

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 alignment of collection and recovery provisions. The third part of the paper looks at Revenue's activities in tackling the Hidden Economy.
- 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. 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.
- 2.5 The 2% per month interest charge for 'fraud and neglect' and the 200% tax-gearred penalty for fraud were repealed.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.
- 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 Power for Revenue to require third party information to be returned in electronic format.

- 2.9 Power for Revenue 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.
- 3 Other recommendations of the Group have been administratively implemented by the Revenue Commissioners. These include:**
- 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 A number of other issues within the general area of Revenue Powers which did not arise from the recommendation of the Revenue Powers Group were addressed**
- 4.1 Power to allow Revenue to pursue prosecutions against persons who engage in tax evasion or who facilitate 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 Introduced a protective notification regime in Finance Act 2006. The primary purpose of this measure is to encourage taxpayers and their advisers to be open with Revenue in relation to transactions that may be tax avoidance transactions within the meaning of section 811 - the general anti-avoidance provision.

5 Finance Act 2008

The following measures were introduced in Finance Act 2008:

- 5.1 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 Gardai in respect of certain Revenue offences. The offences to which the power can apply are serious indictable offences under Revenue law which are "arrestable offences" within the meaning of section 2 of the Criminal Law Act 1997. These are offences which may be punished by imprisonment for a term of five years, or by a more severe penalty.

- 5.2 The power 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, must be provided to the Revenue Commissioners by the letting agent on request.
- 5.3 Amended the protective notification regime which was originally introduced by Finance Act 2006 with a view to making it more effective. The response to the original 2006 initiative was very disappointing with only 8 notifications received and all of these emanating from the same group of companies. The measures provided for in Finance Act 2008 are as follows:
- An increase to 20% from 10% of the surcharge that applies to the tax the taxpayer sought to avoid.
 - A 2 year limit to the time period within which Revenue must form an opinion that a transaction is a tax avoidance transaction, where a full protective notification is made.
- 5.4 The changes made in the 2008 Finance Act are already having some impact, with 55 new protective notifications received by the Revenue Commissioners since its enactment 5 months ago. It should be noted however that the significant increase in the number of protective notifications does not translate into a similar number of tax avoidance schemes or arrangements coming to the attention of Revenue, as many of these notifications relate to the same scheme. That said, it does appear that taxpayers and their advisers are now treating the provisions of section 811A more seriously and taking the opportunity to avail of the protections afforded by the section. Revenue are in the process of working through the protective notifications and related schemes with a view to determining if they are suitable for further consideration under section 811.

6 Automatic Reporting of Interest Paid

- 6.1 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, buildings societies, credit unions and the Post Office Savings Bank where accounts or investments pay more than €35 in a year.
- 6.2 The power to make these regulations was provided for in the Finance Act 2006 and was prompted by a recommendation of the Revenue Powers Group that there should be automatic reporting to Revenue of payments made by financial institutions, life assurance companies, collective investment funds and Government Departments and agencies. The Revenue Commissioners are developing further proposals to extend automatic reporting to payments made by the remaining categories.
- 6.3 Details of interest paid by banks, building societies and Post Office Savings Bank during 2005 and 2006 must be returned by 15 September 2008 while the details for 2007 must be returned by 31st October 2008. For 2008 and subsequent years returns must make a return to Revenue by the following 31st March. Credit unions must report interest for 2008 onwards and dividends for 2009 onwards.
- 6.4 In the light of these new regulations, the Revenue Commissioners have put in place a Voluntary Disclosure Initiative for taxpayers who had €100,000 or more in aggregate in

the accounts (which included funds not previously declared for tax) at any time between 1 January 2005 and 31 December 2007. The deadline date for the submission of a notice of intention to make a voluntary disclosure is 15 September 2008 (coinciding with the first reporting deadline). A full disclosure with all due tax, interest and penalties must be made by 15 January 2009.

7 Appeal Provisions

- 7.1 Following a recommendation of the Law Reform Commission in 'Report - A Fiscal Prosecutor and a Revenue Court', Revenue sought to introduce an appeals mechanism (similar to the appeals system in place for tax assessments) in the Finance Bill 2008 in respect of civil penalties imposed for contravention of tax and duty legislation. At present there is no mechanism for a taxpayer to appeal a tax-gearred penalty and this may be in contravention of Article 6(1) of the European Convention on Human Rights.
- 7.2 Arising from concerns of the Attorney General's Office that the Finance Bill 2008 proposals did not fully address matters, Revenue are re-examining matters in conjunction with that Office with a view to bringing forward proposals for the Finance Bill 2009.
- 7.3 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.
- 7.4 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.
- 7.5 However, the terms reference of the Moriarty Tribunal of Inquiry includes making findings concerning the independence of Revenue. The previous Minister indicated in a reply to a Dáil Question that the publication of the Revenue Bill would be addressed in the context of the availability and timing of the Report of the Tribunal. The first part of the Moriarty Tribunal report was published in December 2006. It stated that the Tribunal was seeking the views of Revenue and others before finalising a specific recommendation in this area. These recommendations will appear in the second and final part of the report which has yet to be presented.
- 7.6 While the Moriarty tribunal has completed much of its work it appears that further delays in the publication of its final report cannot be excluded. It would be appropriate to consider whether some priority improvements to the appeals system might not be advanced at this stage.
- 7.7 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.

8 New Powers for Revenue

For 2009 work is being progressed on a number of measures which include:

- 8.1 The introduction of a provision of appeal against tax-gear penalties. As mentioned above, this provision was not proceeded with in Finance Bill 2008 after concerns were raised by the Office of the Attorney General. It is expected that the revised provision will address any of the issues raised by the Office of the Attorney General.
- 8.2 To provide for broader information sharing by Revenue with the Private Residential Tenancies Board (this may take place through amendment of the Residential Tenancies Act, 2004). The matter will also require consultation with the Data Protection Commissioner.
- 8.3 Amendments to the definition of “ financial institution” in the relevant sections of the Taxes Consolidation Act 1997 to extend the interest reporting to branches of EU credit institutions who are entitled to operate in Ireland without the need of authorisation by the Central Bank of Ireland. This will ensure parity of treatment for the purposes of interest payments reporting and Revenue access to information for financial institutions operating under the authorisation of the Central Bank and institutions operating here under passport arrangements.
- 8.4 Revenue are seeking to include a provision to provide for the mandatory reporting by estate agents of foreign properties bought and sold to, or by, Irish residents. In order to address concerns by estate agents concerning client confidentiality it is proposed to define the term “profession” to ensure professional privilege for the purposes of the application of Revenue powers relates only to doctor/patient confidentiality and solicitor/client privilege.
- 8.5 There may also be a number of other items for consideration in the context of the Finance Bill.

9 Alignment of Collection and Enforcement Provisions

- 9.1 Revenue are seeking legislation in the Finance Bill 2009 to align the collection and recovery provisions across all taxes and duties (except customs). The proposed legislation will modernise, simplify and streamline the current provisions. It will also increase consistency across all taxes and duties and improve administrative efficiency.
- 9.2 In rationalising the existing provisions there will be an overall reduction in the overall amount of legislation in this area. Also a number of redundant or unused collection powers will be repealed while at the same time there will be some increase in the scope of Revenue’s collection and recovery provisions. The increases proposed are:
 - Recovery of tax by sheriff/county registrar to be extended to excise duties.
 - Provisions regarding the taking of bankruptcy proceedings to be extended to stamp duties and excise duties.
 - The possibility of avoiding the offset provisions in section 1006A of the Taxes Consolidation Act 1997 by assigning a right to a repayment to a connected person will be countered. This arises because of a recent decision of the Court of Appeal in the UK where it was held that it was possible for a taxpayer to avoid the offset of a VAT repayment against another tax liability by assigning the repayment to another person.

9.3 These measures were proposed for inclusion in the Finance Bill 2008. However, for a number of reasons (e.g. size of, and delay in preparing, text) it was decided to defer the proposed legislation for consideration for Finance Bill 2009.

Revenue's Activities in Tackling the Hidden Economy

10 Hidden Economy Monitoring Group (HEMG)

10.1 The Hidden Economy Monitoring Group was established in 1990 at the request of the Central Review Committee of the Programme for National Recovery. It is chaired by Revenue and includes representatives of D'FSA, D'ETE, NERA, IBEC, SFA, CIF, and ICTU. The objective of the group is to provide a forum for the exchange of views on the effectiveness of measures introduced in combating the "hidden economy".

10.2 Examples of the most recent achievements of this group include:

- A re-launch of an updated Code of Practice for Determining the Employment and Self-Employment Status of Individuals
- New procedures to strengthen the employment versus self employment distinction in the construction, forestry and meat processing sectors
- Exploring issues relating to ethnic minority workers and entrepreneurs.

11 Joint Investigation Units

11.1 New legislation was introduced in 2007 to enable authorised officers of DETE and NERA to join with DSFA and Revenue to work together in the Joint Investigation Units (JIU's) which had been operating between Revenue & DSFA for many years. The role of the JIUs is to address areas where evidence suggests non-compliance exists. The Social Welfare and Pensions Act 2007, provides for exchanges of employment information between DETE, NERA, DSFA and Revenue. A number of sectoral type projects have already been initiated e.g. construction and security sectors. Revenue has now assigned 32 full time officers to JIU duties. The Revenue JIU staff will, in time, take over work such as site visits to building sites thus releasing some highly-trained auditors to tackle evasion of tax in other sectors. Revenue has over 1,000 audit, investigation and compliance officers who do "outdoor" work in combating tax evasion. For example, in 2007, Revenue completed over 14,000 audits as well as over 200,000 compliance verification checks on businesses.

12 Construction Sector Project

12.1 Revenue initiated a national project for the sector in 2006. The project was tackled on three main fronts viz. legislation, information technology enhancements and changes to administrative structures and information. There was also a significant emphasis on site visits which were enhanced by the information technology and various administrative changes. The results from the site visits are summarised in the Table below.

	2006	2007	To 30/6/08
No. Site Visits	1,615	1,076	197
No. of Unregistered Cases	1,188	836	97
No. of subcontractors re-classified as employees	447	247	94

No. of additional taxes registered	2,479	1,884	767
No. of C2's withdrawn	712	458	176
No. of C2's refused	456	605	192

- 12.2 In 12 months to Dec 2007, 3,807 construction audits were finalised, and €130m has been collected in tax, interest and penalties from this activity as well as €15m of arrears – 40,161 construction sector assurance checks were carried out, yielding €2m.
- 12.3 In the 6 months to June 2008 1,667 construction audits were finalised, and €9m has been collected in tax, interest and penalties from this activity as well as €2.8m of arrears – 15,339 construction sector assurance checks were carried out, yielding €6m.

13 Compliance Programmes

- 13.1 Revenue tackles the problem of the hidden economy through their routine audit and compliance activities. Audits take place in cases where Revenue's risk profiling indicates a need for a specific intervention. Revenue's main focus is to select cases for intervention based on various risk indicators and other information available. The targeted approach is greatly enhanced by the Risk Evaluation Analysis and Profiling System (REAP). This system allows for the screening of all tax returns against sectoral and business norms and provides a selection basis for checks or audits. Data and intelligence gathered from sectoral work is fed back into REAP to complement the risk rating rules and enhance the ability to identify sectors posing the greatest risk to Revenue in future.
- 13.2 Special Compliance Districts throughout the country actively pursue intelligence and enquiries surrounding all aspects of the hidden economy. Various projects are organised ranging from geographical projects, to markets, concerts, cash businesses etc. The results from these are reflected in the general audit and compliance results from audits, assurance checks, site visits etc.

15 Conclusion

- 15.1 The TSG is invited to discuss the various issues raised by this paper.