

Tax Strategy Group

Tax Administration Issues

Introduction

1. This paper deals with tax administration issues which can be broadly categorised as systems and processes that:
 - Ensure effective and efficient tax collection.
 - Enhance accuracy and veracity of tax compliance.
 - Counter tax evasion and tax avoidance
2. At the outset, this paper briefly reviews tax administration initiatives in recent Budgets and Finance Bills. It then discusses current initiatives and concludes by highlighting a number of potential new developments.
3. In considering tax administration, particularly those aspects relating to evasion and other criminal activity, the Tax Strategy Group will be aware that it is a sensitive public policy matter. It will also recognise that it is imperative that a correct balance is struck between ensuring that taxpayers can earn an income and enjoy their property without undue interference from the State and the need for the State to be able to collect tax and enforce the tax system effectively in order to fund public expenditure. In essence, there is a fine balance between the requirement for taxpayers to pay the correct amount of tax at the right time with the statutory obligation for the Revenue Commissioners to ensure that this is done in the most efficient and effective manner while also optimising customer service delivery.

Recent Initiatives

Overview

4. Tax administration initiatives are not all about securing additional investigative powers for the Revenue Commissioners and increased information flows to Revenue. They are mainly about reforming processes so as to reduce extraneous bureaucratic processes (red tape) while also improving the overall administrative experience for taxpayers, their agents and Revenue. In this work, the main concern is to modernise and streamline administrative and legal processes, dispense with antiquated clearance processes of very little utility, introduce mandatory electronic filing of complex tax returns and align filing and payment dates with those applicable to other taxes.

E-Stamping – Finance Act 2008 and Finance Act (No. 2) 2008

5. Another example is the e-Stamping project where a very bureaucratic and labour-intensive process involving the presentation of actual legal instruments to one of three Revenue offices for examination by Revenue staff followed by the impressing of the appropriate stamp on the instruments and the payment of the duty over a counter was replaced by an on-line electronic pay-and-file service.

6. Provision was made in Finance Act 2008 and Finance (No. 2) Act 2008 to allow Revenue to make Regulations concerning the implementation and operation of a new electronic stamping (e-stamping) system. This was a major strategic development which saw the introduction on 30 December 2009 of a self-service e-stamping system using the existing Revenue-on-line service (ROS). E-stamping provides practitioners with a full 24 hour, 7 day on-line self-service process in up to 90% of cases. It allows a practitioner, to file, pay and receive a stamp certificate electronically, without having to present the deed to Revenue.
7. The e-stamping system has had many benefits for Revenue customers. It is cost-effective, in that it reduces the time taken to stamp an instrument and avoids delays associated with bringing instruments to a particular location to have them stamped. It also facilitates parallel developments with other government initiatives such as those of the Property Registration Authority and the advancement of e-conveyancing.

CAT Modernisation – Finance Act 2010

8. Finance Act 2010 also made provisions for the modernisation and reform of the Capital Acquisitions Tax (CAT) system. The main changes, most of which came into effect from mid-June 2010, included:
 - removing the requirement for Revenue certification of the Inland Revenue Affidavit;
 - bringing CAT within the self-assessment system by introducing a “pay and file” regime;
 - providing that claims for reliefs and exemptions must be made electronically;
 - providing a single payment date for Gift Tax and Inheritance Tax (31 October);
 - abolishing “secondary accountability” and the provision that CAT is a charge on property;
 - allowing for payment by annual instalments; and
 - allowing Revenue to raise a CAT assessment where no return has been delivered.
9. The combination of the simplification and modernisation measures will eliminate the need for up to 75% of previously required documentation; reduce compliance costs; streamline procedures between Revenue and the Probate Office; provide faster, simpler and more straightforward processes for taxpayers and agents; and release customer service staff for redeployment for audit and compliance programmes.

Revenue Powers

10. As regards Revenue Powers, the Revenue Powers Group Report was published in February 2004 and it contained 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. Further changes have also been made as required; a number of these are discussed below.

Current Initiatives

(i) *Mandatory Disclosure of Tax Avoidance Arrangements*

11. New Mandatory Disclosure obligations have been placed on promoters of certain tax-avoidance transactions by the Finance Act 2010¹. Under the provision, promoters (and scheme users in certain circumstances) are required to disclose to Revenue details of transactions that have as a main benefit the obtaining of a tax advantage and that match certain features set out in the legislation.
12. Provision of the required information on transactions by promoters or users under the mandatory disclosure rules will be on a non-prejudicial basis if they meet certain 'hallmarks'. There will be no presumption or inference that a transaction disclosed under the rules is a tax avoidance transaction. Equally, the fact that a transaction may not come within the disclosure requirements cannot be regarded as an indicator that the scheme is not a tax avoidance transaction.
13. A consultation document along with draft Regulations, draft guidance notes and draft forms was published on the Revenue website on 17th June. The consultation period expired on 15th September 2010. The consultation has allowed interested and affected parties to comment on the draft regulation etc., with a view to targeting the new regime to best effect.
14. The comments received during the consultation process are currently being considered in Revenue. A submission will then be prepared for the Minister for Finance summarising the views received and Revenue's final proposals. The final regulations can only be made by Revenue with the formal consent of the Minister for Finance. Subject to the obtaining of this consent, it is envisaged to have the Regulations in place and operational by 1st January 2011. There may be a requirement to make some minor changes to the mandatory disclosure provisions in Finance Bill 2011 to reflect issues which have arisen in the consultation process.

(ii) *Automatic Reporting by Financial Institutions and Government Bodies*

15. The Finance Act 2006² introduced enabling legislation allowing the Revenue Commissioners to make regulations requiring financial institutions and Governmental Bodies to make returns of payments made to other persons. The measure was introduced on foot of various recommendations made by the Revenue Powers Group³. In 2008, Regulations⁴ were made that required financial institutions to report interest payments to Revenue.
16. Consultation is now taking place with financial institutions to extend the reporting requirements to cover Investment Undertakings and Assurance products. Consultation is also taking place with Government Bodies in respect of payments

¹ Section 149

² Section 125.

³ The Revenue Powers Group was set up by the Minister of Finance in March 2003 under Mr. Justice Murphy to report on the main statutory powers available to Revenue, to determine the effectiveness and appropriateness of such powers and to determine the need for further powers or the streamlining of existing powers.

⁴ Return of Payments (Banks, Building Societies, Credit Unions and Savings Banks) Regulations 2008 (S.I. No. 136 of 2008).

Collection Issues

22. Revenue will be bringing forward proposals in the area of tax collection designed to relieve logjams and blockages that frustrate the collection/recovery effort or that would enhance existing collection/recovery efforts, for instance the removal of the situation where a PAYE estimate raised on an employer for non-submission of Form P35, can be displaced by a “nil” return.

Revenue Powers

23. In addition to some of the measures already mentioned in this paper, Revenue are considering what further specific measures might be introduced to limit the growth of the shadow economy and to assist them in countering tax and customs criminal-related activity. It is likely that additional provisions in this area will be proposed in Finance Bill 2011. Budget and Finance Bill 2010 contained a number of developments in this area.

Publication of Tax Defaulters

24. At present, tax defaulters are published by Revenue in a list that is published quarterly. The list includes those who have made a settlement with Revenue that exceeds €30,000 and have/are paying a settlement incorporating tax, interest and penalty. A number of cases have been identified where there are clear and significant liabilities, but defaulters are trying to avoid publication by simply refusing to agree a formal settlement while in some instances paying the outstanding liabilities. Revenue is reviewing the rules with a view to ensuring that publication cannot be avoided in such cases.

Agent Mediated PAYE services

25. Revenue are developing legislative proposals to allow:

- (a) regulation of PAYE tax agents providing refund or credit claim services to taxpayers by way of a Scheme of Approval; and
- (b) payment of refunds directly to the client bank account of certain approved tax agency services, subject to compliance with additional conditions and safeguards to be set out in a Scheme of Approval.

26. In addition, Revenue need to ensure that proper assessment provisions, including civil penalties and interest, can apply in the case of fraudulent or negligent PAYE/TRS claims, particularly claims made via electronic channels.

Civil Partnership Bill

27. Extensive technical changes will be needed to most tax codes in order to adapt them for Civil Partnerships. The legislative review may give rise to policy issues that may need to be considered.

Simplification/Modernisation of Self Assessment system

28. Revenue are currently examining the legislation governing the self assessment system (including the payment of tax) as it applies to income tax, corporation tax and capital gains tax with a view to its modernisation, simplification and clarification (e.g. the current section governing the date for payment of self assessed tax is 18 pages⁷ long).

Appeal Provisions

29. The Commission on Taxation indicated in their 2009 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 was 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.

30. Similar representations have recently been made to the Department by representative groups and preliminary discussions have taken place with a view to seeing how the issues raised could be best addressed.

31. The TSG is invited to discuss this paper.

⁷ Section 958 TCA 1997 (Bloomsbury Professional Tax Acts 2010 edition)