Code of Practice for Revenue Compliance Interventions

1. Introduction

Revenue's Mission is to serve the community by fairly and efficiently collecting taxes and duties and implementing customs controls. We achieve this by providing excellent service to support voluntary compliance and delivering a risk-focused, effective, and proportionate response to non-compliance that reflects taxpayer behaviour.

It is the responsibility of every taxpayer to comply with their tax and duty obligations. We recognise and appreciate that most taxpayers voluntarily and diligently discharge this responsibility and we aim to minimise the burden of tax compliance for them. We do, however, recognise that taxpayers may on occasion, make mistakes in their tax affairs and we provide extensive facilities to enable taxpayers to voluntarily address errors and make good any liabilities with minimum penalties. We must also recognise that a minority will actively seek to evade or avoid their liabilities and we must respond in an appropriately robust manner in these cases to uphold the integrity of our tax system.

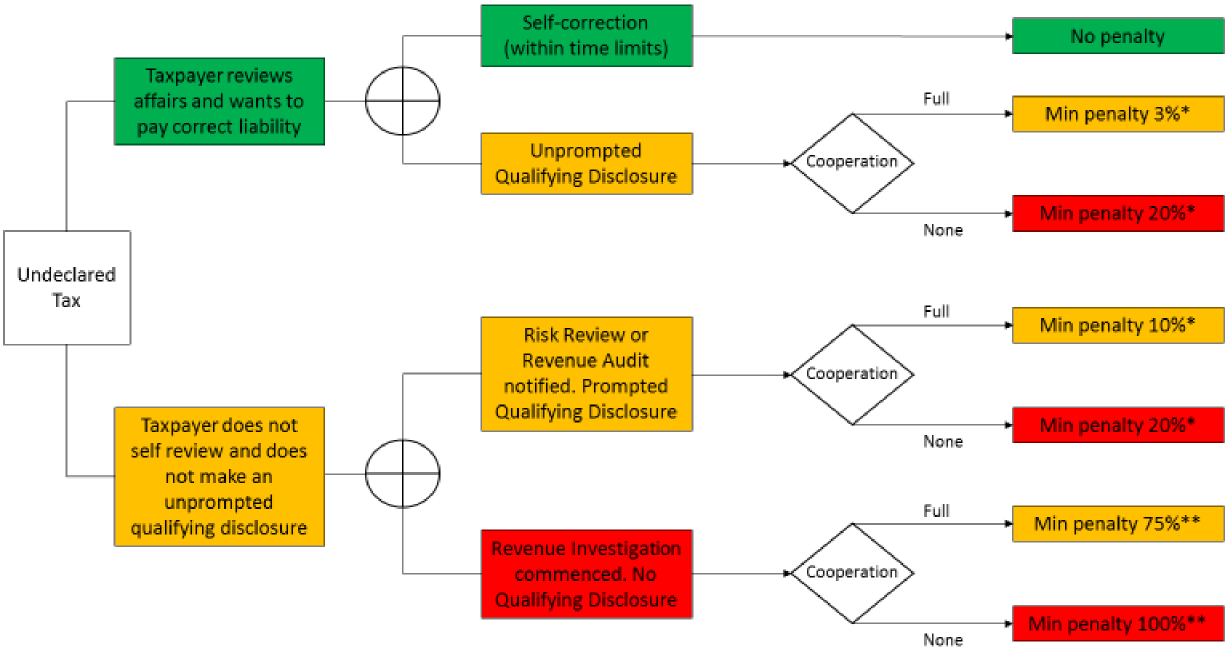
This Code of Practice, which comes into effect on 1 May 2022, sets out a Compliance Intervention Framework intended to provide a consistent graduated response to taxpayer behaviour, ranging from extensive opportunities to voluntarily correct mistakes up to the pursuit of criminal sanctions for cases of serious fraud or evasion. The different 'intervention levels' within the framework are set out in this Code.

This framework of interventions will further enhance our real-time engagement with taxpayers using the insights from PAYE Modernisation to expand real-time compliance management of our segmented case-base while incorporating our traditional tax audit approach within a *Compliance Intervention Framework* that provides a graduated response to risk.

This Code of Practice sets out what you, as a taxpayer, can expect from Revenue if we contact you in relation to your tax affairs and how we will conduct our interventions. It also sets out the benefits that arise from disclosing any default at the earliest opportunity and cooperating fully with a Revenue inquiry. The Code provides details of how and when penalties apply for different categories of default and sets out your entitlement to Review or Appeal if you are dissatisfied with either the conduct or outcome of a Revenue Compliance Intervention.

The Code is intended to provide you with certainty and clarity around the opportunities available to review your tax compliance position and to voluntarily address any issues identified. Taxpayers who avail of these opportunities will experience the minimum level of penalty and generally not risk either publication or prosecution. Revenue will progressively respond with appropriate vigour to taxpayers who do not comply voluntarily or change the behaviour leading to tax non-compliance. Where serious tax or duty evasion or fraud is identified during the course of any compliance intervention (regardless of intervention level), Revenue will initiate an investigation with a view to prosecution as set out in Chapter 6 of this Code.

Summary - Taxpayer behaviour determines consequences



* Penalty for a tax default in the "Careless Behaviour without significant consequences" category

** Penalty for a tax default in the "Deliberate Behaviour" category

Statutory interest applies in all cases.

Higher minimum penalties apply for repeated disclosures and for behaviour with "significant consequences" i.e. where the tax default amounts to more than 15% of the original liability payable. Please refer to Chapter 2 for further details.

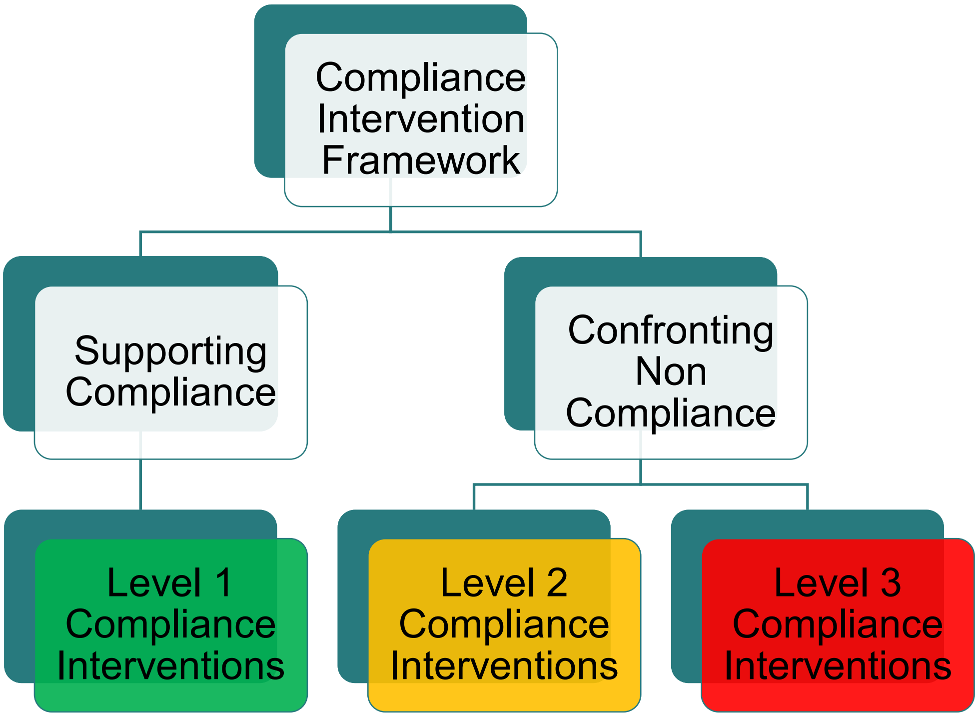
This revised Code of Practice is effective from 1 May 2022 and applies to all interventions notified after that date. It replaces the previous "Code of Practice for Revenue Audit and other Compliance Interventions 2019". This prior Code will continue to apply to interventions commenced prior to 1 May 2022.

The revised Code of Practice applies to all taxes and duties (except Customs), and includes all forms of withholding taxes, including applicable interest and penalties.

The rights and obligations of taxpayers are enshrined in law and are not restricted or altered in any way by this Code of Practice. The Code of Practice must not be used to avoid or delay the payment of tax, interest or penalties which are correctly due.

Customs interventions do not fall under the Compliance Intervention Framework. This is because these activities are provided for by the EU Union Customs Code and EU legislation rather than the national legislation. The legislative and procedural standards and requirements for these can be found on the Revenue's website.

1.1. Compliance Intervention Framework - Overview



The intervention levels (Level 1, Level 2, Level 3) in the Compliance Intervention Framework reflect our graduated response to risk and taxpayer behaviour and provide taxpayers with a mechanism and incentive to address any tax non-compliance issues voluntarily. To this end, taxpayers are strongly advised to review their tax affairs and address issues prior to contact from Revenue. Taxpayers are responsible for their own compliance and should make every effort to manage their tax affairs in a pro-active manner.

Within the Compliance Intervention Framework, each 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 both the taxpayer and on Revenue, whilst properly addressing perceived risks. An overview of the intervention types contained in Levels 1, 2 and 3 of the Compliance Intervention Framework are included in following sections of this chapter.

Note that these are levels of intervention and not to be considered as a sequence of actions. Revenue may initiate an intervention at any level of the framework in response to a perceived risk. This may arise without any previous intervention at a lower level in relation to the taxpayer concerned. In certain circumstances, however, risks identified during an intervention may lead to the initiation of a higher level intervention.

1.1.1. Overview of Compliance Framework Levels

	Level 1	Level 2	Level 3
Objective	Support Compliance	Challenge Non-Compliance	Tackle High-Risk Cases/Practices
Corrective Options	Payment of liability self-correction Filing/ amendment of relevant returns	Payment of liability Filing/ amendment of relevant returns	Payment of liability Filing/ amendment of relevant returns
Disclosure Position	Unprompted Disclosure Available	Prompted Disclosure Available	No Qualifying Disclosure
Activity	Self-Reviews Profile Interviews Bulk issue non-filer reminders CCF Engagements	Risk Review Audit	Investigation

1.2. Supporting Compliance

Revenue recognises that most taxpayers want to comply with their tax obligations and pay the right amount of tax at the right time. Supporting taxpayers in getting it right first time facilitates voluntary compliance. Revenue invests significantly in making it as easy as possible to comply by providing an excellent service for those that want to do it right.

However, even the most compliant taxpayers can make errors in filing tax returns and paying the correct amount due. For this reason, Revenue provides a range of opportunities for taxpayers to self-review, self-correct or to make unprompted qualifying disclosures of any matters. These opportunities ensure that interest and/or penalties are kept to a minimum if they apply at all.

Actions which are designed to assist taxpayers in being voluntarily compliant fall within Level 1 of the Compliance Intervention Framework and do not constitute an inquiry for the purposes of section 1077F[1] Taxes Consolidation Act 1997. This means that where a Level 1 compliance intervention has been initiated, taxpayers can address any compliance matters through self-correction or by making an unprompted qualifying disclosure as appropriate. Taxpayers should not wait for a Level 1 Compliance Intervention before reviewing their position. All taxpayers should manage their compliance position on a proactive basis.

1.2.1. Level 1 Compliance Interventions

Level 1 compliance interventions are aimed at supporting taxpayers by reminding them of their obligations and providing them with the opportunity to correct errors without the expense and stress of a more in-depth inquiry. A Level 1 intervention is broad based and only occurs where Revenue has not already engaged in any detailed examination or review of the matters under consideration.

Examples (not exhaustive) include:

- Reminder Notification of Outstanding Tax Returns.
- Request to self-review
- Profile Interview
- Engagement with businesses under the Cooperative Compliance Framework (CCF)

Further detail is provided in the following paragraphs.

A level 1 intervention may be advised through a real-time request to a taxpayer to review data during the submission of a return, a letter to a group of taxpayers requesting self-review of a particular issue or notification by media or similar public notification advising of an area of concern that relevant taxpayers should review. Irrespective of the communication channel used, Level 1 compliance interventions are intended to remind and encourage taxpayers to fulfil their compliance obligations.

[1] All references in this Code of Practice to Section 1077F TCA 1997 should be read to include references to Section 1077E TCA 1997 where the act, omission or disclosure was made prior to 21 December 2021.

1.2.2. Types of Level 1 compliance interventions

Some examples of types of Level 1 Intervention are set out below.

1.2.2.1. Reminder Notification of Outstanding Tax Returns.

Taxpayers have a responsibility to file all required tax returns and to pay all tax liabilities on time. However, from time to time, situations may arise where normally compliant taxpayers fail to meet these obligations on time. In such situations, Revenue may issue a reminder notification to file the return and pay any associated liability. The form of communication used in such instances will vary and could be part of a wider 'bulk issue' or be referenced in media campaigns, press releases or website statements. These interventions may escalate to more in-depth *Level 2 or Level 3* interventions where a compliance risk is subsequently identified (including non-filing of the relevant return).

1.2.2.2. Request to Self-Review

As part of our overall approach to non-compliance, Revenue will carry out targeted reviews of specific issues that are found to be prevalent across a particular group of taxpayers and which require those taxpayers to self-review the information already provided in their tax returns. These requests will operate under the *Compliance Intervention Framework* as *Level 1* interventions and, as such, provide the taxpayer with the opportunity to self-correct or make an unprompted qualifying disclosure as appropriate. Taxpayers are strongly advised to take advantage of these opportunities to self-review as any subsequent intervention by Revenue will be at *Level 2* or *Level 3* of the intervention framework.

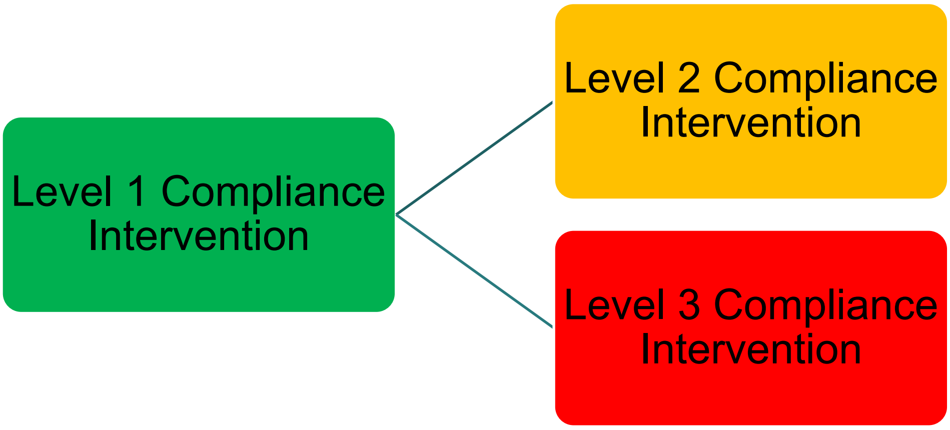
1.2.2.3. Profile Interviews

At times, Revenue may wish to meet with a taxpayer (online or in person) to obtain a better understanding of the nature of the business and its tax treatment. Revenue will not carry out Profile Interviews where it has identified any specific tax compliance risks in relation to the business. This type of engagement is classified as a Level 1 intervention within the Compliance Intervention Framework, thereby providing the taxpayer with an opportunity to self-correct or make an unprompted qualifying disclosure if appropriate. A more in-depth Level 2 or Level 3 intervention may be initiated where compliance issues are identified.

1.2.2.4. Engagement with businesses under the Cooperative Compliance Framework (CCF)

The Cooperative Compliance Framework (CCF) is operated by Revenue for qualifying taxpayers. Cooperative Compliance involves an agreed business relationship between the taxpayer and Revenue which aims to achieve the highest level of voluntary tax compliance, based on trust and certainty of treatment. The CCF approach is voluntary in nature and involves Revenue and the taxpayer agreeing actions to ensure tax compliance. Any activities conducted though the CCF are classified as Level 1 interventions within the Compliance Intervention Framework.

1.2.3. Possible escalation where a Level 1 Compliance Intervention was initiated.



A Level 1 compliance intervention may identify issues that warrant the initiation of either a Level 2 or Level 3 compliance intervention. Also, where a taxpayer does not respond to a Level 1 intervention, Revenue may proceed to examine the matter as a part of either a Level 2 or Level 3 intervention where a sufficient level of risk exists. Where a Level 2 or Level 3 intervention is planned, the taxpayer will receive an appropriate notification. The opportunity to make an unprompted qualifying disclosure ceases on the issue of such a notification.

Note: Level 2 or 3 interventions are not necessarily preceded by a Level 1 intervention. Where Revenue has identified a specific risk in respect of a taxpayer either a Level 2 or 3 compliance intervention will be initiated based on the level of risk involved.

1.3. Confronting Non-Compliance

Revenue interventions aim to target identified risks of non-compliance with particular focus on evasion, aggressive tax avoidance schemes and unintended uses of legislation which threaten tax yields and the fairness of the tax system. Revenue's priority is to recover any unpaid tax or duty along with interest and penalties as efficiently as possible and to ensure any non-compliant behaviour is rectified.

Revenue selects cases for compliance intervention based on risk. To maintain the integrity of the tax system and to ensure fairness for compliant taxpayers, those cases which are selected for compliance intervention on the basis of abuse of the tax code will be dealt with in a robust manner. We apply an expanding range of advanced analytics and data interrogation processes to all data available, including data returned by third parties[2]. Where we identify risks, we tackle them using our range of compliance interventions.

In the Compliance Intervention Framework, Level 2 and Level 3 compliance interventions are used to confront compliance risks based on the circumstances and behaviour of the taxpayers concerned.

[2] Note: All data obtained by Revenue in the course of compliance interventions are subject to Revenue data protection policy and data protection legislation. Details of Revenue's data protection policy can be found on our website www.revenue.ie

1.3.1. Selection of Taxpayers for Compliance Intervention

Other than a relatively small number of randomly selected cases to validate the integrity of our risk approach, taxpayers are selected for a compliance intervention based on the presence of various risk indicators.

Historically, cases have been selected using various risk driven methodologies, including:

- REAP (Revenue's electronic risk and analysis system)
- Real-Time Risk Analytics – VAT and PAYE.

While these methods of case selection will continue, Revenue's approach to compliance management is evolving to reflect the increasing incidence of real time tax administration. As more data becomes available to Revenue in real time, we will seek to identify and address non-compliance as it arises where appropriate. This will result in Level 1 compliance interventions being initiated in a much more timely manner. This mirrors the approach taken with PAYE real-time compliance and most recently reflected in the compliance management approach taken with the COVID-19 support schemes. Where this type of real time engagement does not fully address identified risks, more detailed examinations will be undertaken, including risk review, tax audit and investigation, possibly leading to prosecution in serious cases. Risk based case selection will continue and where historic issues are discovered, appropriate compliance interventions will be initiated.

1.3.2. Level 2 Compliance Interventions

As outlined in paragraph 1.1, the Compliance Intervention Framework ensures that the choice of intervention reflects the most cost-effective approach for both the taxpayer and Revenue in addressing the perceived risk and/or taxpayer behaviour.

Level 2 interventions within the Compliance Intervention Framework comprise of risk-based reviews/checks on data provided by taxpayers in their tax returns. These risk-based reviews/checks will range from examination of a single issue within a return to comprehensive tax audits.

Notification of a Level 2 intervention will issue to taxpayers (and agents where relevant), in all cases. Following receipt of such a notification and prior to the commencement of the inquiry, the taxpayer will have the opportunity to address areas of default or non-compliance through the making of a prompted qualifying disclosure and through full cooperation with the intervention.

1.3.3. Types of Level 2 Compliance Interventions

The following Level 2 interventions operate within the Compliance Intervention Framework:

- Risk Review
- Audit

A "Notification of a Revenue Level 2 Compliance Intervention" will issue in every case.

Level 2 compliance interventions generally focus on a year or period where a specific risk has been identified. However, multi-year (or multi-period) compliance interventions may be carried out where material risks, informed by the wide range of data sources available to Revenue, are identified across multiple years (or periods). Once a Level 2 intervention is notified, the taxpayer is entitled to make a prompted qualifying disclosure. Chapter 2.8 provides further information into the matters which must be included in a disclosure in order for it to be considered qualifying.

Any Level 2 intervention may be desk or field based. A desk intervention is conducted without a visit to the taxpayer's place of business. A field intervention generally involves a visit to the taxpayer's place of business but may also be conducted via videoconferencing.

1.3.3.1. Risk Review

A Risk Review is a focused intervention to examine a risk or a small number of risks on a return.

For example, the risk review may focus on a particular aspect or issue on a return or from a risk identified from REAP (Revenue's **R**isk **E**valuation, **A**nalysis and **P**rofiling system).

1.3.3.2. Revenue Audit

A 'Revenue Audit' is an examination of the compliance of a person with tax and duty legislation having particular regard to the accuracy of specific returns, statements, claims or declarations. Under the Compliance Intervention Framework, an audit will be initiated (as opposed to a Level 2 Risk Review) where there is a greater level of perceived risk.

A Revenue Audit can involve an examination of all risk indicators in a case (across taxes and periods) or may focus on a single issue/single tax within the case. An audit may also be subsequently extended to include additional issues, taxes or years/periods depending on the issues uncovered during the initial examination and will include collecting any arrears of tax that are outstanding at that time.

A Revenue Audit may be carried out by an individual Revenue auditor or by a team of Revenue auditors depending on the size and complexity of the case.

1.3.4. Notification of a Level 2 Compliance Intervention

A taxpayer will receive a 28-day notice of a Level 2 Compliance Intervention. Where Revenue has a record of an agent representing the taxpayer in respect of the tax/duty in question, a copy of the notification will be sent to that agent.

The notification letter will clearly indicate the type of compliance intervention to be undertaken, i.e. Risk Review or Audit. The scope of the intervention will be set out and will range from a single issue or single tax for a specific period or year to a comprehensive audit for multiple years/periods.

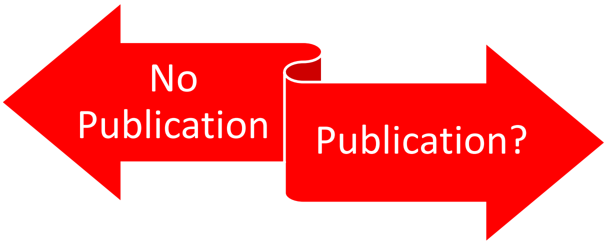
The notification letter issued in respect of a Risk Review, will confirm that the intervention will be considered to have started 28 days after the date of the letter. In exceptional circumstances, it may be possible to agree an alternative commencement date provided that the reason for the request is legitimate and reasonable

The notification letter in respect of an Audit, will confirm that the intervention will be considered to have started 28 days after the date of the letter, unless otherwise agreed. See 3.2.2. which sets out the conduct of an audit and confirms that the taxpayer will be offered the opportunity to make a prompted qualifying disclosure before the audit starts.

As and from the date of issue of a letter of 'Notification of a Level 2 Compliance Intervention' (that is the date shown on the letter) to the taxpayer and agent, the opportunity to make an ‘unprompted qualifying disclosure’ is no longer available. The taxpayer can however make a ‘prompted qualifying disclosure’ before the Risk Review or Audit starts.

Once the intervention begins or is deemed to have commenced the entitlement to avail of a ‘prompted qualifying disclosure’ is no longer available.

1.3.5. Example of the impact of escalation between a Level 1 and Level 2 compliance intervention



Taxpayer A makes an unprompted disclosure on foot of a Level 1 compliance intervention. Based on the risks identified, Revenue is not satisfied that the disclosure is a qualifying disclosure and issues a notification of a Level 2 compliance intervention (Risk Review).

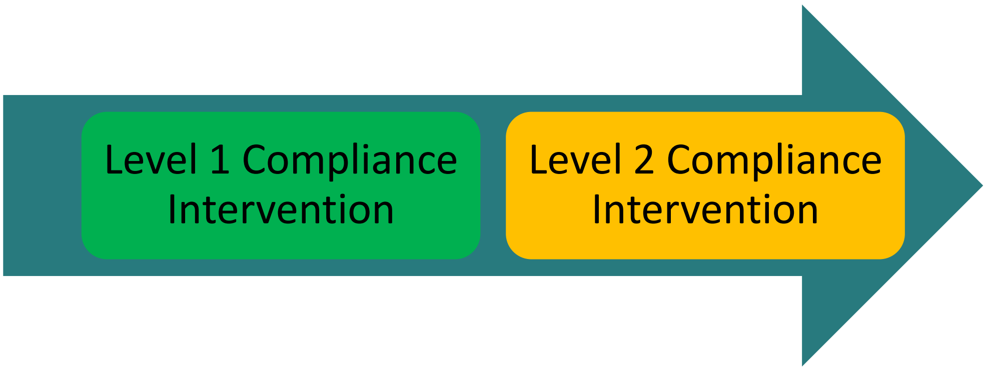
The taxpayer does not make a prompted disclosure prior to the start of the Risk Review and consequently loses the entitlement to do so from that point onwards.

When the default is fully established, the case will be published if it meets the criteria for publication as set out in section 1086A TCA 1997. Taxpayer A may also be prosecuted where the behaviour identified during the intervention warrants such action.

This example shows the benefit for taxpayers in getting matters right as early as possible and in responding fully to the opportunities provided by a Level 1 intervention.

Had Taxpayer A made a qualifying disclosure, he would have been protected from both publication and prosecution as well as minimising the level of penalty.

1.3.6. Example of escalation from a Level 1 to a Level 2 Compliance Intervention



For self-assessment filers, the Form 11 Income Tax Return is due by the extended deadline (for ROS filers) in mid-November.

Shortly after the filing date, Revenue carries out Level 1 interventions by writing to a cohort of taxpayers who are in receipt of a particular type of income and requests that they self-review their returns to ensure that the correct tax treatment has been applied and any associated liabilities discharged.

Taxpayer B is in this cohort, has not computed her liabilities correctly and has additional liabilities less than 15% of the initial amount returned.

As the matter is within the self-correction time limit, Taxpayer B could self-correct the return without penalty. If she pays the additional tax and interest due, no further action is taken by Revenue.

However, in this instance Taxpayer B does not take the opportunity to rectify the position under Level 1 and the case is escalated to a Level 2 Risk Review. Taxpayer B also fails to make a prompted disclosure under Level 2 before the Risk Review begins. This would have attracted a penalty of 10% where full cooperation was given throughout the intervention.

During the Risk Review, the taxpayer takes a significant period to respond to requests for information and only engages with the intervention on a piecemeal basis. The intervention is finally concluded, and the tax liability quantified together with interest. A penalty of 20% applies. Details of the settlement may be included in the quarterly list of tax defaulters if the criteria for publication as set out in section 1086A TCA 1997 are met. The taxpayer may also be prosecuted where the risk identified during the intervention warrants such action.

This penalty would have been reduced to 15% had the taxpayer cooperated fully with the Level 2 compliance intervention. Publication would not apply.

This example shows the benefit for taxpayers in getting matters right as early as possible and in responding fully to the opportunities provided by a Level 1 and Level 2 interventions.

1.3.7. Example showing escalation and impact of non/ full cooperation

Following submission of a Form 11 Return of Income and Self-Assessment, Taxpayer C receives a Level 1 Self-Review request in respect of her declared income and expenditure.

Taxpayer C fails to take the opportunity to make an unprompted qualifying disclosure and consequently is escalated to a Level 2 Risk Review. Taxpayer C also fails to make a prompted qualifying disclosure before the intervention begins and at that point can no longer avail of any benefits associated with making a qualifying disclosure (i.e. an unprompted qualifying disclosure (Level 1) or a prompted qualifying disclosure (Level 2)).

During the Risk Review, it becomes clear that Taxpayer C failed to declare all of her cash income. Revenue identified a particular pattern in transactions which were kept off the books. She had also been paying one of her casual staff “cash in hand”. During the course of the Risk Review, the taxpayer failed to provide Revenue with all of the information required to fully quantify any liability to tax. Any information provided follows a significant delay and repeated requests from Revenue. Information is provided on a piecemeal basis. Eventually, the intervention is concluded, and the tax liability quantified.

Revenue consider the default to be within the category of deliberate behaviour. The facts of the case are consistent with an intent to default. Indicators of deliberate behaviour include:

- Failure to keep proper books and records required by law,
- Repeated omissions of transactions from the books and records, and
- Serious failure to operate fiduciary taxes.

Because Taxpayer C failed to take advantage of the opportunities for mitigation of penalty available within either Level 1 or Level 2 of the Compliance Intervention Framework, she suffers a penalty of 100% (deliberate default). Taxpayer C will also be published in the Tax Defaulters list if she meets the relevant criteria for publication as set out in section 1086A TCA 1997.

Had Taxpayer C fully cooperated with Revenue she could have availed of a reduced penalty of 75%.

Had Taxpayer C availed of the opportunities presented to her under Level 1 (unprompted qualifying disclosure), she could have reduced her penalty exposure to 10% and avoided the risk of publication on the Defaulters’ List.

Please refer to Section 2.17 for further information on what constitutes full cooperation. For details of the various categories of default, please refer to Section 4.6.

1.4. Level 3 Compliance Interventions

Revenue Investigation is the Level 3 Compliance Intervention within the Compliance Intervention Framework. An investigation focuses on tackling high risk practices and cases displaying risks of suspected fraud and tax evasion.

1.4.1. Revenue Investigation

A 'Revenue Investigation' is an examination of a taxpayer's affairs where Revenue believes, from a review of available information, that serious tax or duty evasion may have occurred, or a Revenue offence may have been committed and may lead to a criminal prosecution.

A Revenue Investigation is generally initiated by formally advising the taxpayer in writing that his or her tax/duty affairs are under Revenue Investigation. However, there are also situations where a Revenue Investigation is regarded as on-going without formal notification to the taxpayer. Such situations are outlined in tax and duty legislation and include:

- matters 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,
- matters within the scope of an inquiry being carried out wholly or partly in public, or
- matters to which a person is linked, or about to be linked, publicly.

A taxpayer who receives a letter of ''Notification of a Level 3 Compliance Intervention - Revenue Investigation' may make a disclosure but will no longer be able to benefit from the following:

- the opportunity to make a 'qualifying disclosure' regarding the matter under investigation.
- the avoidance of publication if the final settlement meets the publication criteria of section 1086A TCA 1997, and
- assurance from Revenue that the case will not be referred for criminal prosecution.

Where, in the course of a Revenue Level 2 or Level 3 Intervention Revenue uncovers information, not previously disclosed by the taxpayer, suggesting serious tax or duty evasion or that a Revenue offence may have occurred, Revenue will inform the taxpayer by letter that a civil or criminal prosecution will be considered. The final decision in relation to any criminal prosecution rests with the Director of Public Prosecutions.

1.4.2. Level 3 Compliance Intervention activities

As already stated in paragraph 1.4, Level 3 interventions under the 'Compliance Intervention Framework' are focused on tackling high risk practices and cases displaying risks of suspected fraud and tax evasion.

Where a case 'flags' as high-risk due to current behaviour Revenue will issue a '*Notification of a Level 3 Compliance Intervention - Revenue Investigation'*. Where a case 'flags' due to previous poor compliance history, Revenue will closely monitor its activity and where new risks are identified or there is a recurrence of previous non-compliant behaviour Revenue will issue a 'Notification of a Level 3 Compliance Intervention - Revenue Investigation'. Once the taxpayer is notified of the investigation, the opportunity to make a qualifying disclosure is no longer available.

1.4.3. Notification of a 'Level 3 Compliance Intervention - Revenue Investigation'

In all cases where a Revenue Investigation is being notified, the letter issued to the taxpayer (and agent where relevant) will include the wording *'Notification of a Level 3* Compliance Intervention - Revenue Investigation'.

A Revenue Investigation may commence with an unannounced visit to the business premises. In such cases the 'Notification of a Level 3 Compliance Intervention - Revenue Investigation' will be provided to the taxpayer at the time of the visit.

The investigation notification letter issued by Revenue will outline the specific period and the matter initially being investigated and the action required from the taxpayer based on the information available.

The specified period outlined in the investigation notification will not preclude Revenue from extending the years or periods under examination if further information emerges.

As and from the date of a 'Notification of a Level 3 Compliance Intervention - Revenue Investigation' letter (that is the date shown on the letter) to the taxpayer/ tax agent, or the date of commencement of the Revenue Investigation where notification is not issued in advance to the taxpayer, the opportunity to make a prompted or unprompted qualifying disclosure is no longer available. A taxpayer may make a disclosure of previously undeclared tax or duty liabilities at any time but the making of a 'qualifying disclosure' in these instances is excluded by legislation.

See also paragraph 2.16 of this Code of Practice, which outlines in more detail situations where a taxpayer is excluded by legislation from making a 'qualifying disclosure'.

1.5. Responsibilities in relation to Compliance Interventions

1.5.1. Revenue Officials

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.

Revenue's core corporate values include **Respect, Professionalism, and Integrity.** Our officials are required to uphold these values at all times in their dealings with taxpayers and their representatives.

The objective of a compliance intervention is to examine any risk identified in a timely manner and with the least amount of disruption to the taxpayer. A quality compliance intervention will be well planned, appropriately scoped, and effectively conducted.

Revenue officials will provide any assistance required by taxpayers to enable them to cooperate with the compliance intervention.

Revenue officials will, where necessary, use appropriate powers to secure access to necessary records during compliance interventions.

1.5.2. Taxpayers

Taxpayers are required by law, to cooperate fully with Revenue compliance interventions. A taxpayer who fails to cooperate fully during an intervention may be liable to higher penalties.

The responsibility for filing correct returns and providing accurate information to Revenue rests solely with the taxpayer. A taxpayer cannot assign his or her compliance responsibilities to a tax practitioner. Where, due to the actions of a tax practitioner an incorrect return is filed or inaccurate information is provided, Revenue will pursue the taxpayer for tax, interest and penalties as appropriate.

1.5.3. Tax Practitioners

Revenue recognises the important role that tax practitioners play in assisting taxpayers with filing requirements, interpretation of legislation and other related matters, and in facilitating tax compliance.

Revenue expects that all tax practitioners preparing tax returns and representing taxpayers act honestly and comply with relevant laws and regulations. In exceptional cases where a tax practitioner actively engages with his/her client to assist in tax evasion or avoidance Revenue will seek a penalty under section 1055 TCA 1997 (penalty for assisting in making incorrect returns, etc.) and/or press for prosecution under the provisions of section 1078 (2) TCA 1997 (knowingly aiding, abetting, assisting, inciting or inducing another person to make or deliver knowingly or wilfully any incorrect return, statement or accounts in connection with any tax).

Revenue also expects that any tax practitioner acting on behalf of a taxpayer will provide information and material which to the best of his or her knowledge is a true representation of a taxpayer's tax affairs.

1.5.4. Referrals under section 851A TCA 1997

Under section 851A TCA 1997, a Revenue officer may disclose taxpayer information to a professional body where he or she is satisfied that the work of an agent does not meet the standards of that body. It will be a matter for the relevant professional body to examine the referral and take any action under its own procedures, where necessary. Such a referral will only be made in the most serious of cases, e.g. cases of significant and/or repeated non-adherence to professional standards.

For further information on Revenue referrals to Professional Bodies under Section 851A TCA 1997 please see the relevant [Tax and Duty Manual](#).

2. Regularising Tax Defaults

Taxpayers who regularly review their tax affairs can avail of many benefits in terms of managing their tax compliance position in a cost effective manner. As set out in Section 1.2, Revenue provides a range of opportunities for taxpayers to self-review, self-correct and to make unprompted qualifying disclosures. These opportunities help taxpayers to get things right as easily and cost effectively as possible. Taxpayers who avail of these opportunities will experience the minimum level of penalty and generally not risk either publication or prosecution.

2.1. Voluntarily reviewing tax compliance position

This chapter sets out the various ways that taxpayers can regularise their position.

2.2. Self-Correction without penalty

In line with Revenue's role in supporting voluntary compliance, taxpayers may avail of self-correction *without penalty* provided the following conditions are met:

1. The taxpayer notifies Revenue, within the applicable time limit, (either in writing or through ROS) of the adjustments being made (Note: submitting an amended return on ROS does not constitute notification to Revenue – written notification is required),
2. The taxpayer provides a computation of the correct tax and statutory interest payable, and
3. Payment, in full, accompanies the submission.

2.2.1. Time limits for self-correction without penalty

Return	Time limit for self-correction
Form 11/Form 11S	12 months of filing due date
CT	12 months of filing due date
VAT*	Before the due date for filing the IT /CT return for the chargeable period within which the relevant VAT period ends
PAYE, USC and PRSI returns	Before the due date for filing the IT/CT return for the chargeable period within which the relevant period ends. Where no IT/CT filing obligation exists, self-correction must take place by 31 October of the year following the year in which the monthly PAYE return was due to be filed.
CAT	12 months of the filing due date
Stamp Duty (excluding levies)	12 months of 'specified return date'
Stamp Duty Levies	12 months of the due date for the submission of the statement for the period in question
Excise duties	12 months of return/warrant filing due date
LPT	12 months of return filing due date
CGT	12 months of return filing due date

Once the time limits for self-correction without penalty have passed, the taxpayer may still avail of the benefits associated with making an unprompted qualifying disclosure (provided that a notification of either a Level 2 or 3 compliance

intervention has not been issued to the taxpayer).

*Bi-monthly, quarterly or half-yearly remitters of VAT, who are self-correcting a net underpayment of less than €6,000 may include the amount of tax as an adjustment on the next corresponding VAT return following the one in which the error was made. In such cases, there is no requirement to notify Revenue and interest is not charged.

2.2.2. Self-correction without penalty and interaction with other compliance activity

The benefit of self-correction without penalty will not apply where Revenue has notified a taxpayer of a Level 2 or Level 3 Compliance Intervention for the particular period.

The benefits of self-correction do not apply in cases involving deliberate default.

Self-correction without penalty will not, in itself, trigger a compliance intervention. However, Revenue may initiate an intervention following self-correction where a risk is identified.

2.2.3. Self-correction and Expressions of Doubt

Where a taxpayer has made an "expression of doubt" (See paragraph 7.14) and Revenue, having regard to published guidelines and supporting documentation has advised the taxpayer of its view that the matter is sufficiently free from doubt, the taxpayer will not be entitled to self-correct without penalty. The taxpayer may still avail of the benefits associated with making an unprompted qualifying disclosure.

2.3. Correcting an Innocent Error

Where a tax default is not deliberate and is not attributable to a taxpayer's failure to take reasonable care in complying with her or her tax obligations, a correction can be made without penalty. Statutory interest will apply.

The following issues will be considered in determining whether a taxpayer has taken reasonable care to comply with his or her tax obligations:

- ✓ Whether the taxpayer has kept proper books and records,
- ✓ The previous compliance record of the taxpayer,
- ✓ The materiality* of the error being corrected, and
- ✓ The frequency of any error which, if it occurred in isolation, might be considered innocent.

*For example, where the error being corrected is immaterial in the context of the overall tax payments made by the taxpayer, or in the case of a company, a group of companies.

2.4. Technical Adjustments

Section 1077F TCA 1997 sets out the penalties for *deliberately or carelessly* making incorrect returns.

Revenue acknowledges that, on occasion, a default of liability to tax or duty may arise in circumstances where the taxpayer did not act either carelessly or with deliberate intent. In such cases, it is not appropriate that a tax-geared penalty should apply.

For example, a taxpayer may have, in good faith, applied the legislation on the basis of a different interpretation to that of Revenue.

However, regardless of the reason leading to the liability, Revenue must be satisfied that *due care* has been taken by the taxpayer and that the matter being corrected did not involve deliberate behaviour. Where the taxpayer can prove this to the satisfaction of Revenue a penalty will not apply. Interest will however apply for the period of the underpayment.

In determining whether or not due care has been taken by the taxpayer, Revenue consideration will include:-

- Whether there is published Revenue guidance on the issue,
- Whether there is published legal precedent available (e.g. determinations of the Tax Appeals Commission or the Courts),
- The expertise available to the taxpayer in terms of legal, accountancy and tax advice and applied to the position taken by the taxpayer, the complexity of the technical issue and the relevant legislation and
- The magnitude of the tax consequences – Taxpayers are expected to take an appropriate level of care in relation to complex issues where there are significant amounts of tax at stake.

Revenue will not accept that matters well established in case law and precedent may give rise to a technical adjustment.

2.5. No 'Loss of Revenue'

A taxpayer may, on occasion fail to operate the tax system correctly, but in a manner that does not lead to a net loss of revenue to the exchequer (e.g. the tax due may have been paid in a different period or by a different party). Subject to the conditions below, where Revenue is satisfied that 'no loss of revenue' has occurred, we will not seek to collect the tax amounts in question.

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

Any claims in respect of 'no loss of revenue' must be made by way of a Qualifying Disclosure.

A 'no loss of revenue' claim will not be accepted where:

- the default is in the deliberate behaviour category,
- there is an egregious failure of the taxpayer to operate the tax system,
- the 'no loss of revenue' claim was not made in writing,
- 'no loss of revenue' is not proven to the satisfaction of Revenue,
- the 'no loss of revenue' penalty has not been agreed and paid, or
- the taxpayer has not cooperated fully.

A claim may be part accepted and part rejected.

Where a liability arises as a result of a failure to correctly operate the tax system (e.g. failure to apply withholding taxes to certain counterparties), the taxpayer will need to ensure that the necessary system/procedural changes are implemented to ensure there is no recurrence.

Where a taxpayer cannot conclusively prove that no loss of revenue has occurred, the taxpayer should ensure that the appropriate qualifying disclosure is made.

2.6. Liability to a penalty for 'No Loss of Revenue'

A liability to a penalty applies in all situations where "no loss of revenue" is accepted in relation to careless behaviour which has been disclosed in 'a qualifying disclosure'.

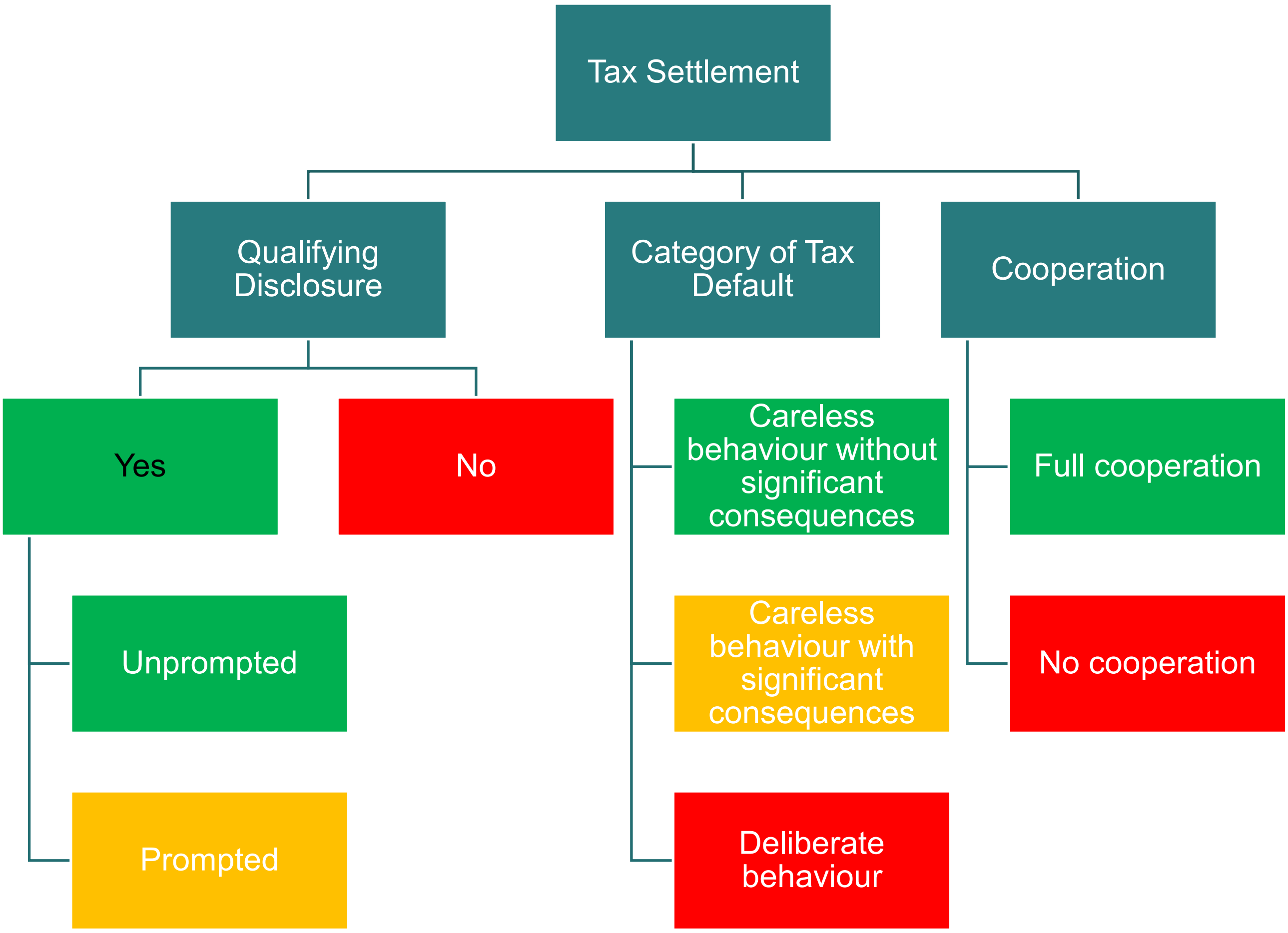
No penalty applies in cases of 'innocent error' or 'technical adjustment'.

The following penalties apply:

	Unprompted Qualifying Disclosure	Prompted Qualifying Disclosure	No Qualifying Disclosure
First Qualifying Disclosure in this category	Lesser of 3% or €5,000	Lesser of 6% or €15,000	
Second Qualifying Disclosure in this category	Lesser of 3% or €20,000	Lesser of 6% or €30,000	
Third Qualifying Disclosure in this category	Lesser of 3% or €40,000	Lesser of 6% or €60,000	
No Qualifying Disclosure			Lesser of 9% or €100,000

2.7. Tax Settlements

The following diagram sets out the factors which impact on the calculation of a tax settlement. The following parts of this chapter set out an explanation of how each of these factors positively or negatively affect a tax settlement.



2.8. Qualifying Disclosure

Section 1077F TCA 1997 defines a qualifying disclosure as a disclosure of complete information in relation to, and full particulars of, all matters occasioning a liability to tax that is made in writing, is signed by or on behalf of the taxpayer and is accompanied by:

- A declaration, to the best of that person's knowledge, information and belief that all matters contained in the disclosure are correct and complete; and
- A payment of the tax and interest on late payment of that tax.

Furthermore, the category of default determines the scope of liabilities which must be included in the disclosure in order for it to be considered qualifying.

Category of Default	Unprompted Qualifying Disclosure	Prompted Qualifying Disclosure
Deliberate Behaviour	All liabilities to tax, duty and interest, in respect of all taxes and periods, where previously undisclosed	All liabilities to tax, duty and interest, in respect of all taxes and periods, where previously undisclosed
Careless Behaviour	All liabilities to tax, duty and interest in respect of the relevant tax and periods that are the subject of the disclosure	All liabilities to tax, duty and interest in respect of the relevant tax and periods within the scope of the compliance intervention

Section 1077F TCA 1997 confirms that qualifying disclosures in the careless behaviour category of default are Tax Act specific. This means that a disclosure covering multiple taxheads may include both a qualifying element and a non-qualifying element. Where part of an overall disclosure is non-qualifying, it is necessary to consider whether the non-qualifying disclosure is publishable under the provisions of section 1086A TCA 1997. For further information in relation to the Publication of Tax Defaulters please see the relevant Tax and Duty Manual (TDM) which is available on the Revenue website.

2.8.1. Calculation of Penalties

On receipt of the qualifying disclosure, Revenue will agree the penalty amount with the taxpayer.

2.8.2. Payment of liability

A disclosure without payment of liability (e.g. tax, duty and interest) will not be considered a qualifying disclosure for the purposes of publication, prosecution or penalty amount. However, where the taxpayer enters into an agreed phased payment arrangement with Revenue for the liability, this criterion will be regarded as satisfied.

Where a taxpayer defaults on a phased payment arrangement, and Revenue forms the view that the intention to pay was not, in fact, genuine, the disclosure will no longer be regarded as a qualifying disclosure. As a consequence, the level of penalty will be reviewed, publication may arise and prosecution may be initiated, if appropriate.

2.8.3. Liabilities not within initial scope of the Revenue Compliance Intervention

In the course of a Level 2 Intervention Revenue may determine that it is necessary to extend the scope of the intervention to address further risks identified. In these circumstances Revenue will formally notify the taxpayer, and agent where relevant, of the further periods/tax heads under review. Prior to the issue of such notification, the taxpayer may still make an unprompted qualifying disclosure in relation to periods/tax heads outside of the original scope.

As with all disclosures, any liability must be paid in order for the disclosure to be considered qualifying.

2.8.4. Non-publication

Where a taxpayer regularises a default by way of a qualifying disclosure, details of the taxpayer and default will not be included in the quarterly publication of tax defaulters (See Chapter 5 for further information).

2.8.5. Prosecution

Revenue will not initiate an investigation with a view to prosecution in respect of a default where a qualifying disclosure has been made.

2.8.6. Group Companies

An intervention carried out in a parent company or a subsidiary company may necessitate interventions in respect of other companies within a group. Prior to the issue of intervention notifications to these, any group company not included in the scope of the original intervention may still make an unprompted qualifying disclosure.

2.9. Unprompted Qualifying Disclosure

An ‘unprompted qualifying disclosure’ means a qualifying disclosure that Revenue are satisfied has been voluntarily furnished to them:

- before Revenue has issued any notification of intention to commence any Level 2 or Level 3 compliance interventions in relation to any matter included in the disclosure.

2.9.1. Period to prepare an Unprompted Qualifying Disclosure

A taxpayer may wish to secure an agreed period of time in which to prepare and make an unprompted qualifying disclosure. The notice of the intention to make an unprompted qualifying disclosure must be given to Revenue in writing before the notification of a Level 2 or Level 3 compliance intervention is made.

A maximum period of 60 calendar days may be requested. The 60 day period allows the taxpayer or their agent to contact Revenue to discuss any matters arising.

2.10. Prompted Qualifying Disclosure

A 'prompted qualifying disclosure' means a qualifying disclosure which has been made to Revenue in the period between:

1. the date on which the person is notified by Revenue that a Level 2 compliance intervention will start, and

2. the commencement of that Level 2 compliance intervention.

Section 1.3.4 sets out the notification periods provided in relation to Level 2 compliance interventions. The taxpayer and the tax agent on record, if any, will receive 28 days' notice of a Level 2 Compliance Intervention.

The notification letter issued in respect of a **Risk Review**, will confirm that the intervention will be considered to have started 28 days after the date of the letter.

The notification letter in respect of an **Audit**, confirms that the intervention will be considered to have started 28 days after the date of the letter, unless otherwise agreed.

As and from the date of issue of a 'Notification of a Level 2 Compliance Intervention' letter (that is the date shown on the letter) to the taxpayer and agent, the opportunity to make an 'unprompted qualifying disclosure' is no longer available. The taxpayer can however make a 'prompted qualifying disclosure' before the Risk Review or Audit starts. Once the intervention begins the entitlement to avail of a 'prompted qualifying disclosure' is no longer available.

2.10.1. Period to prepare a Prompted Qualifying Disclosure

A taxpayer may wish to secure an agreed period of time in which to prepare and make a prompted qualifying disclosure. The notice of the intention to make a prompted qualifying disclosure must be given to Revenue in writing within 21 days of the issue of the notification of a Level 2 compliance intervention.

A maximum period of 60 calendar days may be requested where a prompted disclosure will be made. The period of 60 days begins from the day on which the notice of intention to make a prompted qualifying disclosure was given. Revenue will confirm the expiry of the 60 day period in writing. The 60 day period allows the taxpayer or their agent to contact Revenue to discuss any matters arising.

2.11. First, Second, Third and Subsequent Disclosures

Liability to a penalty is based on the category of behaviour (e.g. careless, deliberate) that gave rise to the default and the number of 'qualifying disclosures' previously made by the taxpayer i.e. taxpayers who make repeated disclosures are subject to higher levels of penalty. Qualifying disclosures made prior to this version of the Code must be aggregated.

A qualifying disclosure of tax defaults, which occurs following a substantive change in ownership of a company, will be regarded as a first qualifying disclosure.

2.12. Qualifying Disclosures – 5-year rule

If a taxpayer makes no additional qualifying disclosures within 5 years of a previous disclosure, any future qualifying disclosure is treated as a first qualifying disclosure.

It is important to consider the definition of qualifying disclosure in determining whether the 5-year rule applies. As set out in 2.8 above, the scope of a disclosure depends on the category of behaviour giving rise to the default. For example, a qualifying disclosure will only be regarded as a second, or subsequent, qualifying disclosure where a previous qualifying disclosure was made regarding that specific taxhead within the relevant 5-year period.

For example, if a previous qualifying disclosure was made respect of VAT only and the current qualifying disclosure is in respect of Corporation Tax, then the current qualifying disclosure is regarded as a first qualifying disclosure.

Qualifying disclosures in the careless behaviour **without** significant consequences category are not counted when calculating the number of qualifying disclosures made by a taxpayer. This category is intended to cater for tax defaults of a minor nature.

2.13. Qualifying Disclosures and Penalties

The liability to a penalty depends on the nature of the disclosure being made, whether or not the taxpayer has cooperated fully, and on the category of behaviour giving rise to the default.

Section 1077F TCA 1997 provides for tax geared penalties as follows:

Disclosures	Category of Behaviour	Penalty % Full cooperation not given by taxpayer	Penalty % Prompted Qualifying Disclosure and full cooperation	Penalty % Unprompted Qualifying Disclosure and full cooperation
All qualifying disclosures in this category	Careless behaviour without significant consequences	20%	10%	3%
First qualifying disclosure in these categories	Careless behaviour with significant consequences	40%	20%	5%
	Deliberate behaviour	100%	50%	10%
Second qualifying disclosure in these categories	Careless behaviour with significant consequences	40%	30%	20%
	Deliberate behaviour	100%	75%	55%
Third or subsequent qualifying disclosure in these categories	Careless behaviour with significant consequences	40%	40% (no reduction)	40% (no reduction)
	Deliberate behaviour	100%	100% (no reduction)	100% (no reduction

* See section 4.6 and 2.17 for explanation of the category of behaviour and full cooperation respectively.

2.13.1. Example showing penalty applicable based on disclosure position

Underpayment of tax - €100,000

Category of Default – Deliberate behaviour

	Penalty - Unprompted Qualifying Disclosure and Full Cooperation	Penalty - Prompted Qualifying Disclosure and Full Cooperation	Penalty – Without Full Cooperation
First qualifying disclosure	€10,000	€50,000	€100,000
Second qualifying disclosure	€55,000	€75,000	€100,000
Third or subsequent disclosure	€100,000	€100,000	€100,000

Note: This example only shows penalty amounts. Statutory interest may also be payable.

2.14. No Qualifying Disclosure – Penalties

Section 1077F TCA 1997 provides for a definition of qualifying disclosure. Where the provisions as set out are not met by a taxpayer, the disclosure is regarded as not qualifying. In such cases, a higher level of penalty applies and is summarised below:

Category of Behaviour	Penalty %	Penalty % - Full cooperation
Careless behaviour without significant consequences	20%	15%
Careless behaviour with significant consequences	40%	30%
Deliberate behaviour	100%	75%

2.15. Examination of a Qualifying Disclosure

Revenue examines a selection of unprompted disclosures for accuracy and completeness. In the event of such examination, the taxpayer must provide full cooperation. See 2.17 for what constitutes full cooperation.

Where Revenue does not wish to examine an unprompted disclosure, the taxpayer will be advised that Revenue accepts the disclosure as qualifying and does not propose to make any further inquiries.

Revenue examines **all** prompted disclosures to verify the details disclosed and to ensure that the disclosure is complete. The taxpayer must provide full cooperation during the course of this examination.

If discrepancies are discovered in either prompted or unprompted disclosures as a result of an examination by Revenue, these discrepancies will not prevent a disclosure from qualifying provided that the discrepancies are not significant and not deliberately made.

2.16. Exclusions – Disclosure not regarded as Qualifying

Legislation prevents a disclosure being regarded as a ‘qualifying disclosure’ in the following circumstances:

- Where a Revenue Investigation has started or where any of the following circumstances apply:

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

b) If matters contained in the disclosure are matters –

(i) that have become known, or are about to become known, to Revenue 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.

Finally, a disclosure is not a 'qualifying disclosure' if:

- The disclosure is 'incomplete'; or
- The disclosure is not made in writing.

2.17. Full Cooperation

Where a taxpayer cooperates fully with a compliance intervention, the costs of the intervention to both Revenue and to the taxpayer are minimised. As set out in 2.13 and 2.14, taxpayer cooperation can have a significant impact on the ultimate level of penalty due as part of a settlement.

In order to avail of reduced penalties, a taxpayer (and their agent), needs to have cooperated fully throughout the intervention. Where the taxpayer has not cooperated fully, there is no scope for mitigation of penalties on that basis. It is not sufficient for a taxpayer to partially cooperate with Revenue.

Revenue will work with taxpayers to enable them to cooperate fully with any compliance intervention, including allowing them reasonable time to fully respond to correspondence and by providing timely responses to their queries or submissions.

During the conduct of an intervention, where Revenue is met with a lack of cooperation, the official conducting the intervention will give a single notice in writing to the taxpayer, and agent where relevant, that the behaviour in question does not constitute full cooperation. If the taxpayer cooperates fully with all aspects of the intervention after that notification, mitigation on the basis of cooperation may still be considered. Mitigation at this stage will be contingent on the taxpayer changing behaviour and continuing to fully cooperate throughout the remainder of the intervention.

The importance of **full** cooperation as opposed to partial cooperation was affirmed in the judgement delivered by Ms. Justice Pilkington in the 2018 High Court Case, *O'Brien v O'Brien.*

The table on the following page sets out factors which indicate full cooperation.

Full Cooperation	Lack of Cooperation
✓ Having all books, records and linking papers, however held, available for Revenue at the commencement of the intervention	× Refusing reasonable access to the business premises
✓ Having appropriate personnel available at the time of the intervention	× Failing to provide reasonable access to the business records, including linking papers
✓ Responding promptly to all requests for information and explanations	× Failing to provide information known to the taxpayer which would be used in determining whether an underpayment arises
✓ Responding promptly to all correspondence	× Delays by the taxpayer in the course of an intervention where there was no reasonable excuse for those delays
✓ Prompt payment of the intervention settlement liability*	

*Prompt payment includes payment by way of an agreed Phased Payment Arrangement (PPA).

2.18. Arrears of Declared Taxes and Duties

Revenue requires payment of all unpaid tax or duty on record together with the payment of the settlement, where due. Revenue also pursues all outstanding tax returns together with the payment (including by way of a PPA) any related liabilities and penalties.

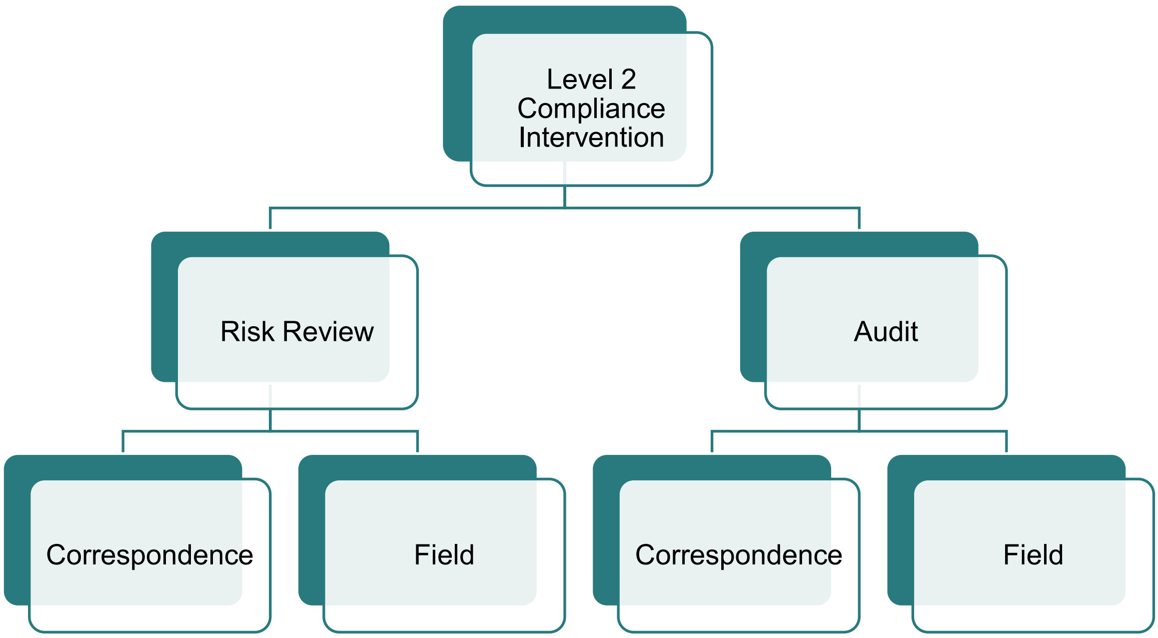
3. Risk Review and the Revenue Audit

A Level 2 compliance intervention is appropriate where Revenue has identified a potential tax or duty risk in respect of a taxpayer.

Recognising that there are varying degrees of risk in terms of complexity or materiality, there are two separate types of intervention at Level 2 (Risk Review and Revenue Audit).

Revenue aims to examine and address risks in a manner that is as efficient and effective as possible. This is important both to minimise the cost to a taxpayer and to ensure the effective use of limited Revenue resources. In order to achieve this, we will use the Risk Review intervention in cases where the time and costs of an audit are not justified.

Following notification of a Level 2 Intervention (either a Risk Review or Audit) a taxpayer will have the opportunity to make a prompted qualifying disclosure, where relevant. A Risk Review or Audit may be desk/ correspondence based or field based. **Note: All references to field-based interventions should be read as including interventions carried out using video conferencing tools such as Skype or Microsoft Teams.**



3.1. Risk Review

3.1.1. Location of a Risk Review

A Risk Review is a focused intervention to examine a risk or a small number of risks. For example, the risk review may focus on a particular risk on a return or from a risk identified from Revenue's REAP (**R**isk, **E**valuation, **A**nalysis and **P**rofiling) system.

On this basis, it is very likely that most Risk Reviews will be desk based. However, at times it may be necessary to visit the taxpayer's premises or hold a meeting by video conference.

Where a visit to a taxpayer's premises is required as part of a Risk Review, the taxpayer is expected to attend. Taxpayers may also invite their agent to attend. Visits will only be scheduled where necessary to effectively conclude the risk review. The general procedures in relation to site visits (as applicable to audits and outlined in 3.2.1 below) apply in such cases.

3.1.2. Conduct of a Risk Review

The majority of risk reviews will be carried out by way of correspondence. The taxpayer will be issued with a letter confirming that they have been selected for a Revenue Level 2 Compliance Intervention - Risk Review, which will commence 28 days after the date of the notification. The notification is broadly similar to the Audit letter and will set out the scope (taxhead) and period for the review. As the Risk Review is narrower in scale than an audit, the notification will confirm the focus of the review. The letter will confirm the information which is being requested by return within 28 days.

For example, the Risk Review may specify the scope as Income Tax (IT) for the period 2020 and that the focus will be Case V Rental Income.

The letter will confirm that it is an inquiry for the purposes of section 1077F TCA 1997 and will direct the taxpayer to Chapter 2 of the Code of Practice for Revenue Compliance Interventions if they wish to make a qualifying disclosure. Chapter 2.8 of this Code sets out the details of how to make such a disclosure.

Although the taxpayer has up to 28 days to respond to the Risk Review, where taxpayers provide the requested material before the expiry of the 28-day period, this will assist in a prompt conclusion of the inquiry.

Where there is an underpayment of tax and/or duty, the taxpayer can make a prompted Qualifying Disclosure within 28 days of the notification. Where additional time is required to prepare the disclosure, they can seek additional time (60 days) in which to prepare it. In the above example, assuming there is a default in the "careless behaviour" category, the prompted qualifying disclosure will need to state the amounts of all liabilities to tax and interest in respect of IT for 2020. Chapter 2.8 sets out, in detail, the requirements for a prompted qualifying disclosure, having regard to the category of default.

Where the taxpayer does not respond to the Risk Review notification within 28 days, the inquiry is deemed to have commenced and the opportunity to make a qualifying disclosure is closed. It is important that taxpayers and their agents are aware of the importance of the 28 day deadline. Revenue will make every effort to contact taxpayers and their agents to remind them of the impending commencement.

In cases of non-engagement, there are a couple of options open to Revenue. For example:

1. Revenue may contact the taxpayer to arrange a visit to the premises to discuss the matters outlined in the notification letter. Any such visit is considered part of the now commenced intervention. No further notification is necessary, but Revenue will seek to agree the date for the visit with the taxpayer. The taxpayer may, if they wish, arrange for their agent to attend any such meeting. Where a site visit is required, it will be carried out at the taxpayer's principal place of business and the procedures as set out below in 3.2.1 (dealing with Audits) will apply.

2. Where the matters are quantifiable without the necessity for a site visit, Revenue may form the view that an amount of tax or duty is due and issue a notice of assessment. In all such cases, Revenue will contact the taxpayer setting out the basis of assessment prior to issuing the notice of assessment.

3.1.3. Escalation to Audit following commencement of Risk Review

Where a taxpayer does not make a prompted qualifying disclosure, and the Risk Review has commenced, additional information may come to light which requires widening of the scope of the intervention (beyond the tax/duty type and period specified in the original Risk Review letter). In such cases, the Risk Review may be escalated to Audit and the scope increased to include other tax heads/periods.

For example, the scope of a Risk Review could be PAYE/PRSI and USC, with a focus on Travel and Subsistence for 2020. During the course of the intervention, a VAT risk may be identified. In such cases, Revenue will escalate the intervention to Audit. 28 days' notice of the audit will be given, and the taxpayer will have the opportunity to make a prompted qualifying disclosure in respect of any additional taxheads/periods included in the Audit notification. The opportunity to make a prompted qualifying disclosure in respect of PAYE/PRSI and USC for 2020 ended at the commencement of the initial intervention in respect of that period.

Taxpayers should be aware that, regardless of the focus of an intervention, there is only one opportunity to make a qualifying disclosure in respect of a given tax/duty type for a given period. To continue with the above example, if the taxpayer's PAYE/PRSI and USC returns for 2020 have failed to adequately account for, say, Directors' Remuneration, this must be fully addressed in any disclosure for the period in order for that disclosure to be a qualifying disclosure.

Disclosure opportunities are therefore aligned for either type of Level 2 Compliance Intervention.

3.2. Audit

3.2.1. Location of an Audit

An audit is usually carried out at the taxpayer's principal place of business and in the presence of the taxpayer and their agent where relevant. Where the business operates from multiple locations, Revenue may wish to visit some or all of these during the course of the audit.

Where a taxpayer has no trading premises and the books and records are retained at the taxpayer's private residence, the audit may be carried out at that location with the consent of the taxpayer. Section 905(2) TCA 1997 refers. Where consent is not given, the audit will be carried out at a Revenue office. In any circumstance where it is not practical to carry out the audit at the place of business, the audit may be carried out at a Revenue office.

The taxpayer should ensure that any books and records held offsite for any reason, e.g. at an agent's premises, are returned to the taxpayer's place of business in time for the commencement of the audit.

During the COVID-19 pandemic, compliance interventions were, subject to a small number of exceptions, conducted remotely. In cases where data can be provided electronically, audits may continue to be carried out remotely using video conferencing facilities. The concept of an audit is the same regardless of whether it is carried out in person on site or remotely using video conferencing facilities.

3.2.2. Conduct of an Audit

On arrival at the place of audit, the Revenue official will show their identification and authorisation. Where the audit is carried out remotely, the Revenue official will show their identification and authorisation at the start of the video conference. They will explain to the taxpayer or company representative the purpose of the audit.

The taxpayer will be offered the opportunity to make a prompted qualifying disclosure and will be advised about the application of interest on outstanding tax liabilities where relevant and about the procedures in relation to penalties and publication where a default is identified.

After the initial interview, the Revenue official will advise the taxpayer that the audit is now commencing and will begin the examination of the books and records. After that point the taxpayer can no longer make a qualifying disclosure.

3.2.3. The Audit Process

During the audit, Revenue will;

- ✓ 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 relevant tax and accounting principles,

- ✓ check that all relevant returns have been made and are complete in accordance with records,
- ✓ make whatever inquiries are necessary for the audit,
- ✓ advise the taxpayer of any errors, omissions or irregularities in the tax and duty returns submitted (including those in the taxpayer's favour), determine the liability if one arises, request settlement and specify any action that may be required to place the taxpayer on a compliant footing.

In general, where an audit is conducted on a taxpayers' premises, Revenue will conduct its examination of the books and records on the premises. Business records are commonly held in electronic format and this is recognised in tax legislation (s.887 TCA). During the course of the audit Revenue may require certain queries to be run and reports to be generated to support the examination of these records. Alternatively, Revenue may require a download of data from the business systems for further interrogation. In this latter case the procedures set out from 3.2.3.2 below will apply.

3.2.3.1. Removal of Hard-Copy Books and Records

However, circumstances may arise where it is more practical to take the hard-copy records to a Revenue office and conduct the examination there. In these circumstances Revenue will make every effort not to retain any original records submitted to the office or provided by the taxpayer for more than one month.

Revenue will request that an itemised listing/log of all books and records being submitted by the taxpayer and/or agent is provided. Where Revenue is not provided with all requested books and records, the taxpayer will be informed in writing.

The taxpayer will be given a receipt for original records taken from a taxpayer's premises. It is important to note that a taxpayer will not be considered to have cooperated fully with a Revenue compliance intervention where all requested books and records have not been provided. Non-cooperation reduces the opportunity for penalty mitigation which can have significant tax and reputational risks for taxpayers. Please refer to Chapter 2 for further information in relation to what constitutes full cooperation.

Revenue aims to ensure that any compliance interventions are carried out with the minimum disruption to the taxpayer's business. Where records removed are required for current trading, the taxpayer will have the opportunity to seek copies or extracts from the records taken.

3.2.3.2. Downloads or Copies of Data in Electronic Format

Where the transfer of electronic data from a taxpayer's IT or EPOS system to Revenue is required, the taxpayer or their IT support will be required to provide the necessary data downloads. The Revenue File Transfer Service (RTFS) is a secure facility that can be used to securely exchange data with Revenue personnel and is the preferred method.

Alternatively, MyEnquiries may be used to provide books and records subject to a 10MB file size limit.

Generally, Revenue will not access the taxpayer's IT systems in the course of a Level 2 Intervention and any required data will need to be transferred in accordance with safeguards outlined in Revenue's Data Security policy and ICT guidelines. In this way, confidential taxpayer data is protected.

Situations do arise where it is necessary for Revenue to take immediate action to secure books and records in order to preserve evidence in cases of suspected evasion.

3.2.3.3. Pre-Audit Meeting – Electronic Records

An Audit notification letter may advise the taxpayer that Revenue will contact them in advance of the meeting to schedule a pre-audit meeting to identify and understand the accounting and EPOS systems in use in the business, the format and extent of electronic records that are available and the electronic records which will be required to be available during the intervention. Revenue may request further data either before or during the intervention.

The pre-audit meeting will ordinarily be held at the business premises where there is access to the relevant records. In certain circumstances, the pre-audit meeting may take place via video conferencing. The taxpayer may wish for their agent to attend the meeting together with any relevant IT support staff.

The pre-audit meeting is carried out before the audit has commenced and, therefore, does not affect a taxpayer's entitlement to make a prompted qualifying disclosure.

3.3. Materiality

Level 2 compliance interventions are undertaken to tackle non-compliance. Where it is clear during the early stage of an intervention that a taxpayer's returns are substantially correct, Revenue will withdraw from the intervention.

Where it is evident that a taxpayer has made best efforts to ensure that tax returns are accurate, adjustments are not made for small inaccuracies on the basis that these may be attributed to innocent error. Please refer to Chapter 2 for a detailed explanation of what constitutes an innocent error.

3.4. Obstruction

As outlined above, a Revenue official will introduce themselves at the start of either the Risk Review (site visit) or Revenue Audit and will produce their official authorisation card.

Revenue will explain the purpose of the particular intervention. If the taxpayer refuses to facilitate the intervention or to produce the requested books and records in an acceptable format, the taxpayer is regarded as obstructing the intervention process.

Revenue will provide the taxpayer with an opportunity to fully cooperate. However, where a refusal to facilitate the intervention continues, and it is clear that the taxpayer has no statutory or legal basis for refusal, the taxpayer will be advised that it is a criminal offence to obstruct or interfere with an authorised officer of the Revenue in the performance of their duties. Section 1078 (2) (j) TCA 1997 refers.

3.5. Years, Periods and Issues for intervention

Revenue compliance interventions generally focus on a year or a period where a specific risk has been identified. However, multi-year (or period) compliance interventions may be carried out where material risks are identified that potentially extend across several years (or periods).

In the notification letter, Revenue will identify year(s) or period(s) in focus for each tax or duty included in the intervention.

Revenue may, as a consequence of risks identified in the course of an intervention, consider it necessary to initiate further interventions in relation to connected entities or parties (e.g. the directors of a company). In such cases the taxpayer(s) subject to the additional interventions will receive the standard intervention notification and will, in general*, have the opportunity to make a qualifying disclosure prior to the commencement of the additional intervention(s).

*Except in the case of a Level 3 Intervention

3.6. Earlier or Later Years/Periods or Issues

As outlined in 3.5, the scope of the intervention will be clearly identified. Revenue will consider the level of risk and materiality in deciding whether to open earlier years or periods. An intervention will only be extended to earlier years or periods where there is evidence to suggest material tax defaults have arisen.

3.6.1. Examples of where earlier years/periods are likely to be opened

- ✓ Where there is 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 or duty avoidance scheme exists that requires further examination,
- ✓ Where substantial loss of revenue has arisen in the year or period subject of the intervention, and where it is likely that a similar position existed in previous years.

A compliance intervention may be initiated for any period in which a return has been completed in a fraudulent or negligent manner. Likewise, the failure to file a return may give rise to a compliance intervention in respect of any tax period.

3.7. Indications of a Serious Tax Offence

During the course of an intervention, Revenue will from time to time encounter strong indicators of a serious tax offence.

Two main types of evidence arise in tax offences:

1. Documentary Evidence

In the absence of a qualifying disclosure, matters relating to a particular default may be considered documentary evidence.

2. Statements made by the Taxpayer

Where a statement made by a taxpayer indicates that an offence has been committed, the taxpayer is cautioned before making further incriminating statements.

Cautions are reserved for cases suspected of involving tax evasion.

A taxpayer who admits that an offence has been committed will be cautioned.

3.7.1. Wording of Caution

The caution to be given is as follows:

*"*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".

3.8. Data Protection Act

Revenue collects information in order to administer taxes and duties. Any information provided by taxpayers will be treated with the highest standards of security and confidentiality and strictly in accordance with the Data Protection Acts 1988 to 2018.

4. Finalisation of a Revenue Compliance Intervention

4.1. Conclusion of Compliance Intervention

In the course of an intervention Revenue may conclude that a taxpayer's affairs are in order. In these circumstances Revenue will advise the taxpayer and finalise the intervention as quickly as possible.

Alternatively, the conclusion of an intervention may involve the determination of additional liabilities in relation to underdeclared tax and there may also be interest and penalties payable. In addition, surcharges may apply in relation to the late filing of returns and/or fixed penalties may arise in respect of breaches of relevant regulations. These are set out in further detail below.

The exact manner in which a compliance intervention will be concluded will depend on the particular type of intervention. In audit cases, a final meeting will be held with the taxpayer to set out the findings of the intervention. It may also be necessary for a final meeting to be held following conclusion of a Risk Review where that has been carried out on-site. Where a final meeting is not required, Revenue will write to the taxpayer to set out the position.

Where Revenue are satisfied that the return(s) is (are) correct and no amendments are required, a letter will be issued confirming that the intervention is closed.

Where a liability arises, the taxpayer will be advised of the findings and Revenue will seek to agree these with the taxpayer. The taxpayer will be requested to provide a written settlement offer formally setting out the tax, interest and penalties due.

Where agreement is reached with the taxpayer in relation to either a 'qualifying disclosure' or any other additional tax/duty liability, Revenue will issue a final letter to the taxpayer (and agent where relevant) setting out details of the agreed settlement, drawing attention to any inadequacies in the records or tax treatment applied, and where relevant, noting the taxpayer's confirmation that these matters have been rectified.

Where agreement is not reached with the taxpayer on the intervention result, Revenue will issue a summary letter setting out the proposed adjustments that gave rise to the additional liability to tax, duty, interest and penalties where applicable. The letter will seek agreement from the taxpayer or an explanation of why agreement cannot be made.

If agreement is not reached (or where payment is not made in an agreed case), Revenue will inform the taxpayer in writing of the basis of any assessment, amended assessment or estimate and will issue the relevant notices to the taxpayer (and their agent where relevant). Assessments or other notifications of liability may be appealed to the independent Tax Appeals Commissions (See section 4.11.2).

As outlined in Chapter 1, Revenue aims to support voluntary compliance. Taxpayers are encouraged to cooperate at all stages of the compliance intervention process. Revenue wants to ensure that all taxpayers are facilitated in cooperating with any intervention and appreciates that taxpayers may need time to liaise with their agents in relation to intervention outcomes.

Subject to the taxpayers right of appeal, where Revenue is unable to secure payment, the collection of the tax and statutory interest will be referred for appropriate enforcement proceedings without delay. Where the taxpayer appeals the liability, collection enforcement action will not take place until the appeal has been finalised.

Where the tax and/or duty 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 4.5 for further information.

4.2. Determination of Additional Liabilities

Where a qualifying disclosure has not been made, Revenue will notify the taxpayer of the basis of assessment applicable. Revenue will also quantify the tax, duty, interest and penalties (if any) due and invite a written offer and payment of such liabilities. Revenue will advise the taxpayer (and their agent) where publication of the settlement will arise.

In order to be accepted as being in full and final settlement of liabilities, the offer must not be subject to any caveat or conditionality.

All qualifying disclosures and other offers of settlement (paid or unpaid) received from a taxpayer are subject to approval by Revenue.

Revenue operates a robust quality assurance programme to ensure that interventions are carried out consistently and in line with the provisions set out in this Code.

4.3. Interest

Where, as a result of an intervention, it is clear that the taxpayer has not made a full and correct return and an undercharge to tax or duty arises, interest charges arise in respect of unpaid taxes and duties. There is no mitigation available in relation to the amount of interest due.

Where an underpayment arises and the taxpayer settles this liability by offsetting an overpayment from another period or taxhead, interest is charged on the underpayment from the due date of the liability to the date that the relevant excess payment becomes available for offset. In accordance with section 865 TCA 1997, a repayment of tax shall not be due unless a valid claim has been made to Revenue for that purpose.

Where an offer of settlement has been accepted, payment must be made within one month. If this deadline is not met, further interest will be charged on the settlement amount to reflect the additional period of underpayment. Where an agreed Phased Payment Arrangement is put in place, interest covering the additional period will be due.

Where it is necessary to take enforcement action to collect a liability arising from an intervention, interest will continue to accrue from the original due date up to the ultimate date of collection. Additional charges in relation to the costs of any enforcement activity may also be due.

4.4. Surcharge for Late Submission of Returns

Section 1084 TCA 1997 imposes a late filing surcharge on any taxpayer, individual or corporate, for the late filing of a tax return. The surcharge will also be automatically included in the intervention settlement amount where the relevant return was not filed on or before the specified return date.

The filing, on time, of an incorrect return is deemed to be late filing. However, a late filing surcharge will not be sought where the return was filed on or before the specified return date and either a tax-geared penalty or a tax avoidance surcharge was applied to a settlement.

4.4.1. Local Property Tax (LPT) Generated Surcharge

Where an intervention arises in respect of IT, CT or CGT and the taxpayer has an unpaid LPT liability (other than a liability catered for in a Phased Payment Arrangement), a surcharge of 10% (subject to a maximum surcharge of €63,485) of the IT, CT or CGT liability will be applied. This is known as an LPT generated surcharge and will be applied when:

1. The LPT return that was due has not been filed and an IT, CT or CGT return is filed, or

2. There are outstanding LPT liabilities at the date of filing the IT, CT or CGT return.

Where a taxpayer incurs a LPT generated surcharge and subsequently files the LPT return and/or pays the tax (or enters into a PPA), the surcharge is capped at 50% of the amount of the LPT liability where this is lower than the amount of the surcharge.

4.4.2. Stamp Duty Surcharge

A stamp duty surcharge will arise where a person fails to deliver a stamp duty return on or before the specified return date. The amount of the surcharge is based on the stamp duty payable. Interest also arises on a late payment of stamp duty, where the unpaid stamp duty is greater than €30. Section 14A Stamp Duty Consolidation Act (SDCA) 1999 refers.

4.5. Penalties

In cases where a penalty arises, the amount of the penalty is generally computed by Revenue, agreed with the taxpayer and paid. Where a taxpayer does not agree liability to a penalty or does not pay a penalty which they have agreed to, then it is a matter for a court to determine whether they are liable to a penalty.

Section 1077F TCA 1997 provides that a penalty is not due where the aggregate amount of the tax or duty default is less than €6,000 and the default is not in the deliberate behaviour category.

Where a tax-geared penalty (i.e. a penalty that is a percentage of the additional tax payable) has been agreed in relation to tax or duty default for specific period or periods, the penalty agreed is considered to include any fixed penalties which may be due as a result of filing an incorrect or late return in respect of any period covered by the settlement.

4.5.1. Calculating the ‘difference’ for tax and duty geared penalty purposes

Section 1077F(3) TCA 1997 sets out how to calculate the amount on which a penalty is due.

Liability to a tax-geared percentage penalty generally arises on the ‘difference’ between

1. The amount of tax which would have been payable, or could have been claimed, if the tax had been computed in accordance with the incorrect or false return or claim, and

2. The amount of tax which would have been payable or refundable if the tax was computed in accordance with the true and correct return or claim.

Section 1077F(5) TCA 1997 sets out how to calculate the amount on which a penalty is due in situations where a person has failed to file a return.

In such cases, liability to a tax-geared percentage penalty arises on the ‘difference’ between

(a) the amount of tax paid (if any) by the person for the relevant period before either

(i) the taxpayer was notified of either a Level 2 or Level 3 Compliance Intervention, or

(ii) the date where Revenue had announced publicly that they had started an investigation into the matter, and

(b) the amount of tax which would have been payable for the relevant period had the correct return been filed.

Section 116A (3) Value Added Tax Consolidation Act 2010 sets out the mechanism for calculating the ‘difference’ for VAT purposes.

The ‘difference’ is generally calculated between:

1. The amount of tax (if any) paid or claimed by the person concerned for the relevant

period on the basis of the incorrect return, claim or declaration as furnished or otherwise made, and

2. The amount properly payable by, or refundable to, that person for that period.

Section 116A (5) sets out the mechanism for calculating the difference when the return has not been filed. This provision ensures that the penalty is calculated by reference to the amount of tax paid prior to the notification of an inquiry or investigation,

Section 58 (5) and (5A) CATCA 2003 and section 134A (7), (8) and (9) SDCA 1999 sets out the rule for calculating the 'difference' for CAT and stamp duty respectively.

4.5.2. Examples of Penalty Issues

The following issues normally give rise to penalties:

Undisclosed sales, receipts, income or gains	Undisclosed remuneration or RCT 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 P&L account or otherwise
Failure to disclose all of the facts and circumstances relating to a Stamp Duty liability	Substantially understated chargeable value of property or properties for LPT	Failure to disclose all of the facts and circumstances related to a CAT liability

The foregoing is not intended to be an exhaustive list and the application of a penalty will depend on the circumstances of the particular case.

Where breaches of tax and duty legislation have been identified, Revenue will inform the taxpayer of the statutory penalties that the breaches attract. The taxpayer may then agree and pay those penalties. The majority of settlements for tax, interest and penalties are resolved by agreement with the taxpayer.

4.5.3. Penalties Determined by a Court

Where a taxpayer does not agree liability to a penalty or does not pay an agreed penalty, then it is a matter for a relevant court to determine whether that person is liable to a penalty.

The relevant court is determined by reference to the jurisdictional limits for civil matters.

Court	Jurisdictional Limit
District Court	Up to €15,000
Circuit Court	Up to €75,000
High Court	Over €75,000

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

A Revenue officer forms the opinion that the taxpayer is liable to a penalty.

Revenue issue a Notice of Opinion (see 4.5.4) to the taxpayer (and their agent). If the taxpayer agrees with the notice of opinion and pays the penalty, no further action is required.

Where the amount of the penalty is not agreed (or the taxpayer does not respond) within 30 days, Revenue may make an application to a relevant court for that court to determine that the penalty is due.

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 will seek to recover the penalty as if it were tax.

4.5.4. Issue of a Notice of Opinion regarding a Penalty

Section 1077B TCA 1997 provides for the issue of a notice of opinion in respect of a penalty which cannot be agreed with a taxpayer or where an agreed penalty has not been paid.

In such cases, a Revenue official forms the opinion in relation to a liability to a penalty and gives notice of that opinion to the taxpayer and to the taxpayer's agent.

The Notice of Opinion is in a standard format and includes details of:

- ✓ the statutory provisions under which the penalty arises,
- ✓ the circumstances in which that person is liable to the penalty,
- ✓ the amount of the penalty to which that person is liable, and
- ✓ such other details as the Revenue official considers necessary.

As tax-geared penalties directly correlate to the amount of the underpaid tax, the quantum of tax must be finalised before a Notice of Opinion is issued.

Section 1077B (2) TCA 1997 provides that Revenue may amend a Notice of Opinion and will give notice of the amended opinion to the taxpayer (and their agent) in the same way as the original Notice.

Once a Notice of Opinion is issued, the issue of whether a penalty is due is now a matter for a relevant Court to determine.

4.5.5. Application to a Relevant Court for Penalty Determination

Section 1077B (3) TCA 1997 provides for the application to a relevant court for a penalty determination.

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

4.5.6. Determination of Penalty by a Relevant Court

The court will determine, based on the evidence before it, whether the taxpayer has breached the legislation giving rise to the liability to a penalty.

Section 1077B TCA 1997 provides that this determination procedure is available to resolve all tax default penalty cases irrespective of when the default occurred.

4.5.7. Recovery of Penalty determined by a Relevant Court

Section 1077C TCA 1997 provides that where an application is made, the court may also make an order as to the recovery of the penalty (determined by them) and without prejudice to any other means of recovery, that penalty may be collected and recovered as if it were tax. Except for cases where the taxpayer has deceased, there is no time limit for proceedings or applications for the recovery of penalties.

4.5.7.1. Penalties in Respect of Deceased Taxpayers

In general, 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, section 1077D TCA 1997 provides that if, 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 existed, then a penalty is due and Revenue can take proceedings to enforce it and collect it from the taxpayer's estate.

4.6. Categories of Default

The level of penalty to apply in relation to any default is the tax-geared penalty as set out in the relevant Tax Acts. The level of tax-geared penalty depends on whether the default is in the category of:

1) Deliberate behaviour,

2) Careless behaviour with significant consequences, or

3) Careless behaviour without significant consequences.

Section 2.13 sets out the penalties applicable based on the category of the default.

4.6.1. Deliberate Behaviour Penalties

As “Deliberate Behaviour” is not defined in the tax acts, it must be given its ordinary meaning. For a tax breach to be considered deliberate behaviour, there must be indicators consistent with intent on the part of the taxpayer. The breach must not have arisen solely as a result of carelessness of any kind.

The following table sets out a non-exhaustive list of indicators for deliberate behaviour.

Deliberate Behaviour
✓ 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
✓ Omissions from tax returns
✓ Providing incomplete, false or misleading documents or information
✓ Claiming a refund of tax when not lawfully entitled to that refund
✓ Serious failure to operate fiduciary taxes
✓ Concealment of bank accounts or other assets

4.6.2. Careless Behaviour Penalties

Taxpayers must exercise care in fulfilling their tax obligations. It follows that careless behaviour is a lack of due care that results in tax liabilities returned by the taxpayer being understated, or repayment claims being incorrect.

There must be no indicators of deliberate behaviour for the careless behaviour category of default to apply.

Although "careless behaviour" is not defined in the Tax Acts, *'carelessly'* is considered to mean the "failure to take reasonable care".

Test of reasonable care

- Whether a taxpayer of ordinary skill and knowledge, properly advised, would have forseen as a reasonable probability or likelihood, the prospect that an act (or omission), would cause a tax underpayment, having regard to all of the circumstances.

The taxpayer cannot devolve the responsibility of making a correct return to an agent.

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 in the case.

Section 1077F(7) TCA 1997 defines "Significant consequences" as arising 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 certain cases, underpaid tax may arise as a result of a repayment claim being reduced. In such cases, it is necessary to calculate the difference between the amount of the original repayment claimed and the correct repayment amount which would have been due if the tax was computed in accordance with a true and correct return.

In careless behaviour cases, where the reduction in repayment due, compared with the repayment claimed, exceeds 15% of the amount of the repayment claimed, a penalty in the category of careless behaviour with significant consequences will apply.

The following table sets out a non-exhaustive list of indicators consistent with careless behaviour to the extent that they lead to substantial underpayments of tax.

Careless Behaviour
✓ Estimation of accounts items
✓ Neglecting to categorise expenditure into allowable and disallowable categories for tax purposes
✓ Neglecting to take advice on the issue of interpretation where either Revenue or a tax agent should have been approached for guidance
✓ 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

Revenue will also consider the following factors in determining whether the taxpayer is considered to have taken due care:

✓ The extent of the tax at risk. The greater the tax risk (also having regard to the total tax liability), 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

4.6.3. Examples of Careless Behaviour categories

Chapter 2.13 sets out the tax geared penalties applicable based on the category of default.

The following table sets out how the 15% test applies in practice.

Careless Behaviour	Without significant consequences	With significant consequences
Tax payable as per an incorrect return	€55,000	€10,000
Tax ultimately due	€63,000	€30,000
Tax underpaid	€8,000	€20,000
15% test	< 15%	> 15%

4.7. Fixed Penalties

In certain situations, a person may be liable to a fixed penalty for failure to fulfil an obligation under the tax and duty legislation.

4.7.1. Failure to file a return

Any person who is required to make a return of income, and fails to do so, is liable to a fixed penalty of €3,000 under section 1052 TCA 1997. The penalty is chargeable on a per return basis. In addition, the penalty can be increased to €4,000 per return where the failure to submit the return continues after the end of the tax year in which the person received the tax return from the Inspector.

4.7.2. Incorrect Returns

Section 1055 TCA 1997 provides that any person who deliberately assists in or induces the making or delivery for any purposes of IT or CT of any incorrect return, account, statement or declaration shall be liable to a penalty of €4,000.

4.7.3. Value Added Tax

Section 115 (1) VATCA 2010 provides that a person is liable to a penalty of €4,000 for non-compliance with the duty to keep full and true records.

Section 116 (18) VATCA 2010 provides that where a person improperly procures the importation of goods without payment of tax in circumstances in which the tax is chargeable, he or she is liable to a penalty of €4,000 and shall be liable to pay to Revenue the amount of any tax that should have been paid on the importation.

4.7.4. PAYE Employers

Failure by an employer to comply with tax legislation provided in Chapter 4 of Part 42 TCA 1997 or any of the Income Tax (Employments) Regulations 2018 can result in liability to a penalty of €4,000 per breach.

Examples include:

Legislation/ Regulation	Breach
Section 988 TCA 1997	Requirement to register with Revenue as an employer
Section 988A TCA 1997	Requirement to keep and maintain a 'Register of Employees' in paper or electronic format
Regulation 19	Requirement to operate Emergency Basis of Tax Deduction
Section 985G TCA 1997	Requirement to make a monthly return to Revenue by an employer
Regulation 10	Notification of payment of emoluments to Revenue on or before the payment
Part 18D TCA 1997 and USC Regulations 2018	Failure to comply with USC legislation
SWSC 2005 and SW Regulations 1996	Failure to comply with PRSI legislation

4.7.5. LPT

Section 145 Finance (Local Property Tax) Act 2012 provides for penalties for employers who fail to comply with their obligations to deduct LPT at source. Sections 146 and 147 of the same Act provide for penalties for failure to deliver a return or for a false statement, false representation or an incorrect return.

4.7.6. Stamp Duty

Sections 8A and 8B SDCA 1999 provide for fixed penalties of €3,000 for failure to deliver a correct return or a failure to deliver a return.

4.7.7. Capital Gains Tax Valuations

The issue of valuations can arise during compliance interventions, particularly in relation to Capital Taxes.

Revenue understands that accurate valuation of capital assets can, on occasion be complex. Therefore, notwithstanding the guidelines in relation to Categories of Behaviour, where reliable evidence, from comparable transactions or otherwise, has not been supplied in support of the taxpayer's valuations, liability to penalty arises 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 arises,

- if A is greater than (B X 30%) but not greater than (B X 50%), liability to a penalty arises and the category of tax default for the purpose of reduced penalties is careless behaviour without significant consequences,

- if A is greater than (B X 50%) but not greater than (B X 60%), liability to a penalty arises and the category of tax default for the purposes of reduced penalties is careless behaviour with significant consequences,

- if A is greater than (B X 60%), liability to a penalty arises and the category of tax default for the purposes of reduced penalties is deliberate behaviour.

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.

4.7.8. Local Property Tax Valuations – Penalties

The Local Property Tax legislation provides for penalties for false statement or false representation or incorrect return of the chargeable value of the property in section 147 Finance (LPT) Act, 2012.

4.8. Timeframe for Concluding Revenue Interventions

It is in the interest of both Revenue and the taxpayer, that any compliance intervention is concluded as quickly as possible. Revenue Customer Service Standards set out the standard of service that taxpayers can expect to receive. In line with these standards, all correspondence is carefully managed to ensure that replies issue quickly.

Where during the course of an intervention, a taxpayer has dealt with all outstanding queries, and has done so within a reasonable period of time, and the intervention remains open for a further month, the taxpayer may request Revenue to advise of the current status of the compliance intervention. In these circumstances, Revenue will set out whether any issues remain outstanding and will, where possible, provide an indicative timeframe for conclusion of the intervention.

If there is no clear cause for the delay in finalising the intervention a taxpayer's entitlements to credits or refunds of tax shall not be delayed or withheld.

4.9. Payment

Ordinarily, a liability (which includes tax, duty, interest and penalties) will be discharged by payment(s), which are brought to account against the additional liabilities for each tax-head.

4.9.1. Discharging liabilities where additional time is required by taxpayer to pay the agreed settlement.

A phased payment arrangement (PPA) 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. For further information on PPA's please see our website.

Where a taxpayer wishes to be considered for a PPA, sufficient information in support of this arrangement must be provided. The following information may be expected:

- ✓ 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 which will allow Revenue to take a view as to where there are increasing excesses on the account and to take a view on the extent of the account swing
- ✓ An aged debtor and creditor profile

The level of the down payment required, and the duration and commencement of the PPA will be specific to the particular circumstances of the case.

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

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

In the case of Stamp Duty, the instrument will remain unstamped until all the liabilities including the full amount of duty are paid.

4.10. Inability to Pay Claims

Revenue will sometimes encounter claims that the financial resources of a taxpayer do not permit payment in full of the tax due. Revenue will carefully consider such claims. A taxpayer's maximum capacity to pay is determined by their assets and the earning potential of the trade, profession or employment. The health and age of the taxpayer may also need to be considered.

Where a taxpayer is claiming an 'inability to pay' a tax or duty default, it is their responsibility to satisfactorily demonstrate that inability to Revenue and documentary evidence must be provided.

Claims of 'inability to pay' that are not in writing or are not substantiated with documentary evidence will not be accepted. Where 'inability to pay' is accepted Revenue may suspend collection of a liability, or part of a liability, pending any change in the taxpayer's circumstances.

Documentary evidence of ‘inability to pay’ should include any or all of the following items that the taxpayer deems relevant
✓ A formal settlement offer document
✓ A statement of affairs (SOA) reflecting the taxpayer’s current situation as at the time of the settlement, signed by the taxpayer
✓ A copy of the latest 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 information included in Section 4.9.1 above
✓ An explanation why a loan cannot be obtained to discharge tax or duty liability or evidence of refusal of a loan
✓ Calculations of anticipated income/expenditure
✓ A signed statement confirming that the behaviour that gave rise to the tax default has now been rectified

4.11. Complaint and Review Procedures – Appeal Procedures

Revenue's Quality Assurance programme seeks to ensure that all interventions are carried out on a consistent basis and in line with our quality standards.

However, where a difference of opinion arises, in relation to a compliance intervention, Revenue 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.

4.11.1. Review Procedures

Revenue's Review Procedures provide taxpayers with an open and transparent mechanism for making a complaint and seeking a review of Revenue's handling of a case. Taxpayers should note that this procedure applies only to complaints with regard to Revenue's handling of the case. Disputes with regard to a liability to tax should be addressed through to the Tax Appeals Commission (See below)

Full details of Revenue's Review Procedures are available on Revenue's website.

4.11.2. Appeals Procedures

A taxpayer is entitled to lodge an appeal to the independent Tax Appeals Commission (TAC) against Revenue's findings in relation to a revised assessment or estimate of tax or duty.

Where an assessment or estimate is appealed statutory interest will only be chargeable when the tax in dispute is determined. Likewise, tax-geared penalties may only be quantified when the tax is determined.

In order to lodge an appeal against an assessment, any liability not under appeal must be paid. Where a taxpayer has entered into an agreed phased payment agreement (PPA) to pay the tax (including interest and collection fees), the liability will be considered to have been paid.

Further information regarding appeals procedures can be accessed on the website of Tax Appeals Commission www.taxappeals.ie

5. Publication in List of Tax Defaulters

5.1. Obligation to Publish

Section 1086A TCA 1997 imposes an obligation on Revenue to publish a list, in Iris Oifigiúil, within 3 months of the end of each quarter, of the

- ✓ name,
- ✓ address, and
- ✓ occupation of each taxpayer

- on whom a fine or penalty was imposed or determined by a Court under any of the Acts in respect of tax or duty 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 has been paid or not.

- where Revenue has agreed with a taxpayer to refrain from initiating procedures for the recovery of any fine or penalty and accepted a settlement of any claim by Revenue for:

  1) payment of tax or duty,

  2) payment of interest on that tax or duty,

  3) a fine or other monetary penalty in respect of that tax or duty including penalties in respect of the failure to deliver returns or other documents in connection with that tax or duty, and

  4) payment of any surcharge, where applicable.

Publication in accordance with section 1086A TCA 1997 applies irrespective of whether the taxpayer has paid the settlement amount within the relevant period. Where a settlement sum has not been paid in full, details of any outstanding amount will be included in the information published.

Section 1086A (2) TCA 1997 provides that where Revenue accepts or undertakes to accept a settlement of a tax or duty default, the acceptance of this sum is deemed to have been made pursuant to an agreement between Revenue and the taxpayer.

Section 1086A TCA 1997 also provides that Revenue may:

- ✓ 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.

Revenue will advise all taxpayers who meet the publication criteria that they will be published in the list of tax defaulters and provide confirmation of amounts to be published.

5.2. Exclusions from Publication

Statutory Exclusions from publication	
Section 1086A(8)(c) TCA 1997	✓ Cases where a qualifying disclosure is accepted
Section 1086A(8)(b) TCA 1997	✓ Cases where the settlement does not exceed €50,000 (figure for tax only)
Section 1086A(8)(a) TCA 1997	✓ Cases where the penalty does not exceed 15% of the amount of the additional tax due
Section 811D TCA 1997	✓ Cases where a 'qualifying avoidance disclosure' is accepted and/or a tax avoidance surcharge(s)

5.3. Publication Figure

As outlined in 5.1 above, the details published include the tax, duty, interest (where applicable), penalties and surcharge (where applicable) that make up the settlement.

Publishable amounts are aggregated for all taxes and for all years/periods covered by the intervention. The publishable amount will always reflect the settlement notwithstanding that the taxpayer may have made overpayments of tax in respect of other taxheads/ periods which are outside the scope of the intervention.

Certain tax and interest is excluded from publication if a penalty does not apply. For example, 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 additional amount of the tax due in respect of the return/period where an adjustment arises.

The position can be complex in multi-tax head settlement situations. It is necessary to ensure that each settlement per tax head contains tax, interest (where applicable) and a penalty.

For further information in relation to the Publication of Tax Defaulters please refer to the relevant Tax and Duty Manual on Revenue's website.

All tax settlements are subject to approval by Revenue. A 'Letter of Acceptance' will be issued by Revenue in all cases where a 'Letter of Offer' from a taxpayer is agreed and approved by Revenue. The letter of acceptance will confirm the publishable details including the publishable amount. The settlement is published within three months of the end of the quarter in which the letter of acceptance is issued by Revenue.

6. Prosecution

6.1. Introduction

Revenue's programmes of criminal investigation aim to combat serious tax evasion. Where we identify such cases, we will seek to collect tax, duty and interest and to penalise tax fraud and evasion.

The Director of Public Prosecutions makes decisions as to whether or not a case should be prosecuted. Those convicted of tax offences may be liable to a fine or imprisonment or both.

6.2. Types of offences that are most likely to lead to prosecution

- Deliberate omissions from tax returns
- False claims for repayment
- Use of forged or falsified documents
- Facilitating fraudulent evasion of tax
- Use of offshore bank accounts to evade tax
- Tax evasion schemes
- Failure to remit fiduciary taxes
- Failure to produce business records when required

6.3. Other Prosecutable Offences

Revenue also pursues a vigorous prosecution policy for

- Failure to file returns
- Failure to produce books, records etc. when requested to do so
- Failure to submit a Statement of Affairs when asked to do so
- Providing false or misleading information to Revenue
- 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 but aims to give an outline of the types of offences that can be referred for prosecution.

6.4. Sales Suppression Software

Any person who knowingly or wilfully possesses or uses for the purpose of evading tax or duty, or who provides or makes available electronic sales suppression software (commonly known as zappers), without preserving the original data commits a criminal offence under section 1078 TCA 1997.

It is Revenue policy to recommend prosecution of such offences.

6.5. Incorrect Returns, Statements or Accounts

Section 1078(2)(b) TCA 1997 provides that a criminal offence is committed by a person who knowingly 'aids, abets, assists, incites or induces' the provision of incorrect returns, statements or accounts in connection with any tax.

It is Revenue policy to recommend prosecution of such offences.

7. Tax Avoidance

This chapter outlines the tax law, Revenue policy and procedures for regularising tax and duty liabilities that apply to certain types of tax avoidance transactions which commenced after 23 October 2014.

For transactions which commenced on or before this date, the 2019 version of the Code of Practice for Revenue Audit and other Compliance Interventions continues to apply. This is available on the Revenue website.

7.1. What is Tax Avoidance?

In general, tax avoidance is entering into a transaction or series of transactions with little or no commercial reality, which gives rise to a tax advantage and which was undertaken primarily to obtain that tax advantage in a manner that is inconsistent with the intention of tax legislation.

A transaction undertaken with a view to obtaining the benefit of a relief, allowance or exemption in the way intended by the legislation would generally not be regarded as tax avoidance. Conversely, a transaction undertaken which involves the misuse or abuse of a relief, allowance or exemption in a manner not intended by the legislation would be regarded as tax avoidance.

Note that behaviour which constitutes deliberate evasion of tax will be subject to tax geared penalties as set out in Chapter 2 of this Code.

7.1.1. Regularising tax and duty affairs where Tax Avoidance has occurred

Revenue encourages taxpayers to review their tax and duty affairs regularly and to quantify and report any irregularities (to Revenue). Revenue encourages the same approach to tax avoidance where early disclosure to Revenue can be advantageous for the taxpayer.

In addition to the methods outlined in Chapter 2, a taxpayer may regularise his or her tax affairs by making a valid ‘qualifying avoidance disclosure’ on a Form QAD1. A ‘qualifying avoidance disclosure’ may only be made in respect of transactions which commenced after 23 October 2014.

Such a ‘qualifying avoidance disclosure’ can be made at any time regardless of whether any Revenue Compliance Intervention has commenced.

7.2. General Anti-Avoidance Rule

Section 811C TCA 1997, the general anti-avoidance provision, applies to transactions which commenced after 23 October 2014. This provision is intended to defeat the effects of transactions which have little or no commercial reality but are intended primarily to reduce, avoid or defer a tax or duty charge or to artificially create or increase a tax deduction or tax or duty refund.

The general anti-avoidance rule must be considered by taxpayers when preparing their returns. The section provides that a person is not legally entitled to any tax advantage arising out of or by reason of a tax avoidance transaction to which the section applies. A taxpayer must have regard to this section when filing a return, making a claim or seeking a refund and must not claim the benefit of the tax advantage which would have arisen but for the general anti-avoidance provision in section 811C TCA 1997.

7.2.1. Consequences of a transaction being found to be a tax avoidance transaction

Where a person claims a tax advantage arising out of or by reason of a tax avoidance transaction, all necessary measures may be taken by Revenue to withdraw or deny the tax advantage.

7.3. Specific Anti-Avoidance Provisions

Schedule 33 TCA 1997 provides that the sections listed in the table below are 'specific anti-avoidance provisions.' As outlined in section 7.4, where a person seeks to obtain the benefit of any tax advantage which is withdrawn by one of these sections then a 'tax avoidance surcharge' can apply. The 'tax avoidance surcharge' does not apply where the taxpayer, in seeking to obtain the tax advantage, incurs a tax geared penalty.

Legislation – TCA 1997	Anti-avoidance provision
Section 381B	Restriction of loss relief – passive trades
Section 381C	Restriction of loss relief – anti-avoidance
Section 546A	Restrictions on allowable losses
Section 590	Attribution to participators of chargeable gains accruing to non-resident company
Section 806	Charge to income tax on transfer of assets abroad
Section 807	Liability of non-transferors
Section 811B	Tax treatment of loans from employee benefit schemes
Section 812	Taxation of income deemed to arise from transfers of right to receive interest from securities
Section 813	Taxation of transactions associated with loans or credit
Section 814	Taxation of income deemed to arise from transactions in certificates of deposit and assignable deposits
Section 815	Taxation of income deemed to arise on certain sales of securities
Section 816	Taxation of shares issued in place of cash dividends
Section 817	Schemes to avoid liability to tax under Schedule F
Section 817A	Restriction of relief for payments of interest
Section 817B	Treatment of interest in certain circumstances
Section 817C	Restriction on deductibility of certain interest

7.4. Tax Avoidance Surcharge

Section 811D TCA 1997 provides that a ‘tax avoidance surcharge’ is payable where a taxpayer enters into a tax avoidance transaction, and seeks to obtain the benefit of a tax advantage that would arise but for section 811C TCA 1997. It also provides that a ‘tax avoidance surcharge’ can arise where a person seeks to obtain the benefit of any tax advantage which is disallowed by a specific anti-avoidance provision. This section applies to transactions which commenced after 23 October 2014.

The main features of the ‘tax avoidance surcharge’ are:

- a ‘tax avoidance surcharge’ of up to 30% may apply but this can be reduced where a ‘qualifying avoidance disclosure’ is made within a specified timeframe (see 7.7.7) or in certain circumstances where a valid protective notification is submitted (see paragraph 7.6).

- a ‘tax avoidance surcharge’ will not arise where a taxpayer incurs a tax geared penalty under section 1077F(2) TCA 1997, section 116A(2) of the Value-Added Tax Consolidation Act 2010, section 134A of the Stamp Duties Consolidation Act 1999 or section 58 of the Capital Acquisitions Tax Consolidation Act 2003. Further guidance on the categories of behaviour which give rise to tax geared penalties and the methodology for the calculation of tax geared penalties is set out at Chapter 4.5 of the Code.

- where a person does not agree to pay a ‘tax avoidance surcharge’, it is a matter for a relevant court to determine whether the person is liable to the surcharge. The analysis of how penalties may be applied by a relevant court, as outlined in Chapter 4, also apply to the ‘tax avoidance surcharge’.

7.5. Statutory Interest

Interest arises at the statutory rate under the normal self-assessment rules. Interest is charged at the statutory rate from the date the tax or duty would have been due for payment if the tax avoidance transaction had not been entered into.

7.6. Protective Notification

A taxpayer may obtain protection from the ‘tax avoidance surcharge’ and delay the commencement of the accrual of interest where the underpayment of tax or duty arises due to the application of the general anti-avoidance rule by filing a protective notification under section 811D TCA 1997.

A valid protective notification will:

- give protection against a ‘tax avoidance surcharge’ that would otherwise arise from a successful challenge by Revenue under section 811C, and

- defer the commencement of the accrual of interest until one month after a Revenue officer makes or amends an assessment using the general anti-avoidance rule.

To be valid, a protective notification must be filed within 90 days of the commencement of the transaction and the following information must be included:

- full details of the transaction, which is the subject of the protective notification, including any part of that transaction that has not been undertaken before the protective notification is delivered,
- full reference to the provisions of the Acts which the taxpayer considers are relevant to the treatment of the transaction for tax or duty purposes,
- full details of how, in the opinion of the taxpayer, each provision referred to in the protective notification applies, or does not apply, to the transaction.
- full details of why, in the opinion of the taxpayer, the general anti-avoidance rule does not apply,
- the taxpayer must also supply copies of all of the documentation pertaining to the transaction, and
- the transaction entered into by the taxpayer must not be one which is a disclosable transaction under the mandatory disclosure regime (i.e. where the characteristics of the transactions gave rise to an obligation on the promoter (a person advising on or marketing a specific scheme of tax avoidance) or a taxpayer to inform Revenue that the transactions have occurred). This condition will not apply where a promoter fails to make a disclosure required by the legislation, but the taxpayer subsequently makes the disclosure and cooperates with Revenue (See 7.9 for the conditions which must be fulfilled.)

A protective notification will have no effect if the underpayment of tax or duty arises due to the application of one of the specific anti-avoidance provisions.

7.7. A Qualifying Avoidance Disclosure

A taxpayer may contend that a transaction was undertaken without fully understanding its nature or the fact that it might fall foul of anti-avoidance legislation. However, it is the taxpayer's responsibility to ensure that he/she is fully aware of the commercial purpose and taxation consequences of his/her transactions.

The 'qualifying avoidance disclosure' regime provides an opportunity for taxpayers who, on consideration of the matter, decide to settle a Revenue challenge made under the anti-avoidance legislation.

In certain circumstances a valid 'qualifying avoidance disclosure' can result in a reduction of the 'tax avoidance surcharge' as summarised in the table at paragraph 7.15.

A 'qualifying avoidance disclosure' may only be made in relation to a transaction which commenced after 23 October 2014 and where the tax or duty liability arises due to the general anti-avoidance rule or to a specific anti-avoidance provision listed in Schedule 33 to the TCA

1997.

While a taxpayer can make a ‘qualifying avoidance disclosure’ at any time, it should be noted that this does not impact of the liability to statutory interest as set out at 7.5 above.

7.7.1. Definition of Qualifying Avoidance Disclosure

A valid ‘qualifying avoidance disclosure’ (QAD) is a disclosure of complete information in relation to, and full particulars of, all matters occasioning a liability to tax that gave rise to a ‘tax avoidance surcharge’.

To be valid, a QAD must be made in writing, be signed by or on behalf of the taxpayer and be accompanied by:

(1) a declaration, to the best of that person’s knowledge, information and belief, that all matters contained in the disclosure are accurate and complete, and

(2) a payment of the tax or duty and interest on late payment of that tax or duty.

A Form QAD1 should be used to submit a ‘qualifying avoidance disclosure’. A Form QAD2 may be completed and submitted with the Form QAD1 where a taxpayer wishes to voluntarily specify the amount of the ‘tax avoidance surcharge’ which they believe is applicable in their case.

Where a taxpayer makes a disclosure but does not include payment of the additional liability due (tax, duty and interest), the disclosure will not be accepted by Revenue as a valid ‘qualifying avoidance disclosure’. In these circumstances, the amount of the ‘tax avoidance surcharge’ will not be reduced.

The criteria outlined in paragraph 2.8 setting out what will be regarded as a payment for the purposes of a ‘qualifying disclosure’ will also apply to a ‘qualifying avoidance disclosure’.

7.7.2. Categories of Qualifying Avoidance Disclosure

The level of the ‘tax avoidance surcharge’ is, in part, determined by when the ‘qualifying avoidance disclosure’ is made and the stage a Revenue Compliance Intervention has reached.

There are four categories of Qualifying Avoidance Disclosure as follows:

1. A disclosure made within a period of 24 months of the end of the chargeable period in which the transaction was commenced and where a Revenue officer has not commenced any inquiry into the transaction.

2. A disclosure, other than a disclosure at (1) above where a Revenue officer has not withdrawn or denied the tax advantage.

3. A disclosure made after a Revenue officer has withdrawn or denied a tax advantage, but the taxpayer has not made an appeal.

4. A disclosure where a taxpayer has made an appeal against the withdrawal or denial of the tax advantage, but that appeal has not yet been heard by the Tax Appeals Commission.

Where a disclosure does not fall within any of the categories 1 to 4, as set out above, then the highest rate of surcharge will apply.

The level of 'tax avoidance surcharge' applicable to transactions falling within each category is set out in table in paragraph 7.15.

7.7.3. Benefits of making a Qualifying Avoidance Disclosure

The benefits of a 'qualifying avoidance disclosure' may include:

- a potential reduction of the 'tax avoidance surcharge' payable from 30% to as low as nil, and

- the taxpayer's name or settlement details will not be published in the list of tax defaulters (see 7.14 for further information).

7.8. Factors which determine level of tax avoidance surcharge

The level of 'tax avoidance surcharge' which will arise on a tax or duty settlement will be determined by a number of factors:

(i) Whether a valid protective notification was filed (see paragraph 7.6)

(ii) Whether a 'qualifying avoidance disclosure' was made (see definition in paragraph 7.7.1)

(iii) The category of Qualifying Avoidance Disclosure in relation in accordance with section 7.7.2 above

(iv) Whether the transaction is one which falls within the mandatory disclosure regime and, if so, whether it is a situation where the promoter failed to make a disclosure required by the legislation, but the taxpayer subsequently made the disclosure and cooperated with Revenue (see paragraph 7.10)

7.9. Mandatory Disclosure Regime

The mandatory disclosure regime requires advisors or taxpayers to provide Revenue with specified information about a transaction that has certain characteristics. For further information on the Mandatory Disclosure Regime please see Tax and Duty Manual 33-03-01 sets which is available on the Revenue website. These guidance notes provide information on whether (or not) a transaction is one which is disclosable. It also provides details of taxpayer's obligations under the regime.

A taxpayer should confirm with his or her advisor whether (or not) a transaction is a disclosable transaction under the regime. If the transaction is a disclosable transaction, the taxpayer is obliged to include a Transaction Number (or Revenue Reference number) in his or her return. Transaction numbers are issued by Revenue to a promoter following the submission of a valid mandatory disclosure.

In addition to any obligations arising under the mandatory disclosure regime, a taxpayer who makes a ‘qualifying avoidance disclosure’ in respect of a disclosable transaction, under the mandatory disclosure regime, will incur a higher ‘tax avoidance surcharge’ than the surcharge for a non-disclosable transactions (see table in paragraph 7.15).

7.10. Taxpayer Initiated Disclosure

In certain limited circumstances, a transaction, which is otherwise a Disclosable Transaction, will not be treated as such for the purposes of the protective notification legislation and for the purposes of a ‘qualifying avoidance disclosure’ under section 811D TCA 1997.

A taxpayer who comes within the circumstances outlined below may file a protective notification and may qualify for the lower level of ‘tax avoidance surcharge’ if they make a ‘qualifying avoidance disclosure’ (see Table at 7.15).

A ‘taxpayer-initiated disclosure’ may be accepted as qualifying if all the following four circumstances arise:-

1. The transaction was disclosable by a promoter and not by the taxpayer who entered into the transaction.

   (In most cases the promoter will have the obligation to make the mandatory disclosure. However, a taxpayer may have the responsibility for making the mandatory disclosure where there is no promoter, where the promoter is located outside of the State, or where the promoter has claimed legal professional privilege).

2. The taxpayer does not have a Transaction Number because either the promoter or marketer did not comply with their mandatory disclosure obligations or, in the case of transactions disclosed on or before 23 October 2014, no Transaction Number was assigned.

3. The taxpayer, in making the ‘qualifying avoidance disclosure’ or protective notification, submits a completed mandatory disclosure form (Form MD7) to Revenue prior to the return filing deadline for the chargeable period in which the transaction was undertaken.

4. The taxpayer, in making the ‘qualifying avoidance disclosure’ or protective notification, provides all the information that a Revenue officer may reasonably require to determine if an application could be made to a relevant court to determine a penalty payable by the promoter or marketer for failing to comply with their obligations under the mandatory disclosure regime.

7.11. Qualifying Avoidance Disclosure and Self-Correction Without Penalty

Chapter 2 provides that a taxpayer may make a self-correction of a return without a penalty arising.

A taxpayer may make a ‘qualifying avoidance disclosure’ (on a Form QAD1) which can reduce the ‘tax avoidance surcharge’ to nil provided an inquiry has not started and the disclosure is submitted within 24 months of the end of the chargeable period in which the transaction commenced. Furthermore, the transaction must be one which is not subject to a mandatory disclosure requirement.

A taxpayer, in preparing a Form QAD1 in relation to a tax avoidance transaction may have a doubt as to whether a tax geared penalty rather than a ‘tax avoidance surcharge’ may arise in his/her case. A ‘qualifying avoidance disclosure’ cannot be made where a tax geared penalty arises.

A taxpayer may still obtain the benefits of a self-correction without penalty if a Form QAD1 is submitted and it is later determined that a valid ‘qualifying avoidance disclosure’ has not been made. The Form QAD1 disclosure would then be treated as a self-correction without penalty, if the disclosure also meets the criteria for a self-correction without penalty as set out in paragraph 2.2.

7.12. Technical Adjustment

Section 2.4 provides that, a taxpayer will not be liable to a tax geared penalty where Revenue is satisfied that the taxpayer has taken due care, and that the matter being corrected did not involve deliberate behaviour.

In the case of a transaction which has tax avoidance as one of its purposes the complexity of the transactions will not in any way serve to make the issue one of ‘technical adjustment’ and will not mitigate any liability to either a tax avoidance surcharge, or a tax geared penalty.

7.13. Qualifying Avoidance Disclosure - No Publication

A taxpayer who incurs a ’tax avoidance surcharge’ and/or makes a ‘qualifying avoidance disclosure’ will not have the details of his or her tax settlement published in the list of tax defaulters in accordance with section 1086A TCA 1997. See paragraph 5.2 of this Code of Practice for other statutory exclusions from the publication provisions.

7.14. Expression of Doubt

A taxpayer who has a genuine doubt as to the taxation treatment of a certain matter may submit an expression of doubt when they file their return. To make a valid expression of doubt a taxpayer must comply with a number of conditions as set out in the relevant legislation for each tax head.

Irrespective of the tax head, an expression of doubt will not be valid if a Revenue officer is of the opinion that the taxpayer was acting with a view to the evasion or avoidance of tax.

The submission of an expression of doubt will have no impact on whether a ‘tax avoidance surcharge’ applies.

7.15. Tax Avoidance Surcharges and Interest

The tables below outline the 'tax avoidance surcharge' and interest due in relation to the various types of 'qualifying avoidance disclosure', where a valid protective notification has been filed and for all other cases.

Transactions commenced after 23 October 2014				
			Tax Avoidance Surcharge	
		Interest	**Taxpayer Initiated Disclosure or not a Disclosable Transaction****	**Disclosable Transaction**
Protective Notification				
Protective notification filed	Assessment made using general anti-avoidance rule	Statutory Interest from assessment*	0%	30% (as PN would be invalid)
	Assessment made using a specific tax avoidance provision	Statutory Interest	30%	30%
Category of Qualifying Avoidance Disclosure				
Disclosure made within a period of 24 months of the end of the chargeable period in which the transaction was commenced and where a Revenue officer has not commenced any inquiry into the transaction		Statutory Interest	0%	3%
A disclosure, other than a disclosure above where a Revenue officer has not withdrawn or denied the tax advantage		Statutory Interest	3%	6%
A disclosure made after a Revenue officer has withdrawn or denied a tax advantage, but the taxpayer has not made an appeal.		Statutory Interest	5%	10%
A disclosure where a taxpayer has made an appeal against the withdrawal or denial of the tax advantage, but that appeal has not yet been heard by the Tax Appeals Commission.		Statutory Interest	10%	20%
Other Cases				
All other cases		Statutory Interest	30%	30%

*Interest will begin to accrue 30 days after a Revenue officer makes or amends an assessment.

** See paragraphs 7.9 and 7.10 for a description of a 'Disclosable Transaction' and a 'Taxpayer Initiated Disclosure'.

8. PAYE

8.1. Pay As You Earn (PAYE) Taxpayers

This Code applies equally to Revenue Compliance Interventions carried out to address compliance risks by PAYE taxpayers. It supersedes the previous **Compliance Code for Pay As You Earn (PAYE) taxpayers.**

All of the information set out in earlier Chapters in relation to the selection of cases for intervention, the conduct of an intervention, the possible penalties in the case of default, the procedures for finalising an intervention, appealing against a Revenue decision and settling any additional liabilities where these arise, apply equally to PAYE taxpayers. PAYE taxpayers may avail of the same opportunities to regularise the tax affairs as any other type of taxpayers. For full details see the relevant sections of this Code.

8.1.1. Who is a PAYE taxpayer?

A PAYE taxpayer is generally regarded as an individual whose main source of income is taxed under the PAYE system.

A taxpayer may still be regarded as a PAYE taxpayer where they have a limited amount of non-PAYE income (e.g. rental income or dividends). The limit for this treatment is *net* assessable non-PAYE income of less than €5,000 where *gross* non-PAYE income before expenses does not exceed €30,000. This applies even if there is no tax liability on the income because it is covered or largely covered by losses, capital allowances or other reliefs.

A person whose non-PAYE income exceeds either of these limits is considered to be a "chargeable person" and is required to register with Revenue for Income Tax and make annual returns.

The following payments, although fully taxable, are not included in assessing whether a person's non-PAYE income exceeds the limits for becoming a "chargeable person":

1. Department of Social Protection payments and pensions, and

2. Legally enforceable maintenance payments, excluding any part(s) of the payment that refers to a child or children.

It is important to note that proprietary directors are regarded as chargeable persons regardless of the level of their other income sources. A proprietary director is a director of a company who is the beneficial owner of or is able to control (either directly or indirectly), more than 15% of the ordinary share capital of the company.

8.1.2. Operation of the PAYE system

The PAYE system operates by employers making deductions of Income Tax, USC and PRSI from the salaries or wages of their employees and paying over these amounts to Revenue on the employee's behalf. Employers make these deductions on the basis of a "Revenue Payroll Notification", provided by Revenue, setting out the employee's entitlements to tax credits and rate bands for each payment.

For most PAYE taxpayers, at the end of each tax year, the correct amount of Income Tax, USC and PRSI will have been deducted by their employer from their earnings. In such cases, they will neither be due a refund nor owe any additional amounts. Some tax reliefs e.g. health expenses are generally claimed after the year ends and entitlements to refunds may arise then.

8.2. Compliance Advice for PAYE Taxpayers

As set out in 8.1.2, employers are required to operate Income Tax, USC and PRSI on all amounts of pay paid to their employees. The employer must deduct the required amounts at the time of each payment.

PAYE taxpayers play an important role in assisting employers in ensuring that the correct amounts of Income Tax, USC and PRSI are deducted from their pay. PAYE taxpayers should always ensure that Revenue is made aware of all the factors that affect the amount of tax deducted from their earnings at the earliest opportunity and should not assume that their circumstances are already known (to Revenue).

The following sets out important information to help PAYE taxpayers to meet their compliance obligations.

1. Tax Credit Certificate (TCC)

The TCC lists for the year, the employee's

- ✓ tax credits, reliefs and standard rate band,
- ✓ USC rates and rate band, and
- ✓ Employment Identifier (which is a unique reference set by the employer in respect of the employment).

PAYE taxpayers should check their TCC annually to ensure that

- ✓ they are entitled to the credits which have been allocated to them by Revenue; and
- ✓ that any additional tax credits which they may be entitled to are included.

Taxpayers can view, print or download a copy of their TCC in the myDocuments section of the myAccount facility which can be accessed at www.revenue.ie

2. Are the correct tax credits being claimed?

Tax resident taxpayers are entitled to a personal tax credit. Depending on their personal circumstances, additional tax credits may be due.

Any taxpayer who is unsure about his/her entitlement to a tax credit or who wishes to check the criteria required to qualify for a tax credit can check the Revenue website at www.Revenue.ie

3. Updating information relating to personal circumstances

Taxpayers should not assume that Revenue has access to all up-to-date information regarding their personal circumstances.

Therefore, they should keep Revenue informed of any changes in basic personal details such as a change of address as well as changes in their circumstances that may affect their entitlement to a tax credit(s).

In particular, significant “life events” such as:

- ✓ marriage or civil partnership,
- ✓ cohabitation,
- ✓ separation, or
- ✓ bereavement

should be brought to Revenue’s attention as soon as possible.

4. Record keeping

A taxpayer must keep all relevant documentation to support claims for tax credits, reliefs, allowances, etc. (e.g. a taxpayer claiming medical expenses must have receipts to support the expenses claimed). All supporting documentation must be kept for a period of six years from the end of the year to which the claim or liability refers.

Where taxpayer uploads receipts to the receipts tracker in myAccount or through ROS, they do not need to keep the original receipts.

5. Non-PAYE income

It is important to inform Revenue of any other non-PAYE sources of income for example:

- ✓ rental income,
- ✓ dividends,
- ✓ Casual work (e.g. income from giving grinds etc.)

Any additional non-PAYE income may be subject to tax or USC or both. Taxpayers should ensure that Revenue is made aware, as soon as possible, of any additional non-PAYE income so that the correct tax, USC and PRSI liability can be calculated and collected and to prevent the build-up of arrears of these liabilities.

6. Respond to queries from Revenue

A taxpayer should respond to any queries from Revenue in connection with their tax affairs as quickly and comprehensively as possible.

7. File a Form 12 if required

If a taxpayer is requested (by Revenue) to complete an income tax return (Form 12), they should do so as quickly as possible following the end of the tax year to which it relates. The quickest and easiest way to do this is through myAccount on www.revenue.ie.

At the end of every year, Revenue makes available to employees an Employment Detail Summary and a Preliminary End of Year Statement (PEOYS), The PEOYS is a preliminary calculation only. It will show whether an employee has paid the correct amount of Income Tax and Universal Social Charge (USC) for the year and is based on the information held in Revenue's records. If a PAYE taxpayer wishes to claim additional credits, reliefs or expenses(such as health expenses) or has other incomes to declare, they must complete an Income Tax return. Revenue will then generate a Statement of Liability confirming their position.

8.3. Interest

Specific rules for charging interest apply if an underpayment arises due to a taxpayer incorrectly claiming any tax credit, relief, allowance, rate reduction or exemption to which he or she was not entitled, or due to any refund paid on the basis of incorrect information.

For incorrect claims made after the end of the tax year, interest is chargeable from the date of any payment made by Revenue, arising from the incorrect claim, to the date on which the proceeds are fully repaid to Revenue.

Where the benefit of a tax credit, relief, etc. is incorrectly granted in-year via an individual's Tax Credit Certificate (TCC) so that they benefit through an increase in their take-home pay, the following will apply:-

- Where the TCC issued prior to the 1 July, interest will apply from the 1 July in that year to the date on which the monies are fully repaid to Revenue, or

- Where the TCC issued on or after 1 July, interest will apply from the following 1 January to the date on which the monies are fully repaid to Revenue.

Statutory interest is only chargeable on the tax liability that is agreed between the taxpayer (or tax agent) and the caseworker, or where the liability has been determined by the Tax Appeals Commission following an appeal. Therefore, there is no basis for any appeal in relation to statutory interest.

8.4. Additional Measures in relation to Incorrect Tax Credit Claims

All taxpayers (including PAYE taxpayers) are responsible for their own tax affairs. An incorrect claim can be made by the taxpayer, by a representative of the taxpayer with full consent, or by a person without the consent of the taxpayer. In all such cases the taxpayer will be required to return the associated (incorrect) amounts to Revenue.

In such cases, Revenue can:

Recoup any proceeds from the taxpayer on the basis of an incorrect claim

Charge interest on the proceeds of incorrect claims from the date the payment was made to the recipient

Agree a penalty for making an incorrect claim

Agree a penalty for underdeclaration of non-PAYE income

8.4.1. Penalties for persons assisting or inducing others

Where any person knowingly or carelessly assists in or induces another to make or deliver to Revenue any incorrect statement or declaration, he or she shall also be liable to a fixed penalty of €3,000 under Section 864(3) TCA 1997. Penalties for this category of default apply on a per claim basis.