.

Where a taxpayer has no trading premises and the books and records are retained at the taxpayer's private residence, an audit may only be conducted at the residence with the consent of the taxpayer, (See Section 905 (2) (e) Taxes Consolidation Act, 1997). Where consent is not given, the books and records are collected and the audit is carried out at the Revenue office.

In general, auditors from the local Revenue District carry out audits. However, for operational reasons, auditors from other Districts or Divisions may carry out an audit of a business in any area.

Audits are not normally carried out at an agent's office. If the books and records are kept at the office of the agent, arrangements should be made to have them available at the taxpayer's place of business before commencement of the audit.

Where, in certain circumstances, carrying out an audit in the taxpayer's premises would be impractical or would cause serious inconvenience to the taxpayer, the auditor will complete the audit in the Revenue office.

Irrespective of where the audit is actually carried out, the auditor normally visits the business premises.

3.2 Conduct of Audit

On arrival at the place of audit, the auditor will show his or her identification and authorisation and explain to the taxpayer or company representative the purpose of the audit. It is Revenue policy not to disclose the precise reason (or reasons) for selecting a particular case for audit. However, where an audit is preceded by an aspect query or profile interview, normally the points at issue will be pursued further in the audit along with any other matters.

The taxpayer is informed about Revenue practice on charging interest and penalties and is offered the opportunity to make a prompted qualifying disclosure. In addition, the auditor will advise the taxpayer of the benefits of a qualifying disclosure regarding penalties and publication.

After the initial interview, examination of the books and records will begin and the audit will be regarded as having commenced.

The auditor will usually:

- Ascertain the nature of the business, identify those responsible for maintenance of the records and list the records kept
- Examine the books and records, in whatever format held, both for completeness and the treatment of transactions having regard to tax and accounting principles
- Check that all relevant returns have been made and are complete in accordance with the records
- Make whatever enquiries are necessary for the audit
- Advise the taxpayer of any errors, omissions or irregularities in the tax returns submitted (including those in the taxpayer's favour), determine liability if it arises, request settlement and specify any action that may be required to place the taxpayer on a compliant footing
- Conduct a physical and documentary walkthrough of premises to verify on-going compliance with criteria or conditions laid down in authorisations for certain customs procedures.

Auditors make every effort not to retain any records submitted to the office or collected from the taxpayer for more than one month. If more time is required to finalise an audit, the auditor, before the month has expired, will advise the taxpayer and the agent to that effect.

Where an audit requires transfer of electronic data from a taxpayer to an auditor, Revenue's data security guidelines will apply. In particular, data will be stored on laptops or portable storage devices in encrypted form.

Revenue guidelines on encryption are designed to ensure the maximum possible protection to commercial data.

http://www.revenue.ie/en/about/data-protection-revenue.html

If an auditor has not been given all the books and records requested, the taxpayer is informed. The taxpayer is given a receipt for records taken from a taxpayer's premises.

When records have been removed and the taxpayer requires them for current trading purposes, copies of the records removed are given to the taxpayer or, if required, the taxpayer is given an opportunity to take extracts from the records taken.

3.3 Materiality in Audit Settlements

The objective of all Revenue audit programmes is to ensure voluntary compliance. If it becomes clear at an early stage in an audit that the taxpayer's returns are substantially correct, the auditor will withdraw from the audit.

Where it is clear that a taxpayer has broadly done their best to ensure that the tax returns for the various taxes are accurate, adjustments are not made for small inaccuracies (on the basis that these may be attributed to innocent errors and may otherwise be balanced by minor errors in Revenue's favour). Materiality, therefore, is always a factor in assessing the significance of an error or omission.

Materiality is a matter for sensible judgement by an auditor, where necessary, in consultation with the appropriate Revenue manager.

3.4 Obstruction

It is Revenue policy for auditors to introduce themselves at the start of the audit and to produce their official authorisation card. The auditor will also explain the purpose of the audit. If the taxpayer refuses to facilitate the audit or to produce the requested books and records in an acceptable format, the taxpayer is regarded as obstructing the audit process.

In such circumstances the auditor will spend a reasonable period of time trying to obtain co-operation from the taxpayer. Where the refusal continues and it is clear that the taxpayer has no statutory or other legal basis for refusing to facilitate the audit, the taxpayer will be advised that it is a criminal offence to obstruct or interfere with an authorised officer of the Revenue Commissioners in the performance of their duties (Section 1078 (2) (j) Taxes Consolidation Act, 1997).

Situations do arise where it is necessary for the auditor to take immediate action to secure the books and records. The auditor may, in this situation, contact a Revenue manager to request support.

In all but the most exceptional of circumstances, a report of such cases will be made to Investigations and Prosecutions Division with a view to referring the matter for criminal prosecution.

3.5 Years, Periods and Issues for Audit

The function of an auditor is to:

- Audit the returns for the years, periods or transactions indicated in the audit notice (normally reflecting the risks identified)
- Make any necessary adjustments
- Settle and collect additional tax and duties if any, together with related interest and penalties and

- Specify the remedial actions required to put the tax affairs of the person audited on a sound footing for the future.

The auditor focuses primarily on years, periods or transactions indicated in the audit notice. Where the scope of the audit is extended the taxpayer may have qualifying disclosure opportunities, see paragraph 2.7.1 and 2.7.2.

3.6 Auditing Earlier Years, Periods or Issues

Initially the audit will concentrate on the years, periods and issues indicated in the audit notice. However, issues may arise during the course of the audit that will require the auditor to consider opening earlier or later years. In these circumstances taxpayers may have qualifying disclosure opportunities, see paragraph 2.7. Overall priorities, time factors involved in such audits, likely outcome, materiality and so on, will always be considered in deciding whether to open earlier years. Earlier years or tax periods will only be audited if there is a sound basis for believing that significant tax defaults have taken place. Decisions in this regard will be made in consultation with the appropriate Revenue manager.

Opening of earlier years/periods is unlikely to arise in the following type of case:

- Where the understatement of liability is relatively small, and
- Where there is no significant unexplained accumulation of assets.

By contrast, justification for considering opening earlier years, under the procedures described above, may arise in the following type of case:

- Where there is a significant unexplained accumulation of assets
- Where there are strong indicators that a scheme to evade tax or duty has been in operation
- Where there are strong indicators that a tax avoidance scheme exists that requires further examination
- Where substantial loss of revenue has arisen in the year or period of audit, and it is likely that a similar position existed in previous years.

Generally, audits involving customs duties will not extend beyond 3 years. This is because a debt shall not be notified to a debtor after a period of 3 years has passed from the date on which the customs debt was incurred. (Article 221 (3) of the Customs Code).

The period for notifying a customs debt to a debtor may be extended beyond 3 years where the act which gave rise to the debt, at the time it was committed, was liable to give rise to criminal court proceedings. (Article 221 (4) of the Customs Code).

3.7 Post Audit Years/Periods

Part of the audit focus is to bring the case up-to-date. Accordingly, where the issue giving rise to an adjustment in the period of audit also occurs in later periods, the auditor, in addition to collecting the tax arising from the audit period, will seek payment of the tax (including preliminary tax) that may be due for the later periods.

3.8 Review of Cases Previously Audited

Taxpayers previously audited may be reviewed for inclusion in Revenue's re-audit programme. If strong indicators of serious tax evasion are detected in the review, the case may be referred to Investigations and Prosecution Division to evaluate its suitability for prosecution.

3.9 Indications of a Serious Tax Offence

In the course of an audit, an auditor will from time to time encounter strong indicators suggesting a serious tax offence of the type described in the prosecution criteria (Chapter 6). Two main types of evidence arise in tax offences; documentary evidence and statements by the taxpayer. Auditors will deal with such evidence as follows:

Documentary Evidence

Unless there is a Qualifying Disclosure (see paragraph 2.6), documentary evidence for the type of offence described in the prosecution criteria at Chapter 6, will be immediately referred via the Revenue manager to Investigations and Prosecutions Division (IPD). IPD considers whether or not the case is suitable for investigation with a view to prosecution. If the case is considered suitable the taxpayer is advised accordingly. Continuation and completion of the case will be managed in conjunction with Investigations and Prosecutions Division.

Statements made by the Taxpayer

A general statement such as "I have a bank account that I have not disclosed" does not indicate that an offence has been committed.

By contrast, a specific statement such as: "I want to tell you how I have been using false invoices to evade tax and pay under-the-counter wages" does indicate that an offence has been committed.

Subject to the guidance in relation to qualifying disclosures (see paragraph 2.7), if the offence is of the type specified in the Prosecution Criteria with a likely prospect of prosecution, the taxpayer is cautioned before making further incriminating statements.

A Revenue auditor will not administer a caution to a taxpayer indiscriminately; it is a procedure reserved for cases where there are grounds to suspect serious tax evasion.

A taxpayer who has admitted committing an offence should be cautioned.

Wording of Caution

The caution to be given is the following:

"You are not obliged to say anything unless you wish to do so, but whatever you say, will be taken down in writing and may be given in evidence"

3.10 Data Protection Act

Revenue collects information in order to administer the tax and customs systems. Any information provided by Revenue customers will be treated with the highest standards of security and confidentiality and strictly in accordance with the Data Protection Acts 1988 and 2003.

http://www.revenue.ie/en/about/data-protection-revenue.html

Chapter 4

Finalisation of a Revenue Audit

- *Basis of an audit settlement*
- *Interest Charges*
- *Surcharges*
- *Penalty Charges/Notices of Opinion 4.5 to 4.6*
- *Default Categories*
- *Payment of liabilities*
- *Review/Appeal Procedures*

4. FINALISATION OF A REVENUE AUDIT

4.1 Monetary Settlement

It is important to emphasise the context in which this Code of Practice for Revenue Audit has been drafted. Monetary settlement has an important role in Revenue's compliance programmes. The use of appropriate monetary settlement procedures is consistent with the efficient management of the tax system and the best use of Revenue resources.

Without prejudice to monetary settlement, Revenue also pursues a vigorous prosecution policy for appropriate cases. However, not every case is suitable for prosecution: for example, there may be issues concerning the evidence available.

Each case is judged on its merits. The most suitable approach depends on the particular circumstances of the individual case.

4.2 Basis of Audit Settlement

Revenue's objective of achieving the highest degree of voluntary compliance depends on the co-operation and confidence in Revenue of the taxpaying public.

Co-operation is more likely to be forthcoming if the taxpayer's right to information is respected and if the taxpayer is given some time to consider and take advice on the audit findings.

Where the tax liability has not already been quantified in a qualifying disclosure, the auditor quantifies the undercharge in respect of tax, interest and penalties (if any) due and invites a written offer and payment of the liabilities so quantified. If publication arises, the taxpayer and agent are so advised in writing.

All settlement offers are subject to approval, and the Board of the Revenue Commissioners has delegated the authority to regional and district staff to approve certain offers.

All offers are accompanied by a report which carries the auditor's recommendation for acceptance or otherwise.

Most audit settlement offers are agreed without undue delay and are subject to quality assurance procedures. Under these procedures, Revenue managers examine a number of audits to ensure they have been carried out in accordance with this Code. Once the audit interviews and discussions with the taxpayer/agent have been concluded, the auditor will have a final meeting (if necessary) with the taxpayer to outline the audit findings. Should a monetary settlement arise, the taxpayer will be required to forward a written settlement offer to the auditor. An offer made by a taxpayer will not be regarded as being in full and final settlement of liabilities due unless it is made without demur or qualification. The taxpayer may also be required to confirm, in writing, that issues identified during the course of the audit have been rectified. The auditor will then confirm the position in writing to the taxpayer as follows:

(i) Where the audit result indicates that the taxpayer's return is acceptable, a letter will issue to the taxpayer and agent notifying them accordingly

(ii) Where agreement is reached with the taxpayer and agent on the qualifying disclosure or audit settlement, a letter will issue to the taxpayer and agent setting out details of the settlement, drawing the taxpayer's attention to any inadequacies in the records or the tax treatment applied, and where appropriate, noting the taxpayer's confirmation that these matters have been rectified

(iii) Where agreement is not reached with the taxpayer and agent on the audit results, a clear, concise letter will issue summarising the proposed adjustments that gave rise to the additional liability to tax, interest and penalties (if they arose).

The letter invites the taxpayer to agree to the figures or, if they are unable to agree, to explain why not.

In most cases agreement is reached once the taxpayer/agent is satisfied that the auditor's approach to settlement is appropriate.

If formal agreement is not reached (or if payment is not forthcoming in agreed cases) the auditor will make all necessary assessments, amendment of assessments or estimates and will issue the relevant notices to the taxpayer and agent.

If no formal appeal is received or if, after the appeal has been determined or otherwise disposed of, the auditor is unable to secure payment, the collection of the tax and statutory interest will be referred for appropriate enforcement proceedings without delay. Where the tax liability has been finalised but penalties are not agreed with the taxpayer or where agreed penalties are not paid, a Notice of Opinion will be issued to the taxpayer. See paragraph 4.5.4 below.

4.3 Interest

Where, as a result of an audit, it is clear that the taxpayer has not made a full and correct return and an undercharge to tax arises, interest charges arise under the relevant interest provisions. **Interest due is not mitigated**.

Where an underpayment arises in an audit and is satisfied by the offset of an excess payment from a later period, interest is charged on the underpayment from the due date to the date of the excess payment.

As regards interest on tax, payment must be made within one month of the taxpayer making an offer in settlement. If the payment is not received within one month, the interest charge in the settlement is re-calculated. Where, exceptionally, an audit settlement can only be paid over a period, additional interest covering the period of an instalment arrangement will arise.

Where, in the absence of agreement between the taxpayer and the auditor, it is necessary to raise assessments or estimates and refer the tax for enforced collection, interest will arise from the original due dates up to the date of payment.

For interest charges in ‘no loss of revenue’ cases - see paragraph 2.5.

Customs

Interest charges will be applied in accordance with Article 232 of the Community Customs Code (Council Regulation (EEC) No 2913/92).

Excise

Interest charges will be applied in accordance with Section 103, Finance Act, 2001 (as amended by Section 97, Finance Act, 2003) and Section 74, Finance Act, 2002.

Environmental Levy

Interest charges arise under Section 72(4A), Waste Management Act, 1996 (inserted by Section 50, Protection of the Environment Act, 2003) .

4.4 Surcharge For Late Submission Of Returns

Taxpayers are liable to a surcharge, under the provisions of Section 1084 Taxes Consolidation Act, 1997, for the late filing of a return. This section also provides that the filing, on time, of an incorrect return, either fraudulently or negligently, is deemed to be late filing.

Where an Income Tax, Capital Gains Tax, Corporation Tax return or Capital Acquisitions Tax return (Section 53A CAT Consolidation Act 2003) was not filed on time, the surcharges applicable will be added to the audit settlement. The overall level of tax-geared penalty in any settlement will be regarded as covering any fixed penalties chargeable for the filing of an incorrect or late return.

4.5 Penalties

4.5.1 Penalties Legislation

The legislation relevant to the application of penalties in audit settlements is set out in **Appendix III**.

In a case where a penalty arises, the amount of the penalty due is generally computed by the Revenue auditor, agreed with the taxpayer and paid. Where there is no agreement between Revenue and the taxpayer on the amount of the penalty or where an agreed penalty is not paid, the penalty due will be determined by a court. There are no provisions for tax-geared penalties in relation to Customs defaults.

In Stamp Duty cases, where an instrument is submitted for stamping (by way of filing a Stamp Duty return) after the time allowed, taxpayers are liable to pay interest and a penalty under Section 14 of the Stamp Duties Consolidation Act, 1999.

4.5.2 Penalties Charged by Agreement

In the course of audits, Revenue auditors are concerned mainly with civil penalties. Not every type of adjustment arising as a result of a Revenue audit will give rise to a liability to a penalty.

The following issues normally give rise to penalties:

- Undisclosed sales, receipts, income or gains
- Undisclosed remuneration or relevant contract payment
- Understated assets including the valuation of stock and debtors
- Overstated liabilities, including creditors
- Non-compliance with the VAT, PAYE, or RCT regulations
- Improper claims for expenses or deductions either by way of debit in the profit and loss account or otherwise
- Improper claims for capital allowances or other allowances or reliefs
- Failure to disclose all the facts and circumstances relating to a Stamp Duty liability
- Failure to disclose all the facts and circumstances relating to a Capital Acquisitions Tax liability.

This is not an exhaustive list and the circumstances of each case dictate whether penalties are charged.

Auditors will exercise care in considering whether penalties arise in any particular case. Where there is any doubt whether a penalty is applicable or, in relation to the appropriate category of tax default where a penalty does apply, the auditor will discuss the matter with his or her Revenue manager.

Having identified the elements of a settlement that attract a penalty, the auditor will compute the penalty, if any, in respect of each of those elements in accordance with the Acts and the guidance outlined in this Code of Practice for Revenue Audit. The penalty will be agreed with the taxpayer and paid.

4.5.3 Penalties Determined by a Relevant Court

The majority of audit settlements for tax, interest and penalties are resolved by agreement with the taxpayer in the manner outlined in this Code of Practice for Revenue Audit. However, where there is no agreement on the liability to a penalty or where an agreed penalty is not paid, the penalty will be determined by a relevant court.

The term 'relevant court' means the District Court, the Circuit Court or the High Court, as appropriate, by reference to the jurisdictional limits for civil matters laid down in the Courts of Justice Act, 1924, as amended, and the Courts (Supplemental Provisions) Act, 1961, as amended.

The jurisdictional limits are as follows:

- District Court – amounts up to €6,348.69
- Circuit Court – amounts up to €38,092.14
- High Court – amounts in excess of €38,092.14

Where the penalty is to be determined by a relevant court, the following procedures apply:

Step 1: Based on the evidence available, an auditor may form an opinion that a taxpayer is liable to a penalty.

Step 2: If the penalty is to be pursued, a Notice of Opinion must issue to the taxpayer (and a copy will also be sent to the taxpayer's agent) – see Notice of Opinion, paragraph 4.5.4 below. If the taxpayer agrees with the opinion of the auditor and pays the penalty, then that is the end of the matter.

Step 3: If there is no agreement on the amount of the penalty or no payment of an agreed penalty (or no response from the taxpayer) within 30 days, the auditor may make an application to a relevant court for that court to determine that the taxpayer has contravened a relevant statute giving rise to a penalty – see paragraph 4.5.5 below.

Step 4: Where a court makes a determination that the taxpayer is liable to a penalty and makes an order for the recovery of that penalty, Revenue may collect and recover the amount in like manner as the collection of tax – see paragraph 4.5.7 below.

4.5.4 Issue of a Notice of Opinion regarding a Penalty [Section 1077B Taxes Consolidation Act, 1997]

This section of the code refers to cases where no agreement can be reached with the taxpayer about the level of penalties payable. It also covers any case where a penalty is agreed but not paid. In these circumstances, the Revenue auditor formally expresses the opinion that a penalty is due and gives notice of that opinion to the taxpayer and to the taxpayer's agent.

The Notice of Opinion will include details of;

a) the provisions under which the penalty arises

b) the circumstances in which that person is liable to the penalty

c) the amount of the penalty to which that person is liable, and

d) such other details as the auditor considers necessary.

For tax-geared penalties, the amount of the tax due must be finalised before a Notice of Opinion is issued.

An auditor may at any time amend an Opinion and will give notice of the amended Opinion to the taxpayer (and agent) in the same manner as the original Notice of Opinion outlined above. [Section 1077B (2) Taxes Consolidation Act, 1997]

For consistency and ease of administration, all Revenue Regions and Districts will use a standard Notice of Opinion. The Notice of Opinion will issue **with the express written approval of a Principal Officer or a grade higher than Principal**.

When forming an opinion on the amount of a tax-geared penalty due, the auditor will take into account whether a qualifying disclosure and/or co-operation has already been given by the taxpayer.

The Notice of Opinion will be issued to the taxpayer and a copy sent to the agent.

Where a taxpayer does not respond to correspondence relating to a Notice of Opinion of an auditor, an auditor cannot assume or decide that the taxpayer is liable to a penalty – that is a matter for a relevant court to determine.

4.5.5 Application to a Relevant Court for Penalty Determination [Section 1077B (3) Taxes Consolidation Act, 1997]

Where the taxpayer to whom a Notice of Opinion is issued does not, within 30 days after the date of the notice (or within 30 days after the date of the amended notice), agree in writing with the opinion or the amended opinion contained in the notice and pay the Revenue Commissioners the amount of the penalty specified in the notice, the auditor may apply to a court for that court to determine whether the taxpayer has actually contravened the statute giving rise to a penalty.

Applications to a relevant court **must be approved in writing at Principal Officer or higher level.**

The fact that a Notice of Opinion is issued by Revenue or that an application is made by Revenue to a relevant court does not negate the taxpayer's entitlement to a reduced or mitigated penalty for co-operation or for a qualifying disclosure. The reduced or mitigated penalty to be charged will be shown on the Notice of Opinion.

4.5.6 Determination of Penalty by a Relevant Court

Based on the evidence before it, it will be a matter for the court to determine whether the taxpayer has breached the legislation giving rise to the liability to a penalty.

4.5.7 Recovery of Penalty determined by a Relevant Court (Section 1077C Taxes Consolidation Act, 1997)

Where a court has made a determination that a taxpayer is liable to a penalty, the court may also, where a relevant application is before it, make an order as to the recovery of that penalty, and without prejudice to any other means of recovery, that penalty may be collected and recovered in like manner as an amount of tax.

4.5.8 Appeals against a Penalty determined by a Relevant Court

Under the penalty determination structure it is important to understand that a court (rather than an auditor) has determined that a taxpayer has a liability to a penalty. There is, therefore, no right of appeal of such determination to the Appeal Commissioners.

Appeals against a determination by a relevant court lie, therefore, within the Rules of Court applicable to each relevant court and not within the Taxes Acts.

4.5.9 Penalties – Time Limits

Except for cases mentioned in paragraph 4.5.10 (Penalties in Death Cases), there is no time limit for proceedings or applications for the recovery of penalties.

4.5.10 Penalties in Death Cases (Section 1077D Taxes Consolidation Act, 1997)

Tax law now prevents Revenue from imposing penalties on deceased taxpayers, after death. Similarly, legal proceedings for the recovery of penalties cannot be taken against the estate or the executor of a deceased taxpayer in relation to pre-death liabilities. However, where before the taxpayer's death, agreement was reached in writing with the taxpayer or an agent of the taxpayer, or a relevant court had determined that a liability to a penalty had existed, then a penalty is due and Revenue can take proceedings to enforce it and to collect it from the taxpayer's estate.

A more comprehensive statement of the position is in **Appendix VII.**

4.5.11 Overview of Tax-Geared and Duty-Geared Civil Penalties

The Finance (No.2) Act 2008 passed into law on 24 December 2008. Tax defaults that occurred prior to 24 December 2008 are covered by the old penalty legislation as outlined at 4.6.3. Tax defaults that occur on or after 24 December 2008 are dealt with under this new penalty legislation.

The procedure, where a 'relevant court' is asked to determine whether a taxpayer is liable to a penalty (in a situation where agreement on a penalty is not reached or where an agreed penalty is not paid), is available to resolve all tax default penalty cases **irrespective of when the default occurred.**

A summary of the pre and post Finance (No.2) Act 2008 position regarding tax-geared penalties is as follows –

	Cases where the tax default occurred before 24 December 2008	Cases where the tax default occurred on or after the 24 December 2008
Level of Penalty	The level of civil penalty to apply in such cases is the 100% tax-geared penalty as mitigated in accordance with the category of default and default frequency set out in Penalty Table 2 (paragraph 4.6.4)	The level of civil penalty to apply in such cases is the new tax-geared penalty as set out in the Taxes Acts (S1077E TCA, 1997, S116 VATCA 2010) (Penalty Table 1 paragraph 4.6.2)
Categories of Default	The categories of default giving rise to a civil penalty are those carried out 'fraudulently' or 'negligently' *(a) Deliberate default;* *(b) Gross carelessness;* *(c) Insufficient care*	The categories of default giving rise to a civil penalty have been changed to *(a) Deliberate behaviour;* *(b) Careless behaviour with significant consequences; or* *Careless behaviour without significant consequences.*
Mitigation	The mitigation where certain conditions are fulfilled is as outlined in Penalty Table 2 (paragraph 4.6.4)	Whilst the general power of mitigation is retained in statute, the tax- and duty-geared penalties contained in the Finance (No.2) Act 2008 include reduced penalties where certain conditions are fulfilled (Penalty Table 1 paragraph 4.6.2)

The key issue is, therefore, to determine when the tax default giving rise to a penalty occurred, and this is illustrated in the following examples:

Examples

Tax Period	Document Submitted	When Submitted	Contravention	Contravention Occurred	Penalties to Apply
2007	Form 11	1/09/2008	Incorrect Return	1/09/2008	Pre Section 1077E TCA 1997 Penalties
2007	Form 11	1/03/2009	Incorrect Return	1/03/2009	Section 1077E TCA 1997 Penalties
2007	Form 11	Not filed	Failure to Comply	01/11/2008	Pre Section 1077E TCA 1997 Penalties
2008	Form 11	Not filed	Failure to Comply	01/11/2009	Section 1077E TCA 1997 Penalties
2008 Jan-Feb	VAT 3	14/03/2008	Incorrect Return	14/03/2008	Section 27 VAT Act 1972 Penalties
2009 Mar-Apr	VAT 3	10/05/2009	Incorrect Return	10/05/2009	S116 VATCA 2010 Penalties
2008	Form 11	1/10/2009	Incorrect Return	1/10/2009	Section 1077E TCA 1997 Penalties

Where a taxpayer fails to comply with a requirement to deliver a return or statement of a kind mentioned in any of the provisions specified in column 1 of Schedule 29 Taxes Consolidation Act, 1997 that taxpayer shall be liable to a penalty.

4.6 Categories Of Tax Default

The categories of tax default giving rise to a civil penalty are as outlined below;

4.6.1 Categories for tax defaults that occurred on or after 24/12/2008

The level of civil penalty to apply for deliberate or careless tax defaults is the tax-geared penalty as set out in the Taxes Acts.

a) Deliberate Behaviour penalties

Deliberate behaviour is not defined in the Acts and is, therefore, given its normal meaning.

In general, *deliberate behaviour* involves either a breach of a tax obligation with indicators consistent with intent on the part of the taxpayer or a breach that cannot be explained solely by carelessness.

For *deliberate behaviour* penalties to apply, the auditor is satisfied;

- that the facts of the case are consistent with intent to default, or
- alternatively, that the taxpayer's actions or omissions were likely to result in a tax default and those actions or omissions cannot be explained solely by carelessness.

Indicators consistent with *Deliberate Behaviour* would include:

- Failing to keep proper books and records required by tax law to enable the taxpayer's correct tax liability to be determined
- Repeated omissions or a large single omission of transactions from the books and records of the business
- Omissions from tax returns
- Providing incomplete, false or misleading documents or information
- Claiming a refund of tax when not lawfully entitled to that refund
- Failing to operate fiduciary taxes
- Concealment of bank accounts or other assets.

This list is not exhaustive.

The tax-geared penalty to be charged for a default in this category is outlined in Penalty Table 1, paragraph 4.6.2.

For tax defaults that occurred prior to 24/12/2008, the above examples are a good indication of the *deliberate default* category. See paragraph 4.6.3(a) below.

b) Careless Behaviour penalties

Taxpayers must exercise care in fulfilling their tax obligations. *Careless behaviour* is a lack of due care rendering tax liabilities returned by the taxpayer, or repayment claims made, incorrect.

Careless behaviour is distinguished from *deliberate behaviour* by the absence of indicators, in the facts and circumstances of the default, which are consistent with intent.

'Carelessly' is defined in the Acts as meaning the "*failure to take reasonable care".*

The test of reasonable care is "whether a taxpayer of ordinary skill and knowledge, properly advised, would have foreseen as a reasonable probability or likelihood the prospect that an act (or omission) would cause a tax underpayment, having regard to all the circumstances". The taxpayer cannot devolve the responsibility of making a correct return to an agent. If all relevant matters have not been brought to the attention of the agent, the taxpayer has not taken due care.

Where there is *careless behaviour*, the penalty to apply depends on whether that careless behaviour gave rise to significant consequences.

Careless behaviour with significant consequences is distinguished from *careless behaviour without significant consequences* by reference to the size of the shortfall relative to the correct tax liability concerned.

Significant consequences: this phrase is not defined in the Acts but is used to describe the statutory penalty applicable where the tax underpaid exceeds 15% of the tax correctly payable.

The 15% test is to be applied separately to each tax type and period in respect of which a return or statement of liability is required to be made by the taxpayer.

In the case of a reduction in a repayment made, if any, compared with the repayment claimed, if the reduction exceeds 15% of the amount of the repayment claimed by the taxpayer a penalty in the category of *careless behaviour with significant consequences* will apply if the incorrect claim arose from a lack of due care by the taxpayer.

Indicators consistent with *careless behaviour* on the part of the taxpayer would include the following non-exhaustive list of examples, to the extent that they lead to substantial underpayments of tax (by reference to the guidance in the next paragraph below):

- Estimation of accounts items
- Neglecting to categorise expenditure into allowable and disallowable categories for tax purposes
- Neglecting to take advice on an issue of interpretation where either a tax agent or Revenue should have been approached for guidance
- Whether the taxpayer obtained advice before deciding on action
- The extent of the tax at risk. The greater the tax at risk, the greater the care required
- The size and nature of the business
- The internal controls in place
- The standard of record keeping in the business
- Any systems failure and the reasons for that failure
- The frequency of the error made. A case involving an isolated error with minor tax implications will be viewed in a different light to a case with more frequent errors.

c) Careless behaviour WITH significant consequences

The tax-geared penalty to be charged for a default in this category is outlined in Penalty Table 1, paragraph 4.6.2

For tax defaults that occurred prior to 24/12/2008, the above examples are a good indication of the *gross carelessness* default category. See paragraph 4.6.3 (b) below.

d) Careless behaviour WITHOUT significant consequences

The tax-geared penalty to be charged for a default in this category is outlined in Penalty Table 1, paragraph 4.6.2

For tax defaults that occurred prior to 24/12/2008, the above examples are a good indication of the *insufficient care* tax default category. See paragraph 4.6.3(c) below.

Examples of Careless Behaviour categories:

Careless Behaviour	Example A	Example B
Tax payable as per an incorrect tax return, say	€10,000	€60,000
Tax ultimately due	€30,000	€65,000
Tax underpaid	€20,000	€5,000
Penalty	The *careless behaviour with significant consequences* penalty applies as the tax underpaid exceeds 15% of the €30,000 ultimately due	The *careless behaviour without significant consequences* penalty applies, as the tax underpaid does not exceed 15% of the €65,000 ultimately due.

4.6.2 Penalty Table 1 – Penalty Percentages (on or after 24/12/2008)

Penalty Table 1 refers to defaults that occurred on or after 24/12/2008 where the taxpayer makes a qualifying disclosure and also to defaults where no qualifying disclosure is made.

The tax-geared penalty is a percentage of the underpaid tax.

PENALTY TABLE 1	CATEGORY OF DEFAULT	QUALIFYING DISCLOSURE FINANCE (No.2) ACT 2008	
All defaults where there is a qualifying disclosure	Penalty table for defaults that occurred on or after 24/12/2008	Prompted qualifying disclosure and co-operation	Unprompted qualifying disclosure and co-operation
All qualifying disclosures in this category	*Careless behaviour without significant consequences*	10%	3%
First qualifying disclosure in these categories	*Careless behaviour with significant consequences*	20%	5%
	Deliberate behaviour	50%	10%
Second qualifying disclosure in these categories	*Careless behaviour with significant consequences*	30%	20%
	Deliberate behaviour	75%	55%
Third or subsequent qualifying disclosure in these categories	*Careless behaviour with significant consequences*	40%	40%
	Deliberate behaviour	100%	100%
NO QUALIFYING DISCLOSURE	**CATEGORY OF DEFAULT**	**NO CO-OPERATION**	**CO-OPERATION ONLY**
All defaults where there is no qualifying disclosure	*Careless behaviour without significant consequences*	20%	15%
	Careless behaviour with significant consequences	40%	30%
	Deliberate behaviour	100%	75%

4.6.3 Categories for tax defaults that occurred before 24/12/2008

The level of civil penalty to apply for fraudulent or negligent tax defaults is the 100% tax-geared penalty as mitigated in accordance with Section 1065 Taxes Consolidation Act, 1997.

Fraud

Fraud involves the making of a false representation by a taxpayer -

- knowingly, or
- without belief in its truth, or
- recklessly, or
- carelessly as to whether it was true or false.

Cases of suspected fraud, where a sustainable case is likely to exist, will be referred to Investigations and Prosecutions Division to evaluate suitability for possible prosecution.

Negligence

Negligence connotes, *inter alia* -

- want of attention, or lack of care, in doing something which ought to be done
- failure, in any given circumstances, to exercise the care and diligence which the circumstances demand
- omission to do something that a reasonable person would do, or
- the commission of something that a reasonable person would not do.

The categories are as follows:

a) Deliberate Default

Deliberate default involves either a breach of a tax obligation with indicators consistent with intent on the part of the taxpayer or a breach that cannot be explained solely by carelessness.

See paragraph 4.6.1 – *deliberate behaviour* – for some examples of the type of default that gives rise to a *deliberate default* penalty.

The tax-geared penalty to be charged for a default in this category is outlined in Penalty Table 2, paragraph 4.6.4.

b) Gross Carelessness

Taxpayers must exercise care in fulfilling their tax obligations. *Gross carelessness* is a lack of due care rendering tax liabilities returned by the taxpayer, or repayment claims made, substantially incorrect.

Gross carelessness is distinguished from *deliberate default* by the absence of indicators, in the facts and circumstances of the default, which are consistent with intent. In cases of gross carelessness the auditor is satisfied that the default can be explained solely by carelessness on the part of the taxpayer. *Gross carelessness* is distinguished from *insufficient care* by reference to the size of the shortfall relative to the correct tax liability concerned.

Without prejudice to the application of the *deliberate default* category, if the shortfall arises from a lack of due care on behalf of the taxpayer and the shortfall for the particular tax type exceeds 15% of the tax liability ultimately due in respect of the particular tax type in which the shortfall occurs, a penalty in the category of *gross carelessness* will apply.

See paragraph 4.6.1(c) – *Careless behaviour with significant consequences* – for some examples of the type of default that gives rise to a *gross carelessness* penalty.

The tax-geared penalty to be charged for a default in this category is outlined in Penalty Table 2, paragraph 4.6.4

c) Insufficient Care

The *Insufficient care* category of tax default is intended to cater for defaults of a minor nature that are discovered during many Revenue audits, for example, computational errors and inadequate adjustments for personal expenditure in the profit and loss account.

Insufficient care is distinguished from *gross carelessness* by the application of the '15 per cent rule' – that is, for the behaviour to be categorised as *insufficient care*, the tax underpaid must not exceed 15% of the overall liability ultimately due for that taxhead.

See paragraph 4.6.1(d) – *Careless behaviour without significant consequences* – for some examples of the type of default that gives rise to an *insufficient care* penalty.

The tax-geared penalty to be charged for a default in this category is outlined in Penalty Table 2, paragraph 4.6.4.

4.6.4 Penalty Table 2 – Penalty Percentages (before 24/12/2008)

Penalty Table 2 refers to defaults that occurred before 24/12/2008 where the taxpayer makes a qualifying disclosure and also to defaults where no qualifying disclosure is made.

The tax-geared penalty is a percentage of the underpaid tax.

PENALTY TABLE 2	CATEGORY OF DEFAULT	QUALIFYING DISCLOSURE Code of Practice for Revenue Audit (2010) – Mitigated Penalty	
All defaults where there is a qualifying disclosure	Penalty table for defaults that occurred before 24/12/2008	Prompted qualifying disclosure and co-operation	Unprompted qualifying disclosure and co-operation
All qualifying disclosures in this category	*Insufficient care*	10%	3%
First qualifying disclosure in these categories	*Gross carelessness*	20%	5%
	Deliberate default	50%	10%
Second qualifying disclosure in these categories	*Gross carelessness*	30%	20%
	Deliberate default	75%	55%
Third or subsequent qualifying disclosure in these categories	*Gross carelessness*	40%	40%
	Deliberate default	100%	100%
NO QUALIFYING DISCLOSURE	**CATEGORY OF DEFAULT**	**NO CO-OPERATION**	**CO-OPERATION ONLY**
All defaults where there is no qualifying disclosure	Insufficient care	20%	15%
	Gross carelessness	40%	30%
	Deliberate default	100%	75%

4.6.5 Mitigation of Penalties/Reduced Penalties

Penalties provided under the Acts can be mitigated by the Revenue Commissioners, subject to the provisions of Section 1065, Taxes Consolidation Act, 1997, to a level appropriate to the circumstances of the case.

Settlements that involve mitigation must be formally approved by the Revenue Commissioners or by a person authorised by them for that purpose.

All offers submitted for approval are accompanied by a report which carries the auditor’s recommendation for acceptance or otherwise.

In recommending mitigation of a penalty, the auditor will consider:

- Firstly, mitigation of the penalty based on the category of tax default concerned, and
- Secondly, a further level based on co-operation and whether the taxpayer has made an unprompted or prompted qualifying disclosure in respect of the default

- Thirdly, mitigation dependent on whether the qualifying disclosure is a first, second or subsequent qualifying disclosure.

For tax defaults that occurred **prior to 24/12/2008**, Penalty Table 2, paragraph 4.6.4 sets out the mitigation appropriate to each category of tax default.

For tax defaults that occurred **on or after 24/12/2008**, Penalty Table 1, paragraph 4.6.2 sets out the reduced penalty appropriate to each category of tax default.

A penalty will not be pursued where the aggregate amount of tax in respect of which penalties are computed is less than €6,000 and a default is exclusively in the *careless behaviour without significant consequences* category.

4.7 Timeframe for Concluding Audits

It is in everybody's interest that the audit is concluded as quickly as possible. Where the taxpayer has dealt with all outstanding queries, and has done so within a reasonable period of time, and the audit remains open for a further period of three months, Revenue will advise the taxpayer of the current status of the audit and will estimate, in so far as possible, when the audit is likely to be concluded.

4.8 Payment

Discharging Liabilities where additional time is required by taxpayer to pay settlement

In the majority of audits, liability (which includes tax, interest and penalties) will be discharged by payment(s), which are brought to account against the additional liabilities for each taxhead.

A phased payment arrangement may be made with the taxpayer who has limited access to liquid funds but continues to generate income. Any such arrangements will be made in accordance with current Revenue procedures.

The taxpayer is required in every instance to provide sufficient information to justify consideration for a phased payment arrangement. The following should be considered:

- Realistic cash-flow for the following 6 months
- An up-to-date debt profile
- Up-to-date management accounts
- An outline of how the proposed repayment schedule will be serviced
- Up-to-date bank statements that will allow Revenue to take a view as to whether there are increasing excesses on the account and to take a view on the extent of the account swing

- Aged debtor and creditor profile.

The level of the down payment required, and the duration and commencement of the arrangement, can vary depending on the circumstances of the case.

Where instalment arrangements are entered into, taxpayers must comply with the following conditions:

- The interest due must be included in the instalment arrangement, and
- Current taxes must be kept up-to-date during the term of the instalment arrangement.

4.9 Inability To Pay Situations

It is the responsibility of the taxpayer claiming 'inability to pay' to satisfactorily demonstrate that inability.

Documentary evidence must be submitted to Revenue.

Auditors will sometimes encounter claims that the financial resources of a taxpayer do not permit payment in full of the tax due. Auditors will give careful consideration to such claims. A taxpayer's maximum capacity to pay is determined by their assets and the earning potential of the trade, profession or employment. In considering the claim, the health and age of the taxpayer may also be relevant.

Claims of inability to pay that are not substantiated with documentary evidence will not be accepted.

All evidence that will support the claim of inability to pay should be included in one comprehensive submission to Revenue.

Documentary evidence of inability to pay should include any or all of the following items that the taxpayer deems appropriate:

- A formal settlement offer document
- A statement of affairs (SOA) as at the last day of the month preceding the date of the Revenue audit, signed by the taxpayer
- A copy of the last accounts
- A list of all assets held and the reason for non-disposal of these assets to pay tax or duty liability
- Any of the items referred to at 4.8
- An explanation why a loan cannot be obtained to discharge tax/duty liability or evidence of refusal of a loan
- Calculations of anticipated income/expenditure
- A signed statement confirming that the tax default that gave rise to the additional liability has now been rectified.

Revenue reserves the right to consider prosecution where full payment is not made.

Customs

Article 229 of the Customs Code (Council Regulation (EEC) No. 2913/92) provides for the granting of payment facilities in the form of payment by instalments. The granting of such facilities is conditional on the provision of security to cover the amount of the debt, although this condition may be waived on production of written evidence by the debtor that its provision would create serious economic or social difficulties.

4.10 Review Procedures – Appeal Procedures

Under Revenue's Quality Assurance programme, a selection of audit cases is monitored to ensure quality. However, where a difference of opinion arises, in relation to the audit, the auditor will respect the taxpayer's right to request a review or to avail of the statutory appeal procedure, and will facilitate the taxpayer who wishes to make such a request or lodge an appeal.

4.10.1 Review Procedures

A review may be requested by a taxpayer or a taxpayer's agent in relation to the **conduct of an audit,** including:

- The proposed adjustments to;
    - receipts or profits figures
    - claims for reliefs or allowances
    - tax computations etc.
- Penalties to be charged,
- Whether the settlement meets publication criteria,
- The issue of a Notice of Opinion regarding penalties*.

*The taxpayer may, within 30 days after the date of issue of a Notice of Opinion (See paragraph 4.5.4), request a review by an internal reviewer or a joint review by an internal and external reviewer, provided a review of the conduct of the audit has not already been undertaken.

Request for Review

The request for a review must be in writing and specify the type of review required. In addition the taxpayer must state the nature of his or her concerns relating to the conduct of the audit.

Local Reviews

Many cases can be resolved quickly and satisfactorily at local level.

Requests for such reviews should be submitted to the local Principal Officer or District Manager.

Internal Review Unit

Where the matter has not been resolved at local level, or where the taxpayer does not wish to avail of this option, the request should be sent to the Principal Officer, Internal Review Unit, Office of the Revenue Commissioners, Stamping Building, Dublin Castle, Dublin 2 who will arrange to have the review carried out. (Statement of Practice SP-GEN 2/99 governing Revenue Internal Review Procedures is available from local Revenue offices and on the Revenue website) http://www.revenue.ie/en/practitioner/law/gen02-99.doc

The Principal Officer in charge of Internal Review has no operational or managerial function in relation to the audit programme but has a direct role in ensuring taxpayer confidence in tax administration.

The request should state whether the review should be carried out solely by the Principal Officer in charge of the Internal Review Unit or jointly with an External Reviewer. The review process may involve contact with the taxpayer or the taxpayer's agent and the auditor. No interest accrues during the period of the review.

The Principal Officer (and External Reviewer in the case of a joint review), in carrying out the review, seeks to establish whether the auditor had adequately considered all the taxpayer's explanations and contentions, and whether the conclusions drawn were reasonable. It is the responsibility of the reviewers to respond on a basis that is fair and consistent with voluntary compliance and public confidence in the taxation system.

The arrangement for review by the Principal Officer (and External Reviewer in the case of a joint review) is separate from a taxpayer's right to appeal to the Appeal Commissioners. If required, such a review should be sought as soon as possible after the auditor issues notification of the outcome of the audit. While a time limit for seeking a review is not imposed (except in a review of the issue of a Notice of Opinion), the opportunity for review ceases;

- once a notification of the time and place for the hearing of an appeal has been issued to the taxpayer or,
- once a settlement that involves publication has been reached.

Customs

A taxpayer has the right to be heard (right of reply) before an adverse decision is taken in relation to the payment of customs duty. Details are available in the Right to be Heard Manual.

http://www.revenue.ie/en/about/foi/s16/customs/own-resources/right-to-be-heard.pdf

Customs Appeals

Leaflet C&E 5 governing Customs Appeal Procedures for customs duties is available at the following link.

http://www.revenue.ie/en/customs/leaflets/c-and-e5.html

Excise Appeals

Leaflets C&E 6 and VRT 6 governing Appeal Procedures for excise duties are available on the Revenue website at the following links.

http://www.revenue.ie/en/tax/excise/leaflets/cande6.html

4.10.2 Appeal Procedures – Formal Statutory Appeals

A taxpayer is entitled to lodge an appeal against the auditor's findings in relation to the income and gains to be assessed in a revised assessment or tax estimate. Statutory interest will only be charged when the tax is determined and may not be appealed. Tax-geared penalties may only be quantified when the tax is determined.

Reviews, as described in the previous paragraph, do not interfere with the taxpayer's statutory rights of appeal. If, following a review, a taxpayer still considers that the proposed settlement is unacceptable, they may proceed with an appeal to the Appeal Commissioners, provided that an appeal has been lodged within the statutory timeframe.

Details regarding appeals against penalties determined by a relevant court are covered in paragraph 4.5.8.

Information regarding Tax & Duty appeals can be accessed at the following link:

http://www.revenue.ie/en/about/foi/s16/income-tax-capital-gains-tax-and-corporation-tax/part-40/tax-and-duty-appeals-manual.pdf

Chapter 5

Publication in List of Tax Defaulters

- *Revenue's obligation to publish audit settlements*
- *Exclusions from publication*

5. PUBLICATION – SECTION 1086 Taxes Consolidation Act, 1997

5.1 Obligation To Publish

Section 1086 Taxes Consolidation Act, 1997 imposes an obligation on the Revenue Commissioners to publish a list, within three months of the end of each quarter, of the name, address and occupation of every taxpayer -

- on whom a fine or other penalty was imposed or determined by a court under any of the Acts in respect of tax-related matters during that quarter. Where a taxpayer is publishable under this category, the tax amount on which the court has determined the penalty will be published, whether the tax or penalty is paid or not.
- where Revenue has agreed with a taxpayer to refrain from initiating proceedings for the recovery of any fine or penalty and accepted a specified sum of money in settlement of any claim by Revenue for;

  (i) payment of tax or duty,

  (ii) payment of interest on that tax or duty, and

  (iii) a fine or other monetary penalty in respect of that tax including penalties in respect of the failure to deliver returns or other documents in connection with that tax or duty.

  This provision applies even where the taxpayer fails to pay the specified sum within the relevant period.

Where Revenue accepts or undertakes to accept a specified sum in settlement of a tax or duty default, the acceptance of this sum in settlement is deemed to have been made pursuant to an agreement between Revenue and the taxpayer.

The provisions of Section 1086 Taxes Consolidation Act, 1997 obliges Revenue to publish the list of settlements, within three months of the end of each quarter, in Iris Oifigiúil.

In addition, Revenue is given the discretion;

- to publicise or reproduce the list in such manner, form or format as it considers appropriate, and
- to specify on the list such particulars of the settlement and the matters giving rise to the settlement as Revenue thinks fit.

Revenue will advise the taxpayers who meet the criteria that they will be published in the List of Defaulters, and will advise them of the particulars that will be published.

Qualifying Disclosure for Non-publication

Where a qualifying disclosure has been accepted, details of the settlement made with the taxpayer will not be published in a list of tax defaulters. For disclosures that occurred on or after 24 December 2008, the disclosure is excluded from publication only where it is a qualifying disclosure as defined in the Acts (See definition in chapter 2.7). A verbal disclosure is not regarded as a qualifying disclosure for the purposes of non-publication.

5.2 Exclusions From Publication

Statutory Exclusions

Section 1086 Taxes Consolidation Act, 1997 provides for the following statutory exclusions from publication – Revenue does not publish the following cases:

- Cases where a qualifying disclosure is accepted (Section 1086 (4)(a) Taxes Consolidation Act, 1997)
- Cases where Section 72 Finance Act 1988, or Section 3 of the Waiver of Certain Tax, Interest and Penalties Act, 1993 applied (Amnesty Legislation) (Section 1086 (4)(b) Taxes Consolidation Act,1997)
- Cases where the specified sum referred to in paragraph (c) or (d) of Section 1086 subsection (2) does not exceed €33,000 (€30,000 in respect of liabilities arising between 1 January 2005 and 1 January 2010) (figure for tax, interest and penalty) (Section 1086 (4)(c) Taxes Consolidation Act, 1997)
- Cases where the penalty (agreed with taxpayer or determined by a court) does not exceed 15% of the amount of the tax ultimately due (Section 1086 (4)(d) Taxes Consolidation Act, 1997).

Customs

Whilst Customs cases are publishable under Section 1086 (2) (a) & (b) Taxes Consolidation Act, 1997, they are not publishable under Section 1086 (2) (c) or (d) Taxes Consolidation Act, 1997.

5.3 Publication Figure

The figures published include the tax, interest and penalties that make up the settlement. Certain tax and interest is excluded if a penalty does not apply. In particular:

- Publishable amounts are aggregated for all taxes and for all years/periods covered by the audit/investigation
- Overpayments of tax which have not arisen directly from the audit will not reduce the figure for publication
- The amount to be published, if any, excludes tax included in a settlement (or related interest and penalties) where the penalty in relation to the tax does not exceed 15% of the amount of that tax.

Examples:

1. Settlement (Income Tax, PAYE and VAT) reached for 2 years or periods to 31 December 2007. The penalties in respect of a tax default in the category of *deliberate default* were mitigated following co-operation from the taxpayer but no qualifying disclosure was made. The settlement of €51,700 was made up as follows:

Tax Period	*Tax*	*Interest*	*Penalties*	*Total*
Year to 31/12/2006	€12,000	€4,000	€9,000	€25,000
Year to 31/12/2007	€14,000	€2,200	€10,500	€26,700
Total				€51,700

VAT repayment on credits due (current period): € 5,000

Payment due €46,700

Publication figure €51,700

2. Settlement (Income Tax, PAYE and VAT) reached for 1 year/period to 31 December 2009. The penalties included in the settlement were reduced in accordance with a default in the *careless behaviour without significant consequences* category of tax default. No qualifying disclosure was made but there was full co-operation by the taxpayer during the course of the audit. The settlement of €35,200 was made up as follows:

Tax Period	*Tax*	*Interest*	*Penalties*	*Total*
Year to 31/12/2009	€30,000	€700	€4,500	€35,200
Total				€35,200

Publication does not arise as the tax-related penalty does not exceed 15% of the tax included in the settlement.

5.4 PRSI and Levies and Publication

Self-Employed

PRSI and the Health Contribution liabilities are part of 'tax' for self-assessment years 1988/89 and later years, and are publishable under Section 1086 by virtue of the provisions of Section 23(3) and (4) of the Social Welfare Consolidation Act 2005.

The income levy is publishable under the provisions of Section 531M(2) Taxes Consolidation Act, 1997.

Employer and Employee

Employers' PRSI, employees' PRSI, and the Health Contribution are publishable under Section 1086 Taxes Consolidation Act, 1997 by virtue of Section 17(4) of the Social Welfare Consolidation Act 2005.

The Training Levy is publishable by virtue of Section 6 of the Training Fund Act 2000.

The Income levy is publishable under the provisions of Section 531M(2) Taxes Consolidation Act, 1997.

Chapter 6

Prosecution

- *An overview of prosecution in the audit context*

6. PROSECUTION

6.1 Introduction

The main drive against tax evasion is through the Revenue audit and investigation programmes. These programmes have proved to be extremely effective in collecting tax and interest and in penalising tax fraud and tax evasion. The tougher stance being taken against the most serious tax offenders/offences through the prosecution programme means that those convicted (in addition to paying tax, interest and penalties due) can also be punished by a fine or imprisonment or both.

The Director of Public Prosecutions makes decisions as to whether a case should be prosecuted.

6.2 Type of tax offences that are most likely to be prosecuted

The types of offences that are most likely to be prosecuted are set out below:

- Deliberate omissions from tax returns
- False claims for repayment
- Use of forged or falsified documents
- Facilitating fraudulent evasion of tax
- Systematic scheme to evade tax
- Use of offshore bank accounts to evade tax
- Insidious schemes of tax evasion
- Failure (as distinct from minor delays) in remitting fiduciary taxes.

6.3 Decision to investigate with a view to prosecution

Having identified an offence of the type described above, the following factors are generally considered before the decision to investigate with a view to prosecution is taken:

- The strength of the available (or likely to be available) admissible evidence. It must be considered sufficiently strong to enable the prosecution to prove beyond reasonable doubt that the alleged offender was guilty of the alleged offence
- The period of time since the alleged offence was discovered bearing in mind that delay in initiating proceedings may damage a case

- The likely length and expense of a trial. The cost of pursuing prosecution should not be disproportionate to the possible benefit to be obtained
- The degree of culpability, responsibility and experience of the alleged offender
- The need for deterrence, both personal and general, in relation to particular offences
- Whether the alleged offender has made a full disclosure of the irregularities, has co-operated in reaching settlement and has paid all the tax, interest and penalties that are due.

This list of criteria is not exhaustive but aims to give an outline of the type of offences which can be prosecuted, and some of the factors, which, alone or in combination, can influence a decision to investigate a case with a view to prosecution.

6.4 Other Prosecutable Offences

Revenue also pursues a vigorous prosecution policy for:

- Failure to file tax returns, e.g. IT, CT, VAT, PAYE / PRSI or RCT etc.
- Failure to produce books, records etc., when obliged to do so
- Failure to submit a Statement of Affairs when required to do so
- Providing false or misleading information to a Revenue official
- Destroying or failing to keep records
- Smuggling of goods
- Misuse of marked mineral oil
- Trading without a current excise licence.

This list is not exhaustive.

Appendices

I - Customer Service Charter
II - Timelines
III - Penalty Legislation references
IV - Non-Audit Interventions
V - Maintenance of Proper Records
VI - Statement of Practice on use of Revenue Powers
VII - Penalties in Death Cases

Appendix I – Customer Service Charter

CUSTOMER CHARTER

Revenue collects taxes and duties that fund the provision of public services for the benefit of all citizens.

Revenue protects society through its Customs Service working on frontier control.

The effective and fair administration of tax and customs law requires Revenue and citizens to recognise certain basic rights and responsibilities.

This Customer Charter sets out mutual expectations in this context.

Consistency, Equity and Confidentiality

- Revenue will administer the law fairly, reasonably and consistently and will seek to collect no more than the correct amount of tax or duty
- Revenue will treat the information you give us in confidence and ensure that it will not be used or disclosed except as provided for by law.

Courtesy and Consideration

You can expect:

- To be treated courteously, with consideration and in a non-discriminatory way in your dealings with Revenue.

We expect you:

- To treat Revenue officials with courtesy and to give them all reasonable co-operation.

Information and Assistance

You can expect:

- To be given the necessary information and all reasonable assistance to enable you to clearly understand and meet your tax and customs obligations and to claim your entitlements and credits

We expect you:

- To provide true and correct information in all your contacts with Revenue and to advise Revenue in a timely manner of developments (such as change of address, commencement or cessation of business) that are relevant to your tax and customs affairs.

Presumption of Honesty

You can expect:

- To be treated as honest in your dealings with Revenue unless there is clear reason to believe otherwise and subject to Revenue's responsibility for ensuring compliance with tax and customs law.

We expect you:

- To deal in an honest way with Revenue by returning the tax and duty which you are due to pay and seeking only those entitlements and credits to which you are due.

Compliance Costs

You can expect:

- That Revenue will administer the tax and duty regimes in a way that will minimise, as far as possible, compliance costs.

We expect you:

- To maintain proper records and accounts and to ensure that your Returns and Declarations are completed fully, accurately and in a timely manner.

Complaints, Review and Appeal

There are comprehensive complaints and appeal procedures open to all customers of Revenue and we encourage you to avail of these if you are in any way dissatisfied with the service you receive from us.

You can expect:

- That if you make a complaint, Revenue will deal with it promptly, impartially and in confidence
- That availing of Revenue's own complaints procedures will never prejudice your rights to raise issues with the Ombudsman or lodge, within the statutory time limits, a formal appeal to the Office of the Appeal Commissioners against an assessment raised by Revenue or against certain determinations made by Revenue officials.

Full details, including contact points, are contained in Leaflet CS4 which is also available in any Revenue public office and from our Forms and Leaflets LoCall number 1890 30 67 06.

http://www.revenue.ie/en/about/custservice/how-complain-revenue.html

Appendix II – Timelines/Disclosure Opportunities

Item	*Time*
Notification of Audit	Generally 21 days
Investigation	Generally notification is given, but there are situations where Revenue investigations are regarded as on-going without formal notification to the taxpayer
Unprompted qualifying disclosure	Available before the taxpayer is notified of an audit or before the commencement of an investigation
Prompted qualifying disclosure	Available after the audit notice has issued from Revenue but before an examination of the books and records has begun
Notice of Intention to make a qualifying disclosure and seeking 60 days to prepare it	Notice must be submitted within 14 days of notification of audit
Extension of audit by Revenue	An additional 21 days will generally be given to make a prompted qualifying disclosure
Self–correction for Income Tax (IT), Corporation Tax (CT) Capital Gains Tax (CGT) and Capital Acquisitions Tax (CAT)	Within 12 months of the due date for filing the relevant return
***Self–correction for VAT**	Before the due date for filing the IT or CT return for the chargeable period within which the relevant VAT period ends
***Self–correction for PAYE/PRSI**	Within 12 months of the due date for filing the annual return
***Self–correction for RCT**	Within 12 months of the due date for filing the annual return
Self–correction without interest or notification to Revenue	For bi-monthly/quarterly/half-yearly remitters of VAT, if the net underpayment of VAT for the period being corrected is less than €6,000, the amount of the tax can be included as an adjustment on the next corresponding VAT return following that in which the error was made.

*not applicable after Revenue has notified a taxpayer of an audit or contacted the taxpayer regarding an enquiry or investigation relating to his/her tax affairs.

Disclosures

Notification of intervention	*Disclosure that may be available*
Assurance checks, including aspect queries	Unprompted qualifying disclosure
Profile Interviews	Unprompted qualifying disclosure
Audit	Prompted qualifying disclosure
Investigation	Benefits of a qualifying disclosure not available

Appendix III - Penalty Legislation

Auditors are mainly concerned with civil penalties that arise under the following legislation:

Legislation - For tax defaults that occurred on or after 24/12/2008

- Section 1077E Taxes Consolidation Act (TCA), 1997 – Income Tax/ Capital Gains Tax/Corporation Tax/Income Levy/Parking Levy/Excise Duties
- Section 1054 TCA, 1997 – Corporation Tax
- Section 115 and Section 116 VATCA 2010
- Section 987 TCA, 1997 – PAYE, breach of regulations
- Section 886 TCA, 1997 – Failure to keep proper records
- Section 58 Capital Acquisitions Tax Consolidation Act, 2003 – Capital Acquisitions Tax
- Section 134A Stamp Duties Consolidation Act, 1999 – Stamp Duties
- Section 1052 TCA, 1997, Section 115 VATCA 2010

Legislation - For tax defaults that occurred before 24/12/2008

- Section 1053 TCA, 1997 – Income Tax/Capital Gains Tax
- Section 1054 TCA, 1997 – Corporation Tax
- Section 115 VATCA 2010 and Section 27 VAT Act, 1972 – VAT
- Section 987 and Section 1053 TCA, 1997 – PAYE
- Section 886 TCA, 1997 – Failure to keep proper records
- Section 58 CAT Act, 2003 – Capital Acquisitions Tax
- Section 8 Stamp Duties Consolidation Act, 1999 – Stamp Duties

Legislation - For all tax defaults where penalty is not agreed and paid

A relevant court will determine the penalty due:

- Section 1077A, Section 1077B and Section 1077C, TCA, 1997

Legislation - For all tax defaults where serious tax evasion is suspected

Where serious tax evasion is suspected, criminal proceedings under the following sections will be considered:

- Section 1078 TCA, 1997 – Revenue offences
- Section 531 TCA, 1997 – Relevant Contracts Tax
- Section 1056 TCA, 1997 – Penalty for false statement made to obtain an allowance.

A tax return prepared and delivered on behalf of a taxpayer by some other person acting on his or her behalf is treated in all respects as if the taxpayer had made it. The taxpayer’s statutory responsibility to complete and file a correct return cannot be devolved to his or her agent.

Appendix IV – Non-Audit Interventions

Assurance Checks, Aspect Queries and Profile Interviews

Not all Revenue queries lead to an audit.

Revenue assurance checks, aspect queries and profile interviews may establish issues that warrant an audit or investigation. Where an audit or investigation is planned the taxpayer will receive an appropriate notification letter. In that case, the audit procedures and rights outlined in this code will apply.

A taxpayer who receives a query, other than a notification of a revenue audit or investigation, should review the area of concern mentioned in the query. If a tax irregularity comes to light, the taxpayer should consider the benefits of disclosing the problem to Revenue. Revenue will treat the disclosure as an unprompted disclosure with significant reduction of penalties. (See paragraph 2.9).

Profile Interviews

Revenue is in a position to risk-profile taxpayers based on information contained in the electronic risk-ranking system (REAP) and from other data available to them. Once a case is profiled, the level of risk within the case may indicate that the Revenue intervention to be made should be broader than an Aspect Query. In these cases a Profile Interview may be scheduled at which the risks identified will be addressed. As part of the Profile Interview process Revenue will issue a letter to the taxpayer identifying the risk areas that will be discussed at the profile interview, which will take place 21 days after the issue of the letter. Taxpayers will be offered an opportunity to make an unprompted disclosure.

On completion of the profile interview, a decision will be taken as to whether or not an audit is warranted. The taxpayer will generally be advised within one week if an audit is to be initiated. If it emerges at the Profile Interview that there is no clear auditable risk, or if the identified risks are satisfactorily explained, Revenue will not initiate an audit.

Assurance Checks

Assurance Checks are interventions by Revenue officers that, although not audits, may involve checks and challenges with direct contact by Revenue with the taxpayer or agent to test a compliance issue. They are generally risk-based. The contact can be by telephone, secure email, letter or in person. These checks do not restrict a taxpayer's right to make a qualifying disclosure.

Assurance Checks are frequently based on some apparent discrepancy in data held by Revenue on a particular taxpayer's record. They can also result from Revenue guidelines on checking claims for repayment or reliefs. Increasing use of assurance checks by Revenue aims to clear up an issue in the record without the expense and inconvenience of a full audit. It makes sense for a taxpayer to reply to an assurance check, fully, quickly and honestly. Assurance checks are an important part of Revenue's efforts to 'ensure that everyone complies with their Tax and Customs responsibilities'.

Assurance checks are not audits and include:

- Aspect Queries
- Requests for invoices to support VAT repayment claims
- Examination of Customs declarations (SADs)
- Eligibility checks for disclosure schemes
- Requests for supporting documentation for various reliefs
- Customs control visits (mandated by EU law) and CAP visits
- Requests for information and explanations.

Aspect Queries

An Aspect Query is a type of assurance check and is regarded as a short, targeted intervention for the purpose of checking a particular risk (often shown by Revenue's REAP system). It can be conducted by telephone, email, letter or visit. The query may include a request for documentation. The taxpayer (and Agent) will generally be told why the query is being made. Aspect Query case working may act as a precursor to Audit. These interventions are not regarded as audits and they do not restrict a taxpayer's right to make a qualifying disclosure (See paragraph 2.6).

Appendix V – Legislation governing maintenance of records

The obligations imposed on taxpayers to maintain proper records are set out in Sections 886 and 903 Taxes Consolidation Act, 1997, Section 45A Capital Acquisitions Tax Act, 2003, Section 8(2)(c) Stamp Duty Consolidation Act 1999, Section 84 VATCA 2010.

Section 912 TCA 1997 specifies that the obligations in relation to record maintenance apply equally to the data equipment together with any associated software, data, apparatus or material.

For Customs, the obligation to keep records is laid down in Articles 14 and Article 16 of the Community Customs Code [Council Regulation (EEC) No 2913/92]

For Excise, the obligation to keep records is laid down in:

Reg 70 of the Control of Excisable Products Regulations 2001 (S.I. No. 146 of 2010) (for traders involved in intra –EU movements of excisable products):

- Part 5 of Alcohol Products Tax Regulations 2004 (S.I. No. 379 of 2004),
- Part 6 of Mineral Oil Tax Regulations 2001 (S.I. No. 442 of 2001),
- Part 5 of Tobacco Products Tax Regulations 2006 (S.I. No 261 of 2006),
- Reg 7 of Electricity Tax Regulations 2008 (S.I. No.385 of 2008),
- Reg 15 of Air Travel Tax Regulations 2009 (S.I. 134 of 2009),
- Reg 4 of Natural Gas Carbon Tax Regulations 2010 (S.I. No.191 of 2010),
- Reg 8 of Betting Duty Regulations 2004 (S.I. No.801 of 2004),
- Reg 17 of Vehicle Registration and Taxation Regulations, 1992 (S.I. No. 318 of 1992).

For the Environmental Levy, the obligation to keep records is laid down in regulations made under Section 72(2), Waste Management Act, 1996 (inserted by Section 9, Waste Management (Amendment) Act, 2001.

Appendix VI – Revenue Powers

The Revenue Commissioners' policy on the use of Revenue Powers is contained in relevant Statements of Practice, which are available in local tax offices and on the Revenue website.

http://www.revenue.ie/en/practitioner/law/gen01-99.doc

Appendix VII - Penalties in Death Cases

Where, before an individual's death –

a) that individual had agreed in writing (or it had been agreed in writing on his or her behalf) that he or she was liable to a penalty under the Acts; or

b) that individual had agreed in writing with an opinion or amended opinion of an auditor that he or she was liable to a penalty under the Acts (or such opinion or amended opinion had been agreed in writing on his or her behalf); or

c) the Revenue Commissioners had agreed or undertaken to accept a specified sum of money in the circumstances mentioned in paragraph (c) or (d) of Section 1086(2) TCA 1997 from that individual; or

d) a relevant court had determined that the individual was liable to a penalty under the Acts,

then, the penalty shall be due and payable and any proceedings for the recovery of such penalty under the Acts which have been, or could have been, instituted against that individual may be continued or instituted against his or her executor, administrator or estate, as the case may be, and any penalty awarded in proceedings so continued or instituted shall be a debt due from and payable out of his or her estate.

However, such proceedings may not be brought outside the time limits stated in Section 1048, Taxes Consolidation Act 1997 (Section 1077D (2) TCA 1997).

Those time limits are as follows;

- if a Grant of Probate or Letters of Administration issued in the year the individual died, the time limit is three years after the end of that year in which the individual died
- if the Grant of Probate or Letters of Administration issued in a year subsequent to the year in which the individual died, the time limit is two years after the end of that year, or
- if an additional Inland Revenue affidavit is required, the time limit is two years after the end of the year in which the new affidavit is delivered.

Section 1077D TCA, 1997 applies as and from the passing of the Finance (No.2) Act 2008 on 24 December 2008 and, therefore, applies to all current open or unsettled audits where the taxpayer is now deceased. The provision is not backdated to cover settled death cases.

Updated August 2011

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