

Tax Administration

1. Background

- 1.1. The first part of this paper reviews the general area of Revenue Powers following on from the work of the Revenue Powers Group and in the light of events and views expressed since the Report was published in February 2004. It also looks at more recent issues that arise in a consideration of Revenue Powers and their current contextual background. The second part of the paper looks at recent initiatives aimed at simplifying and lightening the administrative burden involved in claiming the most common reliefs, as well as measures designed to lighten the administrative burden on SMEs.
- 1.2. The issue of tax evasion is a sensitive public policy matter. The need for balance in this area between the rights of taxpayers as citizens and the prerogative of the State to enforce tax compliance is widely recognised.

2. Revenue Powers Group

- 2.1. The Revenue Powers Group Report was published in February 2004. It made recommendations in the general area of Revenue Powers and taxpayer safeguards. Since the publication of the report a number of the Group's recommendations have been implemented through legislation.
- 2.2. A provision was included, in a different form to that proposed by the Group, to allow Revenue access information held by a non-resident entity over which a domestic financial institution has control.
- 2.3. The publication limit for settlements with tax defaulters was increased from €12,700 to €30,000 with provision for the limit to be automatically revised every five years in line with the CPI to a rounded figure of the next €1,000.
- 2.4. The interest rate on underpaid tax was reduced to a daily simple interest rate equivalent to 10% for non-fiduciary taxes. Fiduciary taxes remained at 12%.
- 2.5. The 2% per month interest charge for 'fraud and neglect' and the 200% tax-geared penalty for fraud were repealed.
- 2.6. An enabling provision was introduced to facilitate automatic reporting. The provision allows the Revenue Commissioners to make regulations with the consent of the Minister of Finance requiring financial institutions and State bodies to make an annual return of the names, addresses and PPS Numbers of customers and others resident in the State to whom interest or other profit payments are made [see para. 7.1].
- 2.7. Power for Revenue to apply to the District Court for a search warrant specifically targeted at the investigation of a criminal Revenue offence.
- 2.8. A provision to require third party information to be returned in electronic format.
- 2.9. A provision to require Public Bodies that make payments in the nature of rent or rent subsidy to include the PPSN of the landlord in their returns to Revenue.

2.10. The power to allow an authorised officer of the Revenue Commissioners to question suspects in Garda custody, who have been arrested and detained by the Gardaí in respect of certain serious Revenue offences.

3. Implementation of Other Recommendations of the Group

3.1. Revenue and the Office of the Director of Corporate Enforcement signed a Memorandum of Understanding governing information exchange between the two bodies which largely meets the Revenue Powers Group's concerns.

3.2. There has been significant progress in the targeting of audits through greater focus on risk.

3.3. Regional 'Powers Officers' have been appointed within Revenue to manage the use of powers in each Region.

3.4. Compliance costs are reduced where possible and are taken into account when considering the introduction of new powers.

3.5. Revenue will aim to examine records at the taxpayer's premises where the removal of records would prevent the business carrying on in an orderly manner.

3.6. Revenue gives more prominence to the External Reviewers and appointments will be made using the Public Appointments Commission.

4. Other Measures to Counter Evasion/Avoidance

A number of other issues, within the general area of Revenue Powers, which did not arise from the recommendation of the Revenue Powers Group, have been addressed in recent years:

4.1. Creation of new Revenue criminal offences to allow prosecutions against persons who engage in fraudulent tax evasion or who facilitate such tax evasion

4.2. Powers to allow Revenue to inspect records held by an insurance company where they have reason to believe tax evasion has taken place.

4.3. A provision to ensure that details of any income and funds received in respect of foreign property, by an Irish letting agent acting for an Irish taxpayer, be provided to the Revenue Commissioners by the letting agent on request.

4.4. Changes to Protective Notification (PN) regime (which provides protection against interest and surcharge where a person discloses an avoidance scheme to Revenue) to make it more effective and to provide more safeguards for taxpayers.

5. Finance (No. 2) Act 2008

5.1. The term "profession" was redefined restrictively to ensure that the protection for professional confidentiality may only be relied upon in the situations for which it was originally intended, i.e. doctor / patient confidentiality and solicitor / client legal privilege. This measure arose from attempts by Revenue to obtain data on the offshore property markets from Estate Agents who claimed privilege.

5.2. Introduction of a provision requiring those involved in setting up off shore trusts to report details to Revenue. Revenue has put in place a Voluntary Disclosure Initiative for those taxpayers who may have placed untaxed funds in such structures. The deadline date for the submission of a notice of intention to make a voluntary disclosure was 1 September 2009. The disclosure and payment of liabilities must be made by 31 October 2009.

- 5.3. Revenue's civil penalty regime for all taxes and duties (except customs) was reformed to ensure its compatibility with the provisions of the European Convention on Human Rights which provides that a person should be given an opportunity to have an independent tribunal examine whether that person is liable to a civil penalty for contravention of tax or duty legislation. The new regime provides that where Revenue and a taxpayer are unable to agree settlement terms, a civil penalty can not be imposed by Revenue unilaterally. Instead a court must determine that the person concerned has actually contravened the provision in question. In addition, the court decides the appropriate level of penalty to apply in the particular circumstances of a case.
- 5.4. The new civil penalty regime also put on a statutory footing Revenue's administrative regime for mitigating penalties by reference to the nature of the taxpayer's behaviour and degree of disclosure and cooperation and updated a number of fixed penalty levels.
- 5.5. In addition, the recovery of penalties from the estate of a person after death was also reformed to ensure compatibility with the European Convention on Human Rights. Penalties can now only be recovered from an estate where the person either agreed in writing to pay the penalties or a court has determined, before the person's death, that the person was liable to the penalties.
- 5.6. A provision was included to allow Revenue to appoint a competent person to carry out pre-registration examination of vehicles to ascertain that the necessary requirements for registration of the vehicle and the proper operation of VRT have been complied with before registration of the vehicle take place. From March 2010, customers who wish to register vehicles, new and used, brought into the State outside the dealership network, (essentially private imports) will present the vehicle for pre-registration examination at an NCT test centre.

6. Finance Act 2009

The interest rate on underpaid tax was reduced to a daily simple interest rate equivalent to 8% annually for non-fiduciary taxes and around 10% annually for fiduciary taxes.

7. Other Developments

7.1. Automatic Reporting of Interest Paid

On 6 May 2008 the Revenue Commissioners, with the consent of the Minister for Finance, made regulations requiring certain financial institutions to make automatic returns of interest and other similar payments to them. The regulations apply to banks, building societies, credit unions and the Post Office Savings Bank where accounts or investments pay more than €635 in a year. Regulations were also made on 3 July 2009 to include EU passported financial institutions operating in Ireland.

7.2. Voluntary Disclosure Initiative

In the light of the 2008 regulations, the Revenue Commissioners put in place a Voluntary Disclosure Initiative for taxpayers who had €100,000 or more in aggregate in the accounts at any time between 1 January 2005 and 31 December 2007. A full disclosure with all due tax, interest and penalties had to be made by 15 January 2009. Disclosures were received from 1,232 persons and as at September 2009 €75.2m was collected from the Voluntary Disclosure Initiative.

7.3. Mandatory e-Filing

In September 2008 Revenue made regulations providing for mandatory electronic filing and paying of certain tax returns and tax liabilities by Government Departments and Offices, State Bodies and larger companies in two phases. Phase 1 applies to returns to be filed from 1 January 2009 by central Government Departments and Offices and a company or other body whose tax affairs are dealt with by Revenue's Large Cases Division. Phase 2 will apply to the

semi-state sector and companies required by the Companies Acts to append audited accounts to their annual return. Revenue are looking at the extension of mandatory e-Filing.

7.4. E-Stamping

From December 2009, the Revenue Commissioners will introduce a new electronic system for stamping instruments and for paying stamp duty. Under the new system a stamp certificate will be attached as a separate document to the instrument itself. Each stamp certificate will be identified by a unique security number and each certificate will relate solely to one particular instrument. A counterpart instrument will also have its own unique security number. Under the new system, except in adjudication cases, the focus of Revenue checks will move from pre-stamping examination of instruments to post-stamping assurance checks and audits of a new stamp duty return.

7.5. Tax Information Exchange Agreements (TIEAs)

Seven TIEAs have been negotiated and signed with Bermuda, Cayman Islands, Gibraltar, Guernsey, Jersey, Anguilla and the Turks & Caicos Islands. TIEA negotiations are ongoing with Cook Islands, Samoa, Antigua and Barbuda, the Bahamas, the British Virgin Islands, St. Lucia, and St. Vincent and the Grenadines.

8. Appeal Provisions

8.1. The general question of the Office of the Appeal Commissioners, its corporate structure and legal basis has been under consideration following reports by the Steering Group on the Revenue Commissioners (2000) and the Public Accounts Committee (Final DIRT Report 2001). The Government decided in June 2001 to proceed with the preparation of draft legislation to provide a new statutory footing for the Revenue Commissioners (a Revenue Bill) and for the Office of the Appeal Commissioners. It was decided to advance the Appeal Commissioners legislation in tandem with the Revenue Bill.

8.2. The Appeal Commissioners role was also examined by the Law Reform Commission in its Report on a Fiscal Prosecutor and Revenue Court (2004) and the LRC made a number of additional recommendations concerning the establishment and administration of the Appeal Commissioners.

8.3. The Commission on Taxation indicated in their recent report that a number of submissions received by them raised concerns about the appeal process. The structure of the appeal process and access to previous decisions of the Appeal Commissioners were particular points of concern raised with the Commission. In relation to the latter point the Commission noted that only a very small number (34) of appeal decisions have been published by the Appeal Commissioners. The Commission are of the view that it is appropriate that the Appeal Commissioners publish all their determinations in a timely manner. This is consistent with the recommendations on access to appeal determinations already made by the Law Reform Commission and the Revenue Powers Group.

8.4. Changes in the scope of appeals would be likely to have substantial resource implications for the Office of the Appeal Commissioners. Changes in the administrative systems of the Office that would provide greater transparency through the publication of decisions and an annual report could also be addressed in this context.

9. New Administrative Initiatives

9.1. Revenue are currently working on proposals to simplify the administration of CAT. The new procedures will involve a full self assessment system with a fixed pay and file date; integrating CAT into the risk assessment system; streamlining the interaction of taxpayers / Probate Office / Revenue; reducing the number of certificates and clearances required.

Revenue have just completed a public consultation process which indicated broad agreement to the proposals.

- 9.2. A proposal is to be considered for inclusion in Finance Bill 2010 which will allow the Property Registration Authority and Revenue to exchange information that is relevant to their functions relating to (a) stamp duty and (b) property registration. This is to support the introduction of Revenue's new electronic system for stamping instruments and for paying stamp duty.
- 9.3. A proposal is being developed for consideration in context of the Finance Bill to require motor insurers to make 3rd party returns to Revenue of insurance provided to persons with non-State registered motor vehicles.