

Tax Strategy Group

Tax Administration Issues

1. Introduction

Tax Administration, in the context of this paper, can be broadly categorised as the systems and process that:

- ◆ Ensure effective and efficient tax collection.
- ◆ Improve the accuracy and veracity of tax compliance and improve and simplify the administrative experience for taxpayers.
- ◆ Counter or deter unacceptable tax avoidance schemes and practices.
- ◆ Counter tax evasion, tax fraud, shadow economy activity, smuggling (both fiscally-related such as cigarettes and socially-related such as drugs, counterfeit and other prohibited goods) and other organised tax/duty-related criminal activity (such as oil laundering, fraudulent repayments, etc).

In looking at ways for tackling unacceptable tax avoidance and serious tax/duty criminal-related matters the Tax Strategy Group will appreciate that these can give rise to sensitive public policy issues. It is important, having regard to prevailing economic circumstances, for the right balance to be struck between ensuring that fully compliant 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 effectively tackle serious tax and duty criminal activity and unacceptable tax avoidance.

Also given the urgent need to maximise tax/duty flows into the Exchequer, there is a real need to maximise the efficiency of the tax/duty system in order to ensure that taxes/duty are collected from those who may try and frustrate or delay paying the taxes/duties due.

This paper sets out the areas Revenue are currently examining in the broad area of tax administration. Some of these measures may need to be implemented in the Finance Bill 2012. Others do not need primary legislation, but can be implemented using existing Revenue powers to make regulations (in some cases this requires the consent of the Minister for Finance). In the time available it may not be possible to progress all these items sufficiently for implementation in Finance Bill 2012 and some items may need to be held over to Finance Bill 2013. Indeed, between now and the preparation of the Finance Bill other important issues may arise which will need to be addressed urgently. However, it is considered important that the TSG be briefed on the various issues that are currently active in the broad area of tax administration. The paper has 5 Parts-

- ◆ **Part 1** deals with tax collection and enforcement.
- ◆ **Part 2** sets out a range of proposals to counter tax evasion and shadow economy activities.
- ◆ **Part 3** looks at tax avoidance issues.
- ◆ **Part 4** suggests ways in which the tax administration framework may be improved to make it simpler and easier for compliant taxpayers to do “business” with Revenue.

and ability to service instalment arrangements may be adequately assessed; as well as further options for withholding taxes in certain areas.

Part 2: Measures to Counter Tax Evasion and Shadow Economy Activities

2.1 Illegal Trading in Mineral Oils

The illegal trade in mineral oils, and oil laundering in particular, represents a serious threat to the Exchequer. Action against this activity is, therefore a key priority for Revenue.

Revenue is working on a mix of proposals (both legislative and operational) including strengthening the legal framework governing the trade in mineral oils, including a new process for the licensing or authorisation of persons dealing in market oil; xxxxxxxxxxxxxxxx
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xxx; enhanced cooperation with other key players in combating the illegal trade, particularly UK Revenue and Customs.

2.2 Credit and Debit Card Transactions

While it might be expected that the increase in the use of payment (debit and credit) cards for retail purposes would reduce opportunities for tax evasion, there is in fact evidence of increased evasion in this area, which takes the form of using multiple terminals at the point of sale, linked to separate financial service providers, and excluding the receipts from one or more terminals from the books and records of the trader.

Revenue will be proposing that, in line with similar developments in other jurisdictions, card payment service providers (generally known as “merchant acquires) be required to make regular automatic returns to Revenue of all amounts credited to traders. These returns can then form part of Revenue’s risk evaluation and analysis for audit purposes (e.g. the gross credit/debit card receipts can be compared directly with the sales of a business).

2.3 Extension of Automatic Reporting of Payments to Assurance Companies

Revenue², with the consent of the Minister for Finance, can make regulations which require certain persons to automatically report to Revenue details of relevant payments that they make to their customers. Regulations are already in place for Financial Institutions (2008 and 2009) and for Government Departments/agencies (2011).

Revenue, in conjunction with Department of Finance, have been in consultation with the Irish Insurance Federation to finalise regulations to extend the automatic reporting of payments by Assurance Companies in respect of policies which have an investment element. These consultations are now nearing completion and it is expected that the regulations will be made by Revenue, with the consent of the Minister, within the next couple of months.

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² Under section 891B of the TCA 1997 (introduced in Finance Act 2006)

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3.2 General Anti-Avoidance Rule (GAAR)

A High Court Judgement (“Hans Droog” Case) has found that provisions elsewhere in tax law effectively overrule the provisions in our GAAR that allowed Revenue to issue an opinion that a transaction is a tax avoidance transaction outside of the normal 4-year time limit. In 2008 legislation was enacted that sought to anticipate and minimise any damage from an unfavourable decision in the case. However, some aspects of the Judgement (which is currently being appealed to the Supreme Court) gives rise to further concerns and there may be a need to further clarify the law in this area to ensure that tax payable by virtue of a finding that a transaction is a tax avoidance transaction can be effectively collected.

Part 4: Improvements to Tax Administration Systems

4.1 Tax Treatment of Receivers

The increase in the number of receivers appointed over the last few years⁴ and the fall out from the property crash has highlighted a number of difficulties in taxation law in the area of receivers. Proposals are being developed by Revenue to clarify and simplify the taxation rules applying. As an interim measure Revenue are working on publishing a document setting out what it sees as the rules applying in this area and what it would regard as acceptable practice pending clarification of the law. The problem areas include –

- ♦ **The rules for computing taxable income, gains and tax liability.** XXXXXXXXXXXXXXXX
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- ♦ **The treatment of balancing events under capital allowances provisions and “section 23” clawbacks.** XXXXXXXXXXXXXXXX
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- ♦ **Who pays tax.** XXXXXXXXXXXXXXXX Where
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⁴ For example according to “InsolvencyIreland.ie”, an online practitioner Journal, there were 57 corporate receivers appointed in 2008; 124 in 2009; 225 in 2010; and 163 in 2011 to end July.

4.2 Stamp Duty: Introduction of full Self Assessment

Stamp Duty currently contains certain features that correspond broadly with a self assessment system – a “pay and file” system is in place (that is, stamp duty returns are filed and stamp duty is paid by reference to the return made without any interference by Revenue); interest and penalties apply on an automatic basis to late filings; an expression of doubt facility is in place where a filer has a genuine doubt as to the stamp duty treatment applying to a particular transaction.

However, there are a number of features in the stamp duty system that still require to be addressed in order for it to be placed on a full self assessment basis. This includes matters such as removing adjudication⁵ by Revenue in advance of filing; reviewing the need for “certificates” in instruments; modifying the way Revenue makes assessments; introduction of a late filing surcharge; examining penalties and publication provisions to ensure they correspond with self-assessment provisions in place for other taxes – including making the e-stamping return subject to Revenue audit in the normal way.

As consultation with stakeholders is necessary (this is already underway) and as the Revenue’s eStamping system requires adaptation and further development, any proposals for inclusion in the Finance Bill 2012 will be subject to an appropriate commencement provision that will allow for the activation of the measures at the appropriate time.

4.3 Simplification/Modernisation of Self Assessment for IT/CT/CGT

Revenue are currently, in conjunction with tax practitioner through the TALC forum, 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 tax is 18 pages long with a further 3 pages of notes⁶). Proposals for legislation for inclusion in Finance Bill 2012 would be subject to an appropriate commencement date to ensure the smooth transition to new rules.

4.4 Electronic Filing of Financial Statements

A greater number of tax returns must now be made electronically through the Revenue On-Line System (ROS). In relation to the filing of Corporation Tax returns, a provision may be required to provide for the electronic filing of related financial statements by companies using a common standard that will allow for the accounts to be easily interpreted and interrogated.

4.5 Single Business Tax

The Programme for Government for National Recovery 2011 – 2016 includes the following under the heading “Supporting SMEs”:

We will direct the Revenue Commissioners to examine the feasibility of introducing – on a revenue neutral basis – a Single Business Tax for micro enterprises (with a turnover of less than €75,000 per annum) to replace all the existing taxes on sole traders and small businesses to cut compliance costs and make starting a business much less daunting.

⁵ Adjudication is a resource intensive procedure whereby Revenue gives a legally binding view on the stamp duty status of a transaction in advance of formal stamping. It is required by law for certain transactions but can also be requested by taxpayers in some circumstances, including where no stamp duty is payable.

⁶ Section 958 TCA 1997 (as per “Tax Acts 2011” published by Bloomsbury Professional).

Revenue has carried some preliminary consideration of the issues involved, including examination of experiences/developments abroad. The tax obligations of employees of such businesses may need to continue to be dealt with separately.

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Part 5: Policy Developments in Non-Tax Areas Impacting on Tax Collection

Two further significant matters, while not Finance Bill items, have the potential to impact on tax and duty collection and enforcement, and are highlighted for the information of the TSG. These are:

- ◆ **Personal Insolvency:** A Personal Insolvency Bill is expected to be published in early 2012 under the EU/IMF Programme of Financial Support for Ireland.
- ◆ **Reform of Credit Risk Management:** The Government commitment, in the revised agreement entered into with the EU & IMF, to reform credit risk management within lending institutions by centralising financial information (including business loans, development loans and credit union loans) on all borrowers for the first time.

5.1 Personal Insolvency Reform

The EU/IMF Programme requires that reform in the area of personal insolvency be introduced by end-2012. The Department of Justice and Equality [DJE] are considering reform of legislation and procedures in this area.

Revenue is generally supportive of reform in the area of personal insolvency and outlined our overall position in our submission to the Law Reform Commission last year.

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