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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

Code of Practice
for Revenue Audit and other Compliance Interventions



www.revenue.ie

To serve the community

by fairly and efficiently

collecting taxes and duties and

implementing Customs controls

Chapter 1

Introduction

1. INTRODUCTION

1.1 Purpose of this Code of Practice

The purpose of this Code of Practice is to set out a clear, fair and equitable set of guidelines to be followed by Revenue, taxpayers and tax practitioners, in the carrying out of all Revenue Compliance Interventions, having regard to best practice and legislation.

The provisions of this Code of Practice are not to be used unnecessarily to delay or obstruct the due process of the application of tax legislation by Revenue carrying out duties on behalf of the State. Taxpayers or tax practitioners acting on their behalf cannot abuse the rights recognised in this Code of Practice to avoid or delay payment of tax, interest or penalties which are correctly owed. The Code of Practice does not restrict the taxpayer's statutory rights.

This Code of Practice will be reviewed on an on-going basis and may be modified to reflect changes in legislation and emerging practices.

1.2 Taxes and Duties Covered by this Code of Practice

This Code of Practice applies to Income Tax, Corporation Tax, Capital Gains Tax, Local Property Tax, Exit Taxes, VAT, Capital Acquisitions Tax, Excise Duties and Licences, Carbon Taxes, Vehicle Registration Tax, Stamp Duties, Customs Duties, Universal Social Charge, Income Levy, Domicile Levy, PRSI (both employers and employees), Health Contributions, Environmental Levy, Training Levy and includes all forms of withholding (e.g. RCT, PSWT, DWT) that apply to any of these taxes, interest in respect of such taxes and penalties.

References to tax in this Code of Practice include references to duties and levies, and a reference to a tax return is to be construed accordingly.

1.3 Promoting Voluntary Compliance

It is a fundamental principle of self assessment tax systems that returns filed by compliant taxpayers are accepted as the basis for computing tax liabilities. Revenue promotes compliance with the tax system by vigorous pursuit of those who do not file returns, by auditing, investigating or making enquiries into selected returns and by taking appropriate action against tax evaders. Revenue challenges aggressive tax avoidance schemes and unintended use of legislation, which threaten tax yields and the perceived fairness of the tax system.

1.4 Tackling Non-Compliance

Revenue carries out a programme of compliance interventions that aim to minimise the burden on the compliant taxpayer and tackle, in a thorough and effective way, the non-compliant taxpayer. This approach involves taking account of all the risks that apply to a taxpayer across all taxes and duties. Revenue priority is to recover any unpaid tax or duty along with interest and penalties as efficiently as possible.

1.5 Selection of Taxpayers for Compliance Intervention

Taxpayers are selected for compliance intervention based on the presence of various risk indicators.

Cases are selected in a number of ways, including: REAP (Revenue's electronic risk analysis system); a range of anomaly-detection and predictive models, including real-time risk models for VAT and PAYE; by teams tackling aggressive tax and duty avoidance schemes; and through Joint Investigation Units, where Revenue works closely with other

Government Departments and where there is increased use of shared facilities for data exchange.

In addition to Revenue's risk based selection approach, Revenue also operates a Random Audit Programme and a Re-Audit Programme.

1.5.1 Risk Evaluation Analysis and Profiling – REAP and CRISP

REAP is Revenue's risk analysis system. REAP risk-rates Revenue's customer base across all the main taxes and duties. 'Risk' in this context means the risk posed to Revenue's core business of 'collecting the right tax and duty at the right time'. REAP has been designed to analyse a vast amount of data (including third party data) that Revenue has on tax and duty cases and to attribute scores based on the level of risk posed. The REAP system prioritises cases based on risk, enabling Revenue to target its attention on those cases who need it most and minimising contact with compliant taxpayers.

Revenue's Customs Risk Intervention Selection Programme – CRISP assists in the selection of imports and declarants for a post clearance intervention, and provides a risk based approach to the selection of customs declarations for interventions. CRISP is similar to REAP in that it will provide an electronic support tool to assist in assessing post clearance risks and provides a basis for selecting cases for targeted compliance intervention.

1.5.2 Real-Time Risk Analytics – VAT, PAYE and Customs

Real-time risk analytics involves integrating predictive models and associated business rules into Revenue systems to ensure that transactions entering the systems, through any channel, are risk assessed at the time transactions are made.

The VAT Real Time Risk Framework (VAT RTRF) identifies potential VAT fraud at the earliest possible opportunity. The VAT RTRF applies to both VAT repayable as well as VAT payable returns.

The PAYE Real Time Risk Framework (PAYE RTRF) assists in the prevention of incorrect claims and the detection of under-declared income or incorrect claims at the time the claims are made, as opposed to after the event. The system identifies and manages risk associated with approving PAYE refunds and PAYE tax credits. The PAYE RTRF ensures that transactions entering the systems through any channel, e.g. through PAYE Anytime or a paper-based refund request, are risk assessed at the time the transactions or claims are made and at the time they are being processed by Revenue.

All declarations at import and export are subject to risk assessment. In respect of the majority of declarations (which are Green-routed i.e. passed for clearance without formal Revenue intervention) the supporting documents do not have to be lodged with Revenue. However, a trader must be in possession of all the requisite supporting documents prior to clearance of the goods. It should be noted that even though the declaration is Green-routed, Revenue still retains the right to examine the consignment and/or accompanying documents.

1.5.3 Reviews of Specific Trades, Professions or Economic Sectors

Revenue's annual compliance programme includes the examination of cases from specific economic sectors. Risk features are identified. Lessons learned from selected cases are then applied to the sector as a whole, focusing on those taxpayers displaying the risk features. The REAP risk model is adjusted to take account of sector-specific risks. The normal audit/intervention rules, as set out in this Code of Practice, apply to compliance interventions or audits conducted as part of sectoral projects.

Projects can range from unannounced compliance visits to full comprehensive audits. In many instances, Revenue will have gathered intelligence on a sector in advance from a number of sources, including the Risk Evaluation Analysis and Profiling (REAP) system, results from other enquiries and audits in the sector, local knowledge, or information from third parties, including suppliers. A project may simply focus on all businesses in one geographic location. In some instances, taxpayers in a sector will be asked to "self-review" prior to receiving an audit notification. They are asked to review their returns, paying particular attention to certain areas of risk that Revenue has identified. Revenue treats any qualifying disclosures received as a result of self-review as "unprompted qualifying disclosures" with a significant reduction of penalties.

1.5.4 Random Audit and Re-Audit Programmes

The main focus of Revenue will continue to be on selecting cases for compliance intervention (Revenue Audit, Revenue Investigation or non-audit compliance intervention) based on the presence of various risk indicators and other information available. In addition to the risk-based programme Revenue undertakes a Random Audit Programme and a Re-Audit Programme.

The objectives of the Random Audit Programme are to measure and track compliance with tax legislation, to act as an indicator of the effectiveness of Revenue's risk based approach and to provide for the possibility that all taxpayers may be selected for a Revenue Audit.

The objectives of the Re-Audit Programme are to assess the impact of auditing in encouraging compliance. This programme has been designed to provide an indicative measure of the rate of recidivism and to inform processes for dealing with recurring non-compliance. However, any case is subject to re-audit where risks are identified.

1.6 Revenue Compliance Interventions

The type of compliance intervention to be undertaken will be the one considered to be the most appropriate to change the behaviour of the taxpayer. Revenue adopts a risk-based approach to selection of the majority of cases for intervention. This risk analysis approach may also result in Revenue focusing on one tax or duty in the case of a particular person, business or sector.

Revenue has a multi-faceted approach to tackling non-compliance and amongst the activities carried out are;

- Revenue Non-Audit Compliance Interventions
- Revenue Audits (including risk selected audits, random audits and re-audits)
- Revenue Investigations

Revenue Compliance Interventions are covered in more detail, in **Chapter 2 'Overview of Revenue Compliance Interventions'**.

1.6.1 Joint Investigation Units (JIU)

The role of (JIU) is to carry out compliance interventions into tax and PRSI non-compliance and fraud, and the employment status of workers, and to address areas where information suggests shadow economy activity exists. Initially this work was carried out in conjunction with the Department of Employment Affairs and Social Protection (DEASP). Workplace Relations Commission (WRC) officers work with both Revenue and DEASP Investigation Units. The (JIU) work collaboratively with these and other agencies including the Gardaí on multi-agency checkpoints to identify shadow economy activity.

1.6.2 Unannounced Visits

Whilst generally taxpayers will be notified of a compliance intervention, Revenue may call to a taxpayer's business without a prior appointment. Revenue is conscious of the possible disruption to business from their visit and will endeavour to visit at an appropriate time.

On arrival at a business premises, the Revenue officer will present his/her Revenue identification and explain the nature of the Revenue intervention and the purpose of the visit. Revenue will seek to speak to the owner or manager of the business, where available.

Records may be copied or extracted during these visits and further action may be taken as appropriate, depending on the circumstances encountered in each case.

A 'Revenue Investigation' may commence with an unannounced visit to the business premises. In such circumstances, a 'Notification of a Revenue Investigation' will be handed to the taxpayer at the time of visit.

In all instances where the unannounced visit is not part of a Revenue Investigation a taxpayer may avail of the opportunity to make an 'unprompted qualifying disclosure' of a tax or duty default.

1.7 Excise Licences Compliance

As part of on-going compliance activities Revenue also carry out interventions focused on ensuring compliance with excise licensing requirements.

Holders of Auto Fuel or Marked Fuel Traders' Licences (AFTLs or MFTLs) are required to electronically submit monthly returns of their oil movements (ROM1) and Revenue interventions will focus on the compliance of such traders with these requirements.

Revenue may implement a range of sanctions against non-compliant traders including licence refusal or revocation and prosecution.

Full information on **how to make an application for a licence or to renew a licence and the compliance requirements** are available on the Revenue website.

1.8 Compliance with Union Customs Code and Delegated & Implementing Acts

Revenue has robust checking procedures in place in order to satisfy EU obligations and ensure compliance with the requirements of the Customs Code and its associated Implementing Provisions.

Article 78(2) of Regulation 2913/1992 (Community Customs Code) and Article 48 of Regulation 952/2013 (Union Customs Code) provide for customs authorities to verify the accuracy of the particulars contained in a declaration after the release of goods.

Post clearance checking procedures are delivered by Revenue at two levels viz. Customs Audit and transaction driven verification checks (non-audit compliance interventions).

The **Collection of Customs Debts** manual outlines procedures where outstanding import duties (i.e. a customs debt) are identified post importation; this will usually arise as a result of a customs audit or other post importation check.

1.9 Electronic Support Tools and Techniques

A significant number of business taxpayers no longer use traditional paper-based journals, ledgers, control accounts and supporting documentation to run their business. Instead, they rely on computerised accounting systems and electronic records to do this, and to provide the basis for completion of the various tax return forms that they are required to file.

The use of computerised accounting systems and electronic records is not dependant on the size of the business. Some of the smallest businesses can have quite sophisticated accounting and recording systems. The complexity and extent to which the accounting and recording system is integrated with other key in-house business databases however, is very likely to increase the bigger the business is. In addition many SMEs now operate through franchises, where the use of electronic systems is a requirement for the franchise owner.

Given that computerised accounting systems and electronic records are now in general use, Revenue will use e-audit techniques for assurance that a business has filed true and correct tax returns based on the information contained in the underlying computerised records.

The terms ‘e-Audit’ and ‘e-Auditing’ are used to describe the use of computer programmes in the interrogation of records and data stored on electronic systems in the course of a Revenue Audit or other compliance intervention. There is no distinction between records kept in a traditional manner and records kept using one or more of the many electronic systems available commercially.

Compliance interventions may involve an examination of the electronic systems used in the course of the business and the electronic copying and downloading of electronic data for analysis. This does not change the nature of a Revenue compliance intervention; it merely allows Revenue use computer-assisted audit techniques on customer’s data. Generally, Revenue will request the taxpayer to provide reports and data files of a specific nature in electronic format.

All digital information extracted will be stored on encrypted storage devices in accordance with safeguards outlined in **Revenue’s data security policy** and ICT guidelines. In this way, confidential taxpayer data is protected.

The potential use of extensive e-auditing techniques will be noted in all compliance intervention notification letters. Some standard electronic checks are part of most interventions and these do not require advance notification in the same way.

See also paragraph 3.21 of this Code of Practice regarding the maintenance of records in electronic format.

1.9.1 Pre-Audit Preliminary Meeting – Electronic Records

The audit notification letter may advise the taxpayer that Revenue will contact them in advance of the audit to schedule a preliminary [pre-audit] meeting to identify and understand the accounting and Electronic Point-Of-Sale (EPOS) systems in use in the business, the format and extent of electronic records that are available and the electronic records that will be required to be made available at the formal Revenue Audit. This does not preclude Revenue from requesting access to further data before or during the Revenue Audit.

The preliminary meeting will normally be held on the business premises where there is access to the computer records. The taxpayer’s agent may be required to attend the meeting. If appropriate, IT support staff should also attend.

The preliminary meeting is not a Revenue Audit and the taxpayer’s entitlement to make a prompted qualifying disclosure is not affected.

The taxpayer will be asked to generate reports, and provide data files from the systems in use. A full back- up of the system's data files may also be requested. The Revenue File Transfer Service (RFTS) is a secure facility that can be used to securely exchange data with Revenue personnel and is the preferred method of transferring data. The use of Revenue encrypted storage devices can also be used where necessary. Electronic and paper records provided in the course of compliance interventions are subject to Revenue data protection policy and data protection legislation.

The taxpayer is expected to fully cooperate with Revenue. This includes providing reasonable assistance in obtaining or retrieving information or data stored electronically. In addition, in some instances where there is difficulty in retrieving data, the business software supplier may be required to provide assistance.

Although an e-audit may be the means by which the audit is conducted, all aspects of this Code of Practice apply to such interventions. For the purposes of this Code of Practice references to compliance interventions include e-audit.

1.10 Respective Roles and Responsibilities in relation to Compliance Interventions

Revenue Audits and other compliance interventions can be a burden on taxpayers and may cause some disruption to their business. It is, therefore, essential that all compliance interventions be conducted in an efficient, professional and courteous manner.

1.10.1 Customer Service Charter – Quality Service Provided and Expected

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.

1.10.2 Revenue Compliance Staff

A quality compliance intervention, which, in general, is selected using a risk-based approach, will be well planned, appropriately scoped and effectively conducted. Legislation and operational policy will be applied in conjunction with this Code. The objective of a compliance intervention is to examine the risk identified in a timely manner and with the least amount of disruption on the taxpayer.

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

1.10.3 Taxpayers

Where a tax practitioner has prepared a tax return or other information for submission to Revenue, the taxpayer is nevertheless responsible for the accuracy of the return filing or the provision of information, as if the taxpayer had prepared the return or information.

A taxpayer may be liable to a penalty in the 'non cooperation' category if he or she fails to 'fully cooperate' with the conduct of an intervention.

1.10.4 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.

In the interests of effective tax administration, compliance interventions should be finalised as quickly as possible. Where information requested by Revenue has not been supplied or not fully supplied on a timely basis, for example, partial provision of records, partial replies to queries, delays in answering queries, or where there is some other obstacle, the effect of which is to delay the conclusion of the intervention, Revenue will notify the taxpayer and the relevant tax practitioner that continued failure to fully cooperate with the finalisation of an intervention will result in the taxpayer being liable to a penalty in the "non cooperation" category.

Revenue expects that all tax practitioners preparing tax returns and representing taxpayers act honestly and comply with relevant laws and regulations. It is the intention of Revenue to 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) in appropriate circumstances.

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. 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.

1.10.5 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 a professional body. It will be a matter for the professional body to examine the referral and take any action under its own procedures, where necessary. Revenue's internal procedures emphasise, inter alia, that a referral by Revenue to a professional body will only be considered in the most serious of cases, e.g. cases of significant and/or repeated non-adherence to professional standards and, any referrals will be subject to sign-off by an Assistant Secretary.

Revenue's internal procedures in this regard may be accessed at: **Tax and Duty Manuals - Compliance - Audit and other compliance interventions - Revenue referrals to Professional Bodies under S851A TCA 1997.**

1.11 Compliance Code for PAYE Taxpayers

Compliance interventions and checks carried out on PAYE taxpayers are carried out in accordance with the **Compliance Code for PAYE Taxpayers**. However, where a Revenue Audit or Investigation is carried out in the case of a PAYE taxpayer, this Code of Practice applies to the audit or investigation.

1.12 Operation of this Code of Practice

This Code of Practice will come into effect from 16 October 2019 as regards all compliance interventions that are notified on or after that day. As regards compliance interventions, notice of which had been given, but which had not been settled before 16 October 2019, the taxpayer may choose whether the settlement is made under the terms of this Code of Practice or the Code of Practice for Revenue Audit and other Compliance Interventions published 22 February 2017.

Chapter 2

Overview of Revenue Compliance Interventions

This chapter covers:

- Objectives of Revenue Compliance Interventions
- Overview and Definition of Revenue Compliance Interventions
- Notification of a Revenue Compliance Intervention / Revenue Audit / Revenue Invesitgation.

2. OVERVIEW OF REVENUE COMPLIANCE INTERVENTIONS

Under the provisions of the tax and duty codes, Revenue is entitled to make enquiries or investigations and take such actions as it considers necessary to satisfy itself as to the accuracy or otherwise of any statement or other particular contained in any return, list, statement or other particulars. Such inquiries, investigations or actions taken by Revenue are referred to in this Code of Practice as Revenue Compliance Interventions, Revenue Audits and Revenue Investigations.

2.1 Objective of Revenue Interventions

The primary objective of the customer service, compliance intervention, audit and prosecution programmes is to promote voluntary compliance with tax and duty obligations.

Revenue audit and intervention programmes are mainly concerned with detecting and deterring non-compliance. The range of functions includes;

- determining the accuracy of a return, declaration of tax liability or claim to repayment
- highlighting and appraising risk areas of concern to Revenue and requesting taxpayers (and/or agents) to review and examine these specific risks/issues
- identifying additional liabilities or other matters requiring adjustments, if any
- collecting the tax, interest, and penalties, where appropriate
- identifying cases meeting criteria for publication in the Tax Defaulter's List under the provisions of section 1086 Taxes Consolidation Act 1997
- specifying remedial action required to put taxpayers on a compliant footing where errors or irregularities are discovered during the course of an intervention
- considering what procedural or other changes are necessary to eradicate evasion activities
- where strong indications of serious tax evasion or a Revenue offence emerge in cases, referring those cases to Investigations & Prosecutions Division (IPD) to evaluate suitability for prosecution
- verifying compliance with Excise legislation including excise licencing requirements
- verifying compliance with Customs legislation including checking the accuracy and completeness of data entered in customs declarations, as well as those made under simplified procedures.

2.2 Types of Revenue Interventions

Audit and other Compliance Interventions undertaken by Revenue fall broadly into the following categories:

- Revenue Non-Audit Compliance Interventions
  (Mainly Assurance Checks, Aspect Queries and Profile Interviews)

  The taxpayer is entitled to make an 'Unprompted Qualifying Disclosure'
- Revenue Audit

  The taxpayer is entitled to make a 'Prompted Qualifying Disclosure' before examination of the books and records starts
- Revenue Investigation

  The taxpayer may make a disclosure but is **not** entitled to make any type of 'Qualifying Disclosure'

Where a taxpayer makes a 'qualifying disclosure' in relation to undisclosed tax or duty liabilities, the settlement is not published in the List of Tax Defaulters and Revenue will not initiate an investigation with a view to prosecution of the taxpayer in relation to the matter disclosed.

A taxpayer may be investigated with a view to prosecution where a disclosure of tax defaults is not a 'qualifying disclosure' or where no 'qualifying disclosure' is made.

Paragraphs 3.6 to 3.13 of this Code of Practice outline the full requirements under tax legislation for the making of a 'qualifying disclosure'.

2.3 Revenue Non-Audit Compliance Interventions

Each Revenue 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 the taxpayer and Revenue, whilst addressing the perceived risk. Consequently, not all Revenue interventions take the form of a formal 'Revenue Audit' or 'Revenue Investigation'. Revenue carries out the following, **non-audit** risk management compliance interventions;

- Assurance checks (including aspect queries)
- Profile interviews
- Pursuit of returns from Non-Filers
- Sectoral Reviews (review of specific trades, professions or economic sectors)
- Joint Investigation Unit (JIU) visits involving other agencies, including Workplace Relations Commission (WRC) and Department of Employment Affairs and Social Protection (DEASP)
- Unannounced visits/site visits
- Request for a business to undertake a self-review of tax / duty liability

The above list of risk management compliance interventions is not exhaustive.

However, an important point to note is that where any type of non-audit compliance intervention (see list above) is undertaken by Revenue, the taxpayer is entitled to make an '**Unprompted Qualifying Disclosure**' (see paragraph 3.9) of previously undeclared tax or duty liabilities, as a Revenue Audit or Revenue Investigation is not regarded as having started.

Revenue non-audit compliance interventions including Assurance Checks, Aspect Queries and Profile Interviews may establish issues that warrant an audit or investigation. Where a ‘Revenue Audit’ or ‘Revenue Investigation’ is planned the taxpayer will receive an appropriate notification letter.

A taxpayer who receives a non-audit compliance intervention query from Revenue should review the area of concern mentioned in the query. If a tax or duty irregularity comes to light, the taxpayer should consider the benefits of disclosing the problem to Revenue. Revenue will treat any disclosure made by the taxpayer in these circumstances as an unprompted disclosure.

Revenue 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 for a number of years (or periods).

2.3.1 Definition of an Assurance Check

Assurance Checks are compliance interventions by Revenue that, although not Revenue Audits, may involve checks and challenges with direct contact by Revenue with the taxpayer and/or agent to test a compliance issue. They are generally risk-based and focus on a specific stated risk(s) and period(s) so as to minimise unnecessary costs to taxpayers and Revenue. The contact can be by telephone, secure email, letter or in person. These non-audit compliance checks do not restrict a taxpayer’s right to make an ‘unprompted qualifying disclosure’.

Assurance Checks are frequently based on some apparent discrepancy in data held by Revenue on a particular taxpayer’s record. They can also result from Revenue guidelines on checking claims for repayment or reliefs. Increasing use of assurance checks by Revenue aims to clear up an issue in the record without the expense and inconvenience of a formal ‘Revenue Audit’. It makes sense for a taxpayer to reply to an assurance check, fully, quickly and honestly. Assurance checks are an important part of Revenue’s efforts to ‘ensure that everyone complies with their Tax and Duties responsibilities’.

Revenue will give the taxpayer (where necessary) a minimum of 30 days notice to produce documents, accounts or particulars that are required.

2.3.2 Definition of an Aspect Query

An Aspect Query is regarded as a short, targeted intervention for the purpose of checking a particular risk (often shown by Revenue’s REAP or RTR system – see paragraph 1.5). An Aspect Query can be conducted by telephone, secure-email, letter or visit. The query may include a request for documentation. The taxpayer (and agent) will generally be told why the query is being made. Aspect Query case working may act as a precursor to ‘Revenue Audit’. These compliance interventions are not regarded as Revenue Audits and they do not restrict a taxpayer’s right to make an ‘unprompted qualifying disclosure’.

2.3.3 Definition of a Profile Interview

Revenue is in a position to risk-profile taxpayers and transactions based on information contained in the electronic risk-ranking system (REAP) and from other data available to them. Once a case is profiled, the level of risk within the case may indicate that the Revenue intervention to be made should be broader than an Aspect Query. In these cases a Profile Interview may be scheduled at which the risks identified will be addressed.

As part of the Profile Interview process Revenue will issue a letter to the taxpayer identifying the risk areas that will be discussed at the Profile Interview, which will usually take place 21 days after the issue of the letter.

Where a Profile Interview is scheduled to examine (for example) an application for an auto-fuel trader's licence, it is in the trader's interest that the compliance intervention takes place at the earliest opportunity after the application is received so this may be within the 21 day timeframe.

Revenue may examine all documentation and records provided by the taxpayer to clarify the risk. Taxpayers will be offered an opportunity to make an unprompted disclosure (if necessary). These Profile Interview compliance interventions are not regarded as Revenue Audits and they do not restrict a taxpayer's right to make an 'unprompted qualifying disclosure'.

On completion of the Profile Interview, a decision will be taken as to whether or not a 'Revenue Audit' or other action is warranted. The taxpayer will generally be advised within two weeks if a 'Revenue Audit' or other action is to be initiated. If it emerges at the Profile Interview that there is no clear auditable risk, or if the identified risks are satisfactorily explained, Revenue will not initiate an audit.

The taxpayer (and agent) will be notified in writing of the outcome of the Profile Interview.

2.4 Notification of a Revenue Non-Audit Compliance Intervention

Revenue non-audit compliance interventions are conducted by telephone, secure-email, letter or visit. A written notification is not always issued.

Where a 'Revenue Audit' is scheduled (paragraphs 2.5 and 2.6 below), the taxpayer (and agent) will receive a 'Notification of a Revenue Audit'.

Where a 'Revenue Investigation' is scheduled (paragraphs 2.7 and 2.8 below), the taxpayer (and agent) generally receives a 'Notification of a Revenue Investigation'.

2.5 Definition of a Revenue Audit

A 'Revenue Audit' is an examination of;

- a tax return
- a declaration of liability or a repayment claim
- a statement of liability to Stamp Duty
- the compliance of a person with tax and duty legislation.

An examination may involve looking at all the risks in a particular case or may focus on a single issue or tax-head.

A Revenue Audit also includes, where appropriate in any particular case, and also in cases where returns have not been submitted, an examination of an individual's or a company's books, records and compliance with tax obligations so as to establish the correct level of liability. It may also involve collection of arrears of tax with a view to putting the taxpayer on a correct tax compliance footing.

Apart from randomly selected audits and re-audits, a Revenue Audit is generally based on informed selections from the risk profiling of cases as well as local knowledge. Revenue Audit cases may also be selected as part of an examination of a particular business sector or scheme. The selection criteria used for Revenue Audit and other compliance interventions are outlined in more detail in the 'Introduction' chapter of this Code of Practice.

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, the need for specialist expertise and the number of Revenue offices participating in the audit.

2.6 Notification of a Revenue Audit

Twenty-one days notice of a Revenue Audit is generally given to both the taxpayer and his or her agent. Where a Revenue Audit is to be scheduled, the letter issued will include the wording: 'Notification of a Revenue Audit' and will show the date the audit will start.

All audit notification letters issued to a taxpayer and agent will clearly indicate the nature of the Revenue intervention. The scope of the audit will also be set out, and will range from a single tax-head or single issue for a specific period or year to a comprehensive audit for a number of years.

The potential use of extensive e-auditing techniques will be noted in all audit notification letters.

As and from the date of issue of a "Notification of a Revenue Audit" 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 examination of the books and records begins.

Where a desk audit notification has issued, examination of the books and records will be regarded as having commenced on the day after the period of notice has expired.

2.7 Definition of a Revenue Investigation

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

A Revenue Investigation may lead to criminal prosecution.

A Revenue Investigation is generally initiated by advising the taxpayer in writing that his or her tax/duty affairs are under Revenue Investigation.

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;

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

A taxpayer who receives a 'Notification of a Revenue Investigation' letter 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 as outlined in legislation
- the avoidance of publication if the final settlement meets the publication criteria of section 1086 TCA 1997
- assurance from Revenue that the case will not be investigated with a view to referral for criminal prosecution.

Where, in the course of a Revenue Audit a Revenue officer encounters 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.

2.8 Notification of a Revenue Investigation

A Revenue Investigation may commence with an unannounced visit to the business premises. In such cases the ‘Notification of a Revenue Investigation’ will be handed to the taxpayer at the time of the visit.

In all cases where a Revenue Investigation is being notified, the letter issued to the taxpayer (and agent) will include the wording ‘Notification of a Revenue Investigation’.

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

The specified period outlined in the investigation notification will not preclude Revenue from extending the period of the Revenue Investigation if further information emerges.

Revenue legislation confers specific non-routine powers for use in counteracting tax and duty evasion and obstruction of a compliance intervention.

As and from the date of a “Notification of a Revenue Investigation” letter (that is the date shown on the letter) to the taxpayer or agent, or the date of commencement of the Revenue Investigation where notification is not issued in advance to the taxpayer, the opportunity to make any type of ‘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 3.10 of this Code of Practice – Exclusions, which outlines in more detail situations where a taxpayer is excluded by legislation from making a ‘qualifying disclosure’.

Chapter 3

Regularising Tax and Duty Defaults

This chapter covers:

- Self-Correction without Penalty within 12 months
- Errors and Adjustments which can be corrected without Penalty
- No Loss of Revenue procedures
- Disclosures to Revenue and the benefits of making a Qualifying Disclosure
- Stamp Duty, CAT and LPT Valuations
- Maintenance of Adequate Records

3. REGULARISING TAX AND DUTY DEFAULTS

The opportunities outlined in this chapter for regularising tax and duty defaults are generally available to taxpayers irrespective of the type of compliance intervention undertaken by Revenue. There are some conditions, exceptions and exclusions but these are outlined at the relevant paragraph. In particular, where a 'Revenue Investigation' has started, the taxpayer is excluded by tax legislation from making a 'qualifying disclosure' regarding the matter under investigation. Likewise, with effect from 1st May 2017 this exclusion applies to any liabilities included in a disclosure that relate directly or indirectly to offshore matters.

3.1 Regularising tax and duty affairs

There is an advantage to a taxpayer in reviewing his or her tax and duty affairs regularly. If tax or duty irregularities are evident, they should be quantified and reported to Revenue. This can save money in reaching a settlement with Revenue. Taxpayers may regularise their tax or duty affairs in a number of ways;

- Self-Correction Without Penalty (within certain time limits)
- declaring an Innocent Error
- making a Technical Adjustment
- making a No Loss of Revenue claim
- making a Qualifying Disclosure.

3.2 Self-Correction without Penalty

Revenue wishes to facilitate taxpayers who discover errors after submission of the relevant tax returns and who wish to regularise the position. To encourage taxpayers to regularly review their compliance position, Revenue will allow taxpayers 'self-correct without penalty' any return, subject to the following conditions;

- the taxpayer must notify Revenue of the adjustments to be made [either in writing or electronically through the Revenue On-Line (ROS) service]
- the taxpayer must include a computation of the correct tax or duty and statutory interest payable
- A payment in settlement must accompany the submission. [Payment can be made online, see also paragraph 3.7.3 and 5.9 of this Code of Practice in relation to payment]
- for bi-monthly/quarterly/half-yearly remitters of VAT, if the net underpayment of VAT for the period being corrected is less than €6,000, the amount of the tax can be included (without interest or notification to Revenue) as an adjustment on the next corresponding VAT return following that in which the error was made.

The following time limits will apply in respect of self-correction without penalty;

- for chargeable persons the self-correction must take place within twelve months of the due date for filing the return/self-assessment
- for VAT, the self-correction must take place before the due date for filing the Income Tax or Corporation Tax return for the chargeable period within which the relevant VAT period ends
- for the PAYE/PRSI/USC annual return, relating to 2018 and preceding years, the self-correction must take place within twelve months of the due date for filing the annual return

- for PAYE (Income Tax/PRSI/USC) monthly returns in 2019 and 2020, the self-correction must take place by the due date for filing the IT/CT return or the period within which the relevant PAYE period ends. Where employers are not obliged to file an IT or CT return the self-correction must take place by 31 October of the year following the year in which the monthly PAYE return was filed.(Note: The self-correction without penalty timeframe for monthly returns after 2020 is to be considered further).
- Self-correction for CAT must take place within twelve months of the due date for filing the return.
- For Stamp Duty (excluding levies), the self-correction must take place within twelve months of the 'specified return date', as defined in section 14A(1) Stamp Duties Consolidation Act, 1999. In the case of the various stamp duty levies (Part 9 Stamp Duties Consolidation Act 1999), self-correction must take place within twelve months of the due date for the submission of the statement for the period in question.
- For Excise Duties, the self-correction must take place within twelve months of the due date for filing the return/warrant.
- Self-correction without penalty for Local Property Tax (LPT) must take place within twelve months of the return filing date.

No amendment may be made to an RCT return after the return due date in relation to any RCT relevant payment that has been the subject of a deduction authorisation under section 530D TCA 1997.

For RCT relevant payments made prior to 01/01/2015:

It should be noted that, where a principal contractor makes a relevant payment to a subcontractor without first obtaining a deduction authorisation from Revenue, the principal contractor shall be liable to pay tax to the Revenue Commissioners at the rate of 35 per cent on the amount of the relevant payment. This tax rate may be reduced to 20 per cent or Zero per cent where section 530F (3) (a) TCA 1997 applies. The principal contractor is also liable to a penalty in respect of each relevant payment made without a deduction authorisation.

For RCT relevant payments made on or after 01/01/2015:

It should be noted that, where a principal contractor makes a relevant payment to a subcontractor without first obtaining a deduction authorisation from Revenue, the principal contractor shall be liable to a penalty of either 35 per cent, 20 per cent, 10 per cent or 3 per cent of the relevant payment where section 530F (2) TCA 1997 (as amended by Finance Act 2014) applies.

Other Issues

The benefit of 'self-correction without penalty' will not apply to a specified year or period if Revenue has contacted a taxpayer in relation to, or notified a taxpayer regarding a Revenue Compliance Intervention (Revenue Audit, Revenue Investigation, Aspect Query or Profile Interview) into that year or period. Nor will the benefit of self-correction without penalty apply if the proposed correction relates to an instance of deliberate behaviour, which also featured in any period prior to the self-correction period. In practice this means that a taxpayer cannot make a combination of a qualifying disclosure and a self-correction for recurring deliberate behaviour.

The benefit of 'self-correction without penalty' will not apply to a 'letter of expression of doubt' case where Revenue, having regard to published guidelines and supporting documentation, is of the opinion that a matter is sufficiently free from doubt so as not to a warrant a genuine expression of doubt. [Section 959P TCA 1997]

Self-correction without penalty in accordance with this section will not result in a compliance intervention. However, a compliance intervention may arise based on normal selection procedures.

Once the time limits for 'self-correction without penalty' listed above have lapsed the taxpayer may still be entitled to make a 'qualifying disclosure' or avail of other compliance opportunities outlined in this Chapter.

3.3 Correcting an Innocent Error

A tax default of a person that was not deliberate and was not attributable in any way to the failure by the taxpayer to take reasonable care to comply with his or her tax obligations shall not render that person liable to a penalty.

Factors that will be considered in this regard include;

- whether Revenue concludes that the taxpayer has provided for, and implemented, the keeping of proper books and records so as to fulfil tax obligations
- the frequency with which errors, which individually could be viewed as innocent, occur. Repeatedly making errors, indicating that the appropriate level of care is not being exercised, would place the default in the 'Careless behaviour without significant consequences/Insufficient care' category or higher. (For categories of default, and their consequences, see Chapter 5)
- the previous compliance record of a taxpayer. A good compliance record is a factor to be taken into account in deciding whether reasonable care has been exercised. Conversely, a poor compliance record could indicate a general carelessness as regards tax matters
- 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.

Statutory interest on the outstanding tax will be applied.

3.4 Technical Adjustments to tax or duty liability

Technical adjustments can be described as adjustments to tax or duty liability that arises from differences in the interpretation or the application of legislation.

For a technical adjustment to a tax or duty liability not to render a person liable to a penalty, Revenue must be satisfied that;

- due care has been taken by the taxpayer, and
- the treatment concerned was based on a mistaken interpretation of the law or practice, and did not involve deliberate behaviour.

The treatment of the position taken by a taxpayer in relation to a particular item depends on a number of factors such as;

- the court decisions and published Tax Appeals Commission decisions that are relevant to the point at issue, i.e. the amount of legal precedent available
- 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
- the tax implications of the decision taken. A taxpayer who takes a position on a matter that has significant tax consequences is expected to take due care.

Matters that are well established in case law and precedent will not be entertained as technical adjustments.

It should be borne in mind that, particularly in cases that have tax avoidance as one of its purposes, the complexity of the transaction undertaken will not in itself serve to make the issue one of "technical adjustment" because of complexity.

Statutory interest on the outstanding tax will be applied.

3.5 No Loss of Revenue

Revenue's role is to collect the correct amount of tax and duty in accordance with the appropriate legislation. Where the taxpayer has failed to operate the tax or duty system correctly, the tax or duty payable will not be sought where the taxpayer has proven to the satisfaction of Revenue that 'no loss of revenue' has occurred. Liability to a penalty may arise, as outlined below.

Revenue does not envisage many claims from taxpayers in relation to 'no loss of revenue' but is aware that in certain exceptional cases a 'no loss of revenue' situation can arise. This is particularly the case with VAT.

There may be specific exceptional circumstances where 'no loss of revenue' claims may be considered in relation to taxes other than VAT. In such exceptional circumstances, the responsibility is on the taxpayer or agent to demonstrate by written submission that no loss of revenue has arisen. Revenue is bound to assume, unless and until the contrary is proven to the satisfaction of Revenue, that non-operation of tax obligations leads to revenue loss.

In cases where 'no loss of revenue' is claimed, the taxpayer should make a 'no loss of revenue' qualifying disclosure, advising Revenue of the tax default. All 'no loss of revenue' claims must be submitted in writing to Revenue. In general, all supporting documentation to validate the 'no loss of revenue' claim should be included in one submission to facilitate a prompt review of the matter.

3.5.1 Maintaining the integrity of the tax system

Taxpayers have sought to justify their failure to correctly operate the tax system by claiming that a loss of revenue does not arise. Non-operation or incorrect operation, if allowed to continue without sanction, would erode the integrity of the tax system. In addition, it increases the risk of revenue loss and can give a business an unfair advantage over its competitors. The non-charging of VAT, for example, will result in the next customer in the chain, having a greater liability to discharge to Revenue.

3.5.2 General failure to operate tax system

Claims for 'no loss of revenue' concessional treatment will not be considered where there is general failure to operate the tax system.

3.5.3 Onus of proof to the satisfaction of Revenue

In all cases the obligation is on the taxpayer to provide evidence to conclusively demonstrate to the satisfaction of Revenue that there is no loss of revenue. Where this onus of proof is not met, the 'no loss of revenue' concessional arrangements will not apply.

A **Tax Clearance Certificate** is confirmation from Revenue that a person's tax affairs are in order at the date of issue of the Certificate. It will not, of itself, be accepted as proof of 'no loss of revenue' in relation to any specific transaction.

Where, after examining the 'no loss of revenue' claim and all documentation submitted by the taxpayer (and/or agent), Revenue has concerns that a loss of revenue to the Exchequer may still have occurred, the claim for 'no loss of revenue' will not be accepted by Revenue.

3.5.4 'No loss of revenue' claims are NOT accepted in the following circumstances;

A 'no loss of revenue' claim will not be accepted in any of the following circumstances:

- where the default is in the *deliberate behaviour* category
- where there is general failure to operate the tax system
- where 'no loss of revenue' is not proven to the satisfaction of Revenue
- where the taxpayer has not cooperated
- where the 'no loss of revenue' claim was not submitted in writing
- where a 'no loss of revenue' tax default penalty is not agreed and paid [excludes Innocent Error and Technical Adjustment cases]

3.5.5 Treatment where 'no loss of revenue' is clearly demonstrated

In cases that are not excluded by the criteria set out above, Revenue is prepared to treat 'no loss of revenue' cases as follows:

(i) **Tax will not be collected** where a taxpayer claims that a 'no loss of revenue' situation arises in their case, and proves it to the satisfaction of Revenue, including the provision of all supporting documentation.

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

This concessional treatment will only apply to the extent that 'no loss of revenue' has been proved to the satisfaction of Revenue. A claim may be part accepted and part rejected.

Where 'no loss of revenue' is accepted by Revenue, a taxpayer will be liable to a penalty in accordance with the table at paragraph 3.5.7 below.

(ii) **Innocent Error and Technical Adjustments**

Where the non-operation by a person of the tax is due to innocent error, that innocent error shall not render that person liable to a penalty. That is to say, the taxpayer otherwise took reasonable care to comply with his or her tax obligations.

Non-application of a penalty will only be considered where the non-operation of the tax was based on an accepted 'technical adjustment'.

See Paragraphs 3.3 (Correcting an Innocent Error) and 3.4 (Technical Adjustments) of this Code of Practice for factors to be taken into consideration regarding Innocent Error and Technical Adjustment cases.

3.5.6 Determining the appropriate level of penalty

Among the considerations taken into account in a 'no loss of revenue' claim are;

- the general compliance record of the taxpayer and the level of cooperation provided
- whether the failure was an isolated incident or whether the taxpayer made a 'no loss of revenue' claim previously

- whether adequate steps have been taken to prevent a recurrence
- whether a 'no loss of revenue' qualifying disclosure has been made.

In cases where 'no loss of revenue' is claimed, the taxpayer should make a 'no loss of revenue' qualifying disclosure by submitting the full facts in writing and advising Revenue of the tax default. A person is liable to a lower level of penalty where a 'no loss of revenue' qualifying disclosure' made by that person is accepted by Revenue.

For all situations, the penalties to which a person is liable are outlined in the penalty table included in paragraph 3.5.7 hereunder.

3.5.7 Liability to a penalty for 'No Loss of Revenue' Tax Default

Liability to a penalty arises in all 'no loss of revenue' cases except where the 'innocent error' or 'technical adjustment' criteria are met. See penalty table below.

NO LOSS OF REVENUE TAX DEFAULT	CATEGORY OF DEFAULT	NO LOSS OF REVENUE QUALIFYING DISCLOSURE	
All '*careless behaviour*' no loss of revenue tax defaults where there is a 'qualifying disclosure'		**Prompted qualifying disclosure and full cooperation**	**Unprompted qualifying disclosure and full cooperation**
First qualifying disclosure in this category	*Careless behaviour*	Lesser of 6% or €15,000	Lesser of 3% or €5,000
Second qualifying disclosure in this category	*Careless behaviour*	Lesser of 6% or €30,000	Lesser of 3% or €20,000
Third or subsequent qualifying disclosure in these categories	*Careless behaviour*	Lesser of 6% or €60,000	Lesser of 3% or €40,000

NO LOSS OF REVENUE (NLOR) TAX DEFAULT	CATEGORY OF DEFAULT	FULL COOPERATION
All '*careless behaviour*' no loss of revenue tax defaults where there is no 'qualifying disclosure'	*Careless behaviour*	Lesser of 9% or €100,000

Notes: No Loss of Revenue Tax Default
Claims for 'no loss of revenue' will not be considered where there is general failure to operate the tax system or where there is no cooperation by the taxpayer
*The tax will not be collected where it is **proven by the taxpayer**, to the satisfaction of Revenue, that there is no loss of revenue to the Exchequer*
Interest may be charged, but only for the period of any temporary loss of revenue
Liability to a penalty arises in all cases except where the 'innocent error' or 'technical adjustment' criteria are met. The maximum penalty is €100,000.
All 'no loss of revenue' claims should be submitted to Revenue in writing and include (in one submission) all supporting documentation to validate the 'no loss of revenue' claim

3.6 Qualifying Disclosure

It should be borne in mind that tax and duty settlements reflect a number of factors:

(i) Was there a qualifying disclosure? (See definition in paragraph 3.7)

(ii) Was the qualifying disclosure prompted or unprompted?

(iii) What category of tax default took place?

Tax default behaviours are divided into the following categories;

- deliberate behaviour
- careless behaviour with significant tax consequences and
- careless behaviour without significant tax consequences

(iv) Whether or not the taxpayer cooperated in the conduct of the audit.

The concepts of 'qualifying disclosure' 'prompted qualifying disclosure' and 'unprompted qualifying disclosure' are key factors in determining liability to a civil penalty in settlements between taxpayers and Revenue.

Making a qualifying disclosure entitles the taxpayer to a significant reduction in the penalty in any tax settlement. Penalty Table 1, paragraph 5.6.2, of this Code of Practice shows how the factors outlined above interact in calculating tax-geared penalties in a compliance intervention settlement.

The importance of making a qualifying disclosure and the timing of a qualifying disclosure are both evident in the tables at Paragraphs 3.11.1, 3.11.2 and 3.16.1.

A taxpayer who makes a 'qualifying disclosure' will not be investigated with a view to prosecution in relation to the matter disclosed and will not have his or her tax settlement published in the list of tax defaulters in accordance with section 1086 TCA, 1997.

There are statutory definitions of –

- a qualifying disclosure
- a prompted qualifying disclosure, and
- an unprompted qualifying disclosure.

3.7 Definition of a 'Qualifying Disclosure'

A taxpayer is encouraged to make a disclosure of previously unreported or undeclared additional tax or duty liabilities or other errors made in a return, self-assessment or claim to Revenue at any time but the opportunities available to the taxpayer to make a 'qualifying disclosure' are as outlined in tax legislation.

A 'qualifying disclosure' is a disclosure of complete information in relation to, and full particulars of, all matters occasioning a liability to tax that give rise to a penalty, is **made in writing, is signed by or on behalf of the taxpayer** and is accompanied by:

a) A **declaration**, to the best of that person's knowledge, information and belief, that all matters contained in the disclosure are correct and complete

b) A **payment** of the tax or duty and interest on late payment of that tax or duty.

In addition –

- all qualifying disclosures (prompted and unprompted) in the *deliberate behaviour* category of tax default must state the amounts of **all liabilities to tax, duty and interest, in respect of all taxes and periods**, where liabilities arise, as a result of deliberate behaviour, that were previously undisclosed

- in the case of a prompted qualifying disclosure in the *careless behaviour* category of tax default, the qualifying disclosure must state the amounts of **all liabilities to tax, duty and interest in respect of the relevant tax and periods** within the scope of the proposed compliance intervention
- in the case of an unprompted qualifying disclosure in the *careless behaviour* category of tax default, the qualifying disclosure must state the amounts of **all liabilities to tax, duty and interest in respect of the tax and periods** that are the subject of the unprompted qualifying disclosure.

Important Note: Where a taxpayer makes a disclosure and the additional liability due for tax, duty and interest is not paid, then the disclosure is not accepted by Revenue as a "Qualifying Disclosure" for the purposes of non-prosecution and non-publication. The amount of penalty applicable is also re-calculated.

For a disclosure to be regarded as a 'qualifying disclosure", **the liability due must be paid**. See paragraph 3.7.3 below regarding payment.

3.7.1 Liabilities not within initial scope of the Revenue Audit

In cases not involving deliberate default, if Revenue draws the attention of the taxpayer to issues not within the initial scope of the Revenue Audit, without formally extending the audit, the taxpayer will have the benefit of an 'unprompted qualifying disclosure' in respect of any liabilities disclosed.

3.7.2 Qualifying Disclosure and Calculation of Penalties

A 'qualifying disclosure', as defined in legislation, does not need to make any reference to penalties or state the amount of the penalty. On receipt of a qualifying disclosure, Revenue will agree the penalty amount with the taxpayer and will obtain payment of the full amount of the settlement to include tax, duty, interest and penalties.

3.7.3 Qualifying Disclosure and Payment

One of the conditions of a qualifying disclosure is that the liability due MUST be paid. A real, genuine and accepted proposal to pay the agreed liability (involving payment or an agreed phased payment arrangement made in accordance with Revenue's instalment arrangement procedures) will satisfy the payment criteria for a qualifying disclosure. Where the taxpayer fails to honour a phased payment arrangement, and Revenue are satisfied that the disclosure and intention to pay were not bona fide, the disclosure will be deemed not to be a qualifying disclosure. Revenue reserves the right to initiate or pursue an investigation with a view to a criminal prosecution in such cases.

See paragraph 5.9 of this Code of Practice for more information on payment methods.

3.7.4 Qualifying Disclosure and Non-Publication

For all tax defaults, irrespective of the date the tax default occurred, a qualifying disclosure as defined in paragraph 3.7 will enable the taxpayer to secure the benefits of non-publication.

3.7.5 Qualifying Disclosures and Prosecution

Where the taxpayer makes a 'prompted qualifying disclosure' or an 'unprompted qualifying disclosure', Revenue will not initiate an investigation with a view to prosecution of the taxpayer in relation to the matter disclosed. A taxpayer may be investigated with a view to prosecution where a disclosure of tax defaults is not a qualifying disclosure.

3.7.6 Qualifying Disclosures and Companies

An audit of a parent company or a subsidiary company may necessitate the audit of other companies within a group. If the company being audited has not been advised that the ‘Revenue Audit’ covers other companies within the group, the audit notice does not prevent such other group companies from making an ‘unprompted qualifying disclosure’. However if a ‘Notification of Revenue Audit’ to another company within the group has already issued, then any disclosure made by that other company would be considered to be a prompted disclosure.

3.8 Definition of a Prompted Qualifying Disclosure

A ‘prompted qualifying disclosure’ means a qualifying disclosure that has been made to Revenue in the period between -

a) the date on which the person is notified by Revenue of the date on which an audit will start, and

b) the date that the audit starts.

‘*The date on which the person is notified*’ is the date of the ‘Notification of a Revenue Audit’ letter.

In practice this means that a ‘prompted qualifying disclosure’ is a disclosure made after a ‘Notification of a Revenue Audit’ has issued from Revenue but before an examination of the books and records or other documentation has begun. Where a desk audit notification has issued, examination of the books and records will be regarded as having commenced on the day after the period of notice has expired. (See **Exclusions** outlined in paragraph 3.10 below)

3.9 Definition of Unprompted Qualifying Disclosure

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

a) before any audit or investigation had been started by them into any matter occasioning a liability to tax, or

b) where the person is notified by Revenue of the date on which an audit or investigation into any matter occasioning a liability to tax of that person will start, before that notification.

In practice this means that an ‘unprompted qualifying disclosure’ is a disclosure that is made before a ‘Notification of a Revenue Audit’ is issued (that is, before the date on which the letter of notification was issued) or before the commencement of a ‘Revenue Investigation’. For exclusions, see paragraph 3.10 below.

3.10 Exclusions – Disclosure not regarded as a Qualifying Disclosure

A taxpayer is entitled to make a disclosure of additional undeclared tax or duty liabilities or other errors made in a return/self-assessment to Revenue at any time. This Chapter outlines the opportunities and methods available to a taxpayer to regularise his or her tax or duty affairs.

However, any disclosure made by a taxpayer is excluded by legislation from being regarded as a ‘qualifying disclosure’ in the following circumstances:-

1. where a ‘Revenue Investigation’ has already 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 a person representing that person, 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.

2. where any disclosure made after 30th April 2017 includes matters that relate directly or indirectly to any of the following:

   a) an account held or situated in a country or territory other than the State

   b) income or gains arising from a source, or accruing, in a country or territory other than the State

   c) property situated in a country or territory other than the State.

A disclosure in respect of liabilities arising in the State will not be accepted as qualifying if there are other offshore matters of which Revenue is or becomes aware which give rise to a penalty greater than 15%.

In addition, a disclosure is not a 'qualifying disclosure' if –

- the disclosure made by the person is incomplete by reference to the conditions as set out in paragraph 3.7 of this Code of Practice and as provided for in the Taxes Acts
- the disclosure is given verbally. A verbal disclosure is not regarded as a 'qualifying disclosure'. A 'qualifying disclosure' must be in writing.

For more information on Revenue non-audit compliance interventions and a definition of 'Revenue Audit' and 'Revenue Investigation', see Chapter 2 of this Code of Practice.

3.11 First, Second, Third & Subsequent Qualifying Disclosures and Penalties

In situations where the 5-year rule does not apply (paragraph 3.12 below), liability to a penalty is based on the category of behaviour (careless, deliberate) by the taxpayer that resulted in the tax or duty default disclosed and the number of 'qualifying disclosures' previously made by the taxpayer.

The rules regarding first, second, third and subsequent qualifying disclosures apply to all 'unprompted qualifying disclosures' and 'prompted qualifying disclosures' received by Revenue.

A qualifying disclosure of tax defaults, which are tax defaults that occurred before a change in ownership (within the meaning of Paragraph 1, Schedule 9, TCA, 1997) of a company, will be disregarded in considering the application of this section to a qualifying disclosure made after the change of ownership, in so far as tax defaults disclosed after the change of ownership occurred after that change.

3.11.1 Unprompted Qualifying Disclosures and Penalties

Liability to a penalty where an 'unprompted qualifying disclosure' is made by a taxpayer is set out in Penalty Table A below. Where full cooperation with the Revenue Compliance Intervention is given by the taxpayer, the penalty is reduced as outlined in the table.

PENALTY TABLE A	UNPROMPTED QUALIFYING DISCLOSURE MADE		
DISCLOSURE	CATEGORY OF BEHAVIOUR	PENALTY	FULL COOPERATION PENALTY REDUCED TO
		%	
All Unprompted Qualifying Disclosures in this category	Careless Behaviour without significant consequences	20%	3% of tax/duty default
First Unprompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	5% of tax/duty default
	Deliberate behaviour	100%	10% of tax/duty default
Second Unprompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	20% of tax/duty default
	Deliberate behaviour	100%	55% of tax/duty default
Third or subsequent Unprompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	40% of tax/duty default (no reduction)
	Deliberate behaviour	100%	100% of tax/duty default (no reduction)

For information;

- the term 'unprompted qualifying disclosure' is defined at paragraph 3.9
- the terms 'significant consequences' and 'deliberate behaviour' are explained at paragraph 5.6
- 'Full Cooperation with a Revenue Compliance Intervention' is explained at paragraph 3.16
- calculation of the 'difference' for tax and duty geared penalty purposes is explained at paragraph 5.5.1
- penalties are explained at paragraph 5.5.

3.11.2 Prompted Qualifying Disclosures and Penalties

Liability to a penalty where a ‘prompted qualifying disclosure’ is made by a taxpayer is set out in Penalty Table B below. Where full cooperation with the Revenue Compliance Intervention is given by the taxpayer, the penalty is reduced as outlined in the table.

PENALTY TABLE B	PROMPTED QUALIFYING DISCLOSURE MADE		
DISCLOSURE	CATEGORY OF BEHAVIOUR	PENALTY	FULL COOPERATION PENALTY REDUCED TO
		%	
All Prompted Qualifying Disclosures in this category	Careless Behaviour without significant consequences	20%	10% of tax/duty default
First Prompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	20% of tax/duty default
	Deliberate behaviour	100%	50% of tax/duty default
Second Prompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	30% of tax/duty default
	Deliberate behaviour	100%	75% of tax/duty default
Third or subsequent Prompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	40% of tax/duty default (no reduction)
	Deliberate behaviour	100%	100% of tax/duty default (no reduction)

For information;

- the term ‘prompted qualifying disclosure’ is defined at paragraph 3.8
- the terms ‘significant consequences’ and ‘deliberate behaviour’ are explained at paragraph 5.6
- ‘Full Cooperation with a Revenue Compliance Intervention’ is explained at paragraph 3.16
- calculation of the ‘difference’ for tax and duty geared penalty purposes is explained at paragraph 5.5.1
- penalties are explained at paragraph 5.5

3.12 The 5-year Rule regarding Qualifying Disclosures

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

In this context, it should be noted that;

- a qualifying disclosure can only be a second qualifying disclosure if there was a liability to the specific tax-head in the first qualifying disclosure

  Example: If the previous qualifying disclosure was in respect of VAT only and the current qualifying disclosure is in respect of Corporation Tax, then the current qualifying disclosure is to be 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 or duty defaults of a minor nature.

3.13 Period to prepare a Qualifying Disclosure

To secure an agreed period of time in which to prepare and make a qualifying disclosure, notice of intention to make a qualifying disclosure must be given **in writing** to Revenue by the taxpayer and/or his or her agent.

Unprompted Qualifying Disclosure

In the case of an unprompted qualifying disclosure, the notice of the intention to make a disclosure must be given to Revenue **in writing** before;

- a 'Notification of a Revenue Audit' is issued, or
- contact with the taxpayer has been made by Revenue regarding a 'Revenue Investigation' relating to his or her tax affairs. Situations where a disclosure is not accepted as a 'qualifying disclosure' are outlined in paragraph 3.10 (Exclusions) above.

In the case of an 'unprompted qualifying disclosure', if an additional 60 days to prepare the disclosure is required, the notice of intention to make an unprompted disclosure must be submitted **in writing** to Revenue together with a request to allow the extended period of time to make the disclosure. The 60-day period allows the taxpayer or his or her agent to contact Revenue to discuss any matters arising, including the category of default on which the penalty is to be based.

Prompted Qualifying Disclosure

The majority of prompted disclosures will be submitted in the period between the date of the 'Notification of a Revenue Audit' and the commencement of the 'Revenue Audit'. After the initial interview, examination of the books and records will begin and the 'Revenue Audit' will be regarded as having commenced.

In the case of a 'prompted qualifying disclosure', if an additional 60 days to prepare the disclosure is required, the written notice of intention to make a disclosure must be given within 14 days of the day of issue of the 'Notification of a Revenue Audit'.

A person who has given notice in writing within the time allowed of his or her intention to make a 'prompted qualifying disclosure' will be given 60 days in which to quantify the shortfall and to make the relevant payment. This period of 60 days will begin from the day on which the notice of intention to make a 'prompted qualifying disclosure' was given and will be communicated to the taxpayer (and agent) in writing by Revenue. The 60-day period allows the taxpayer or his or her agent to contact Revenue to discuss any matters arising, including the category of default on which the penalty is to be based.

The preceding paragraphs set out a time limit for agreeing a period within which a qualifying disclosure may be prepared (without the risk of the taxpayer being notified of an audit or the commencement of the examination of the books and records where the taxpayer has already been so notified) and the duration of that period.

Notice of Intention in respect of the same issue or period

A notice of intention to make a qualifying disclosure will not be granted where the taxpayer has already availed of a 60 day period in respect of the same issue or period, i.e. only one 60 day period will be allowed to prepare a qualifying disclosure for the same issue or period.

3.14 Examination of Unprompted or Prompted Qualifying Disclosures

Revenue examines a selection of unprompted qualifying disclosures for accuracy and completeness. In the event of such examination, the taxpayer must provide full cooperation to continue to avail of the relevant treatment. Where the case is not selected for examination, the taxpayer will be advised that, based on the information available at the time of writing, Revenue does not propose to make any further enquiries into past liabilities of the taxpayer.

Revenue examines all prompted qualifying disclosures to verify the details disclosed and to ensure that the disclosure is complete. The taxpayer must provide full cooperation during the course of the examination to continue to avail of the relevant treatment.

If discrepancies are discovered in either prompted or unprompted disclosures as a result of an examination by Revenue, these discrepancies will not negate the qualifying disclosure provided that the discrepancies are neither significant nor intentional.

The detailed examination of an unprompted disclosure made by a taxpayer is regarded as a 'Revenue Audit' and this Code of Practice applies. A 'Notification of a Revenue Audit' will be issued to the taxpayer (and agent).

3.15 Qualifying Disclosures – Requirements Summary Chart

<table>
<tr><th>Category of Default</th><th>Type of Qualifying Disclosure</th><th>Requirement for a Qualifying Disclosure (accompanied by payment of tax, duty and interest)</th></tr>
<tr><td>Deliberate behaviour</td><td>Prompted and Unprompted</td><td>State the amounts of all liabilities to tax and interest, in respect of all tax heads and periods where liabilities arise, as a result of deliberate behaviour</td></tr>
<tr><td>Careless behaviour</td><td>Prompted</td><td>State the amounts of all liabilities to tax and interest in respect of the relevant tax head and periods, within the scope of the proposed audit</td></tr>
<tr><td>Careless behaviour</td><td>Unprompted</td><td>State the amounts of all liabilities to tax and interest, in respect of the tax head and periods that are the subject of the qualifying disclosure</td></tr>
<tr><td colspan="3">A qualifying disclosure does not need to state the amount of the penalties. Penalties will be subsequently agreed and paid</td></tr>
<tr><td colspan="3">The tax, duty and interest owed must be paid</td></tr>
<tr><td colspan="3">A full explanation and particulars in relation to the chargeable amounts not previously disclosed must be included</td></tr>
<tr><td colspan="3">A statement, including computations, together with disclosure of estimates used, if any, of the amount of tax, duties, PRSI and Levies due for each period concerned must be included</td></tr>
<tr><td colspan="3">Where any tax return was made or submitted by a person, neither deliberately nor carelessly, and it comes to that person's notice that it was incorrect, then, unless the error, where material, is remedied without unreasonable delay, the incorrect return shall be treated as having been deliberately made or submitted by that person [section 1077E (9) TCA 1997 ETC.]</td></tr>
</table>

3.16 Full Cooperation – No Qualifying Disclosure Made – Penalties

Where no qualifying disclosure is made, a lower penalty is still applicable where a taxpayer cooperates fully during the course of the compliance intervention.

Full cooperation includes the following;

- having all books, records and linking papers, however held, available for Revenue at the commencement of the audit

- having appropriate personnel available at the time of the audit
- responding promptly to all requests for information and explanations
- responding promptly to all correspondence
- prompt payment of the audit settlement liability.

Examples of lack of cooperation include;

- refusing reasonable access to the business premises
- refusing reasonable access to the business records, including linking papers
- failing to provide Revenue, during the course of the audit or intervention, with information known to the taxpayer which would be used in determining whether a tax underpayment arises
- delays by the taxpayer in the course of the audit or intervention where there was no reasonable excuse for those delays.

See also the operational instruction *'Failure to Cooperate Fully with a Revenue Compliance Intervention'* published on www.revenue.ie under Tax and Duty Manuals – section 16/Compliance and paragraph 4.4 of this Code of Practice regarding *Obstruction*.

Revenue will provide any assistance required by taxpayers to enable them to cooperate with the audit, including allowing them reasonable time to reply fully to correspondence and providing a timely response to submissions or queries from taxpayers or their agents.

3.16.1 Liability to a penalty where no Qualifying Disclosure made

Liability to a penalty in relation to a careless or deliberate tax or duty default where a 'qualifying disclosure' is not made by the taxpayer is set out in penalty Table C. Where full cooperation with the Revenue Compliance Intervention is given by the taxpayer, the penalty is reduced as outlined in the table.

PENALTY TABLE C	NO QUALIFYING DISCLOSURE MADE	
CATEGORY OF BEHAVIOUR	PENALTY	FULL COOPERATION PENALTY REDUCED TO
	%	
Careless Behaviour without significant consequences	20%	15% of tax/duty default
Careless behaviour with significant consequences	40%	30% of tax/duty default
Deliberate behaviour	100%	75% of tax/duty default

For information;

- the terms 'significant consequences' and 'deliberate behaviour' are explained at paragraph 5.6
- 'Full Cooperation with a Revenue Compliance Intervention' is explained at paragraph 3.16
- definitions of 'prompted qualifying disclosure' and 'unprompted qualifying disclosure' are included at paragraphs 3.8 and 3.9
- calculation of the 'difference' for tax and duty geared penalty purposes is explained at paragraph 5.5.1
- penalties are explained at paragraph 5.5

3.17 Capital Gains Tax Valuations

Valuations that cannot be supported and which are determined to be baseless arise from time to time in Capital Gains Tax (and other taxes) compliance interventions. Spurious valuations lead to prolonged correspondence, delays in finalising audit settlements and claims that penalties should not be applied on the basis that the opinion of a professional valuer has been obtained. In the absence of relevant supporting evidence, a professional opinion will not, of itself, prevent the application of penalties. It is acknowledged that it may be difficult for taxpayers to obtain accurate valuations depending on the prevailing economic environment.

Notwithstanding the guidelines in relation to Categories of Behaviour (Chapter 5), where reliable evidence, whether from comparable transactions or otherwise, has not been supplied in support of the taxpayer's valuations, liability to a 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 purpose 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 purpose of reduced penalties is *deliberate behaviour*.

3.18 Capital Acquisitions Tax and Stamp Duty Valuations

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.

3.19 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 property in section 147 Finance (Local Property Tax) Act, 2012 (as amended).

3.20 Arrears of Declared Taxes and Duties

In order to improve tax compliance under all tax-heads, Revenue requires payment of all unpaid tax or duty on record together with the payment of the audit settlement, where due. Revenue also pursues all outstanding tax returns together with any related liabilities and penalties.

3.21 Maintenance of Records

The obligation to keep proper records rests with the taxpayer.

Records, whether held in paper or electronically, must be of a sufficient standard to give a full and accurate account of the business so that correct tax liabilities can be calculated. In all cases where substantial inadequacies are found in the records, the provisions of the appropriate sections are brought to the attention of taxpayers.

Linking documents used when preparing the accounts are part of the taxpayer's books and records as defined in section 886 TCA, 1997.

Value Added Tax Records

Every accountable person shall, in accordance with sections 84 and 85 of the Value Added Tax Consolidation Act 2010, keep full and true records of all transactions which affect or may affect his or her liability to tax and entitlement to deductibility.

- **Cash Registers**

  An information leaflet on record keeping for all businesses that use a cash register or an electronic point of sale (EPOS) system is available on the Revenue website.

  https://www.revenue.ie/en/tax-professionals/tdm/value-added-tax/part09-obligations-accountable-persons/records/obligations-records-cash-registers.pdf

- **Electronic Point of Sale [EPOS] systems**

  Where records are generated, recorded or stored in any electronic format, those records must be retained for the minimum period required by tax and duty legislation. The retention alone of paper copies of documents or reports, which were generated, recorded or stored electronically, at any time, will not satisfy the requirements of the Acts to maintain records.

  See section 887 of the TCA, 1997 (substituted by section 232 Finance Act 2001) and the Notice for Retention of Tax Records in Electronic Format published by the Revenue Commissioners in January 2012 in **Iris Oifigiúil**.

Self-Assessment Records

The taxpayer or agent should always retain a paper or electronic copy of the Income Tax or Corporation Tax return together with the self-assessment and a calculation of the final tax liability for a period of 6 years as required under section 886 TCA, 1997.

Mineral Oil Traders

A mineral oil trader shall for mineral oil tax purposes, in addition to any records required under section 886 of the Taxes Consolidation Act 1997 and section 84 of the Value-Added Tax Consolidation Act 2010, keep records as outlined in Part 5 of the **Mineral Oil Tax Regulations 2012**.

Retention of Tax Records in Electronic Format

Section 887 TCA, 1997 allows businesses to keep records electronically, without specific Revenue approval, provided that they are kept in accordance with requirements published by the Revenue Commissioners. The requirements for tax records held in electronic format are available on page 3 of **Iris Oifigiúil** published in January 2012.

All electronically stored records must be accessible to Revenue. The method of delivery and the format of the electronic record required by Revenue shall be specified by Revenue at the time the records are being requested.

Section 912 TCA, 1997 specifies that the obligations in relation to record maintenance apply equally to the data equipment together with any associated software, data, apparatus or material.

Obligation of Employers to register and to keep a Register of Employees

Employers are advised that under section 988A TCA 1997, all employers are required to keep a Register of Employees (in paper or electronic format) showing the name, address, personal public service number, date of commencement and, where relevant, the date of cessation of employment of all employees. Section 988 TCA 1997 requires all employers who pay emoluments to register with Revenue.

Appendix V of this Code of Practice outlines the legislation under which taxpayers are obliged to maintain proper records.

Chapter 4

The Revenue Audit

This chapter covers:

- Location, conduct of a Revenue Audit and expected attendees
- Scope of the audit
- Re-Audit of cases previously audited
- Procedures where there are indications of a serious tax offence

4. THE REVENUE AUDIT

Where appropriate, references hereunder apply to Revenue Audit and all Revenue Compliance Interventions.

4.1 Location of Audit and Expected Attendees

Unless otherwise warranted, the Revenue Audit is carried out at the taxpayer's place of business. The taxpayer (and agent) is expected to attend. Where there are a number of businesses or locations, the audit is undertaken at the principal place of business. As part of the audit process, Revenue may visit some or all of the locations where the business is carried on.

In the case of companies, the audit normally takes place at the principal place of business, rather than at the Registered Office address.

Where a taxpayer has no trading premises and the books and records are retained at the taxpayer's private residence, an audit may only be conducted at the residence with the consent of the taxpayer, [See section 905(2) (e) TCA, 1997]. Where consent is not given, the books and records are collected and the audit is carried out at the relevant Revenue office.

In general, Revenue auditors from the local Revenue office carry out audits or compliance interventions. However, for operational reasons, Revenue auditors from other local Revenue offices may carry out a compliance intervention of a business in any area.

Revenue Audits are not normally carried out at an agent's office. If the books and records are kept at the office of the agent, arrangements should be made to have them available at the taxpayer's place of business before commencement of the audit.

Where, in certain circumstances, carrying out an audit in the taxpayer's premises would be impractical or would cause serious inconvenience to the taxpayer, Revenue will complete the audit in the Revenue office.

Irrespective of where the Revenue Audit is actually carried out, the Revenue auditor normally visits the business premises.

Where the compliance intervention scheduled includes the use of e-audit techniques, as noted in paragraph 1.9 Electronic Support Tools & Techniques, the taxpayer's technology expert or software/EPOS supplier may also need to attend.

4.2 Conduct of a Revenue Audit

On arrival at the place of audit or compliance intervention, the Revenue auditor will show his or her identification and authorisation and explain to the taxpayer or company representative the purpose of the intervention. It is Revenue policy not to disclose the precise reason (or reasons) for selecting a particular case for audit.

However, where an audit is preceded by an aspect query or profile interview, normally the points at issue will be pursued further in the audit along with any other matters.

The taxpayer is informed about Revenue practice on charging interest on outstanding tax liabilities and a person's liability to a penalty and the taxpayer is offered the opportunity to make a prompted qualifying disclosure.

In addition, Revenue will advise the taxpayer of the benefits of making a qualifying disclosure regarding reduced penalties and non-publication.

After the initial interview, examination of the books and records will begin and the Revenue Audit will be regarded as having commenced.

Revenue will usually;

- 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 tax and accounting principles
- check that all relevant returns have been made and are complete in accordance with the records
- make whatever enquiries are necessary for the audit
- advise the taxpayer of any errors, omissions or irregularities in the tax or duty returns submitted (including those in the taxpayer's favour), determine liability if it arises, request settlement and specify any action that may be required to place the taxpayer on a compliant footing
- conduct a physical and documentary walkthrough of premises to verify on-going compliance with criteria or conditions laid down in authorisations for certain Customs procedures.

Revenue makes every effort not to retain any records submitted to the office or collected from the taxpayer for more than one month. If more time is required to finalise an audit, Revenue, before the month has expired, will advise the taxpayer and the agent to that effect and give an indicative timeframe for the conclusion of the audit.

Where a Revenue Audit requires transfer of electronic data from a taxpayer's computer or EPOS systems to Revenue, the taxpayer or his/her information technology supplier/representative/advisor/agent will be required to provide the necessary data downloads. Revenue is not permitted to operate the taxpayer's computer system. However, the data requested will be transferred to Revenue encrypted storage devices.

See also paragraph 1.9, 'Electronic Support Tools and Techniques'.

Revenue's data security guidelines will apply to all records extracted in the course of an audit or intervention. In particular, data will only be stored on laptops or portable storage devices in encrypted form.

Revenue guidelines on encryption are designed to ensure the maximum possible protection to data. See **Data Protection in Revenue**.

If Revenue has not been given all the books and records requested, the taxpayer is informed. The taxpayer is given a receipt for records taken from a taxpayer's premises.

When records have been removed and the taxpayer requires them for current trading purposes, copies of the records removed are given to the taxpayer or, if required, the taxpayer is given an opportunity to take extracts from the records taken.

4.3 Materiality in Settlements

The objective of all Revenue audit and compliance programmes is to ensure voluntary compliance. If it becomes clear at an early stage in an audit that the taxpayer's returns are substantially correct, Revenue will withdraw from the audit.

Where it is clear that a taxpayer has broadly done their best to ensure that the tax returns for the various taxes and duties are accurate, adjustments are not made for small inaccuracies (on the basis that these may be attributed to innocent errors and may otherwise be balanced by minor errors in Revenue's favour). Materiality, therefore, is always a factor in assessing the significance of an error or omission.

Materiality is a matter for sensible judgement by Revenue.

4.4 Obstruction

It is Revenue policy for Revenue auditors to introduce themselves at the start of the audit or compliance intervention and to produce their official authorisation card. Revenue will also explain the purpose of the audit. If the taxpayer refuses to facilitate the audit or to produce the requested books and records in an acceptable format, the taxpayer is regarded as obstructing the audit process.

In such circumstances Revenue will spend a reasonable period of time trying to obtain cooperation from the taxpayer. Where the refusal continues and it is clear that the taxpayer has no statutory or other legal basis for refusing to facilitate the audit, the taxpayer will be advised that it is a criminal offence to obstruct or interfere with an authorised officer of the Revenue Commissioners in the performance of their duties [Section 1078 (2) (j) TCA, 1997].

Situations do arise where it is necessary for Revenue to take immediate action to secure the books and records. The Revenue auditor may, in this situation, contact a Revenue manager to request support.

In all but the most exceptional of circumstances, a report of such cases will be made to Revenue's Investigations and Prosecutions Division with a view to referring the matter for criminal prosecution.

4.5 Years, Periods and Issues for Audit

Revenue Audits generally focus on a year or period where a specific risk has been identified. However, multi-year (or period) compliance interventions may be carried out where material risks, informed by the wide range of data sources available to Revenue, are identified for a number of years (or periods).

The specified period outlined in the audit notification will not preclude Revenue from extending the period of the audit.

The function of Revenue conducting the audit is to;

- audit the returns for the year(s), period(s) or transactions indicated in the 'Notification of a Revenue Audit' (normally reflecting the risks identified)
- make any necessary adjustments
- settle and collect additional tax and duties if any, together with related interest and penalties and
- specify the remedial actions required to put the tax affairs of the person audited on a sound footing for the future.

Revenue focuses primarily on the years, periods or transactions indicated in the 'Notification of a Revenue Audit'.

Where the initial scope of the audit is extended to other years, periods and/or tax-heads, the taxpayer may have an additional opportunity (where required) to make a qualifying disclosure. See paragraphs 3.7.1 Liabilities not within initial scope of the Revenue Audit

Where tax defaults arise in a director-owned company, it is usually for the benefit of one or more of the directors. Consequently, an audit of a director-owned company may include an audit of the directors' tax affairs. In such situations, all parties subject to the Revenue Audit will receive a 'Notification of a Revenue Audit'.

4.6 Auditing Earlier Years, Later Years, Periods or Issues

Initially the audit will concentrate on the year(s), period(s) and issues indicated in the 'Notification of a Revenue Audit'. However, issues may arise during the course of the audit that will require Revenue to consider opening earlier or later years. In these circumstances taxpayers may have qualifying disclosure opportunities.

Overall priorities, time factors involved in such audits, likely outcome, materiality and the additional costs arising for taxpayers and for Revenue of opening earlier years (or periods) will always be considered in deciding whether to open earlier years (or periods).

Earlier years or tax periods will only be audited if there is a sound basis for believing that significant tax defaults have taken place.

Opening of earlier years/periods is unlikely to arise in the following type of case;

- where the understatement of liability is relatively small, and
- where there is no significant unexplained accumulation of assets
- where there is a difference of opinion in the technical treatment of an item but the loss of revenue to the Exchequer is relatively small.

By contrast, reasonable grounds for considering opening earlier years, under the procedures described above, may arise in the following type of case:

- where there is a 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 of audit, and it is likely that a similar position existed in previous years.

Where Revenue has reasonable grounds for believing that a return is incorrect due to its having been completed in a fraudulent or negligent manner, a compliance intervention into any return may be made for any period irrespective of the expiry of the 4 year statutory limit, where the time limit applies to that particular tax.

Part of the audit focus is to bring the case up to date. Accordingly, where the issue giving rise to an adjustment in the period of audit also occurs in later periods, Revenue, in addition to collecting the tax arising from the audit period, will seek payment of the tax (including preliminary tax) that may be due for the later periods.

Generally, audits involving Customs duties will not extend beyond 3 years. This is because a debt shall not be notified to a debtor after a period of 3 years has passed from the date on which the Customs debt was incurred. [Article 103 (1) of the Union Customs Code & Article 221 (3) of the Customs Code]

The period for notifying a Customs debt to a debtor may be extended beyond 3 years where the act which gave rise to the debt, at the time it was committed, was likely to give rise to criminal court proceedings. [Article 103(2) of the Union Customs Code]

4.7 Review of Cases Previously Audited

Taxpayers previously audited may be reviewed for inclusion in Revenue's re-audit programme. If strong indicators of serious tax evasion or a Revenue offence is detected in the review, the case may be referred to Investigations and Prosecution Division to evaluate its suitability for prosecution.

See explanatory note on Random Audit and Re-Audit Programmes at paragraph 1.5.4 in

‘Chapter 1 – Introduction’ to this Code of Practice.

4.8 Indications of a Serious Tax Offence

In the course of an audit, Revenue will from time to time encounter strong indicators suggesting a serious tax offence of the type described in the prosecution criteria (See Chapter 7 of this Code of Practice). Two main types of evidence arise in tax offences; documentary evidence and statements by the taxpayer. Revenue will deal with such evidence as follows:

Documentary Evidence

Unless there is a Qualifying Disclosure (see paragraph 3.7), documentary evidence for the type of offence described in the prosecution criteria at Chapter 7, will be immediately referred via the Revenue manager to Investigations and Prosecutions Division (IPD). IPD considers whether or not the case is suitable for investigation with a view to prosecution. If the case is considered suitable the taxpayer is advised accordingly. Continuation and completion of the case will be managed in conjunction with IPD.

Statements made by the Taxpayer

A general statement such as “I have a bank account that I have not disclosed” does not indicate that an offence has been committed.

By contrast, a specific statement such as: “I want to tell you how I have been using false invoices to evade tax and pay under-the-counter wages” does indicate that an offence has been committed.

Subject to the guidance in relation to qualifying disclosures (see paragraph 3.7), if the offence is of the type specified in the Prosecution Criteria with a likely prospect of prosecution, the taxpayer is cautioned before making further incriminating statements.

Revenue will not administer a caution to a taxpayer indiscriminately; it is a procedure reserved for cases where there are grounds to suspect serious tax evasion.

A taxpayer who has admitted committing an offence should be cautioned.

Wording of Caution

The caution to be given is the following:

“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”

4.9 Data Protection Act

Revenue collects information in order to administer the tax and duties systems.

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 and 2003.

See **Revenue’s Data Protection policy**.

All taxpayer information held by Revenue is confidential and may only be disclosed in accordance with section 851A (2) TCA, 1997 or as is otherwise provided for by any other statutory provision.

4.10 Data Retention Policy

As noted in Chapter 2, Revenue Audit and intervention programmes are mainly concerned with detecting and deterring non-compliance. While this may involve the examination of original records, the removal of such records, both paper and/or electronic, occurs infrequently. The retention period of these original records is finite and is governed by section 905(2)(iv) (D) TCA 1997.

Revenue Compliance Interventions can involve the copying of records or the extraction from records. Typically, this can include any one or more of the following:

- copies of “raw data” in a database, involving the underlying transactions, e.g. individual line level transactions in an EPOS system
- reports from systems, e.g. reports of sales, purchases, payments, bank etc.
- reports from non financial business records such as tachograph records, stock control, and manufacturing processes.

The data will be deleted within six months of the date that the compliance intervention is finalised. Where the data forms part of a quality control review of the intervention, or a Revenue Internal Audit or other similar activity, it will be deleted when this process is completed. Files which contain the results of the tests carried out during the intervention testing and other relevant files will be retained for the purposes of any internal or external review or to inform a subsequent intervention.

Chapter 5

Finalisation of a Revenue Compliance Intervention

This chapter covers:

- Basis of settlement
- Settlement Offer Approval and Acceptance Procedures
- Interest Charges
- Surcharges
- Penalty Charges/Notices of Opinion
- Categories of Behaviour
- Fixed Penalties
- Payment of liabilities – Inability to pay
- Review/Appeal Procedures

5. FINALISATION OF A REVENUE COMPLIANCE INTERVENTION

5.1 Monetary Settlement

It is important to emphasise the context in which this Code of Practice has been prepared. Monetary settlement has an important role in Revenue's compliance programmes. The use of appropriate monetary settlement procedures is consistent with the efficient management of the tax system and the best use of Revenue resources and minimising the cost of compliance for taxpayers.

Without prejudice to monetary settlement, Revenue also pursues a vigorous prosecution policy for appropriate cases. However, not every case is suitable for prosecution: for example, there may be issues concerning the evidence available.

Each case is judged on its merits. The most suitable approach depends on the particular circumstances of the individual case.

5.2 Basis of Compliance Intervention Settlement

Revenue's objective of achieving the highest degree of voluntary compliance depends on the cooperation and confidence in Revenue of the taxpaying public.

Cooperation is more likely to be forthcoming if the taxpayer's right to information is respected and if the taxpayer is given some time to consider and take advice on the audit/intervention findings.

Where the tax and/or duty liability has not already been quantified by the taxpayer (or agent) in a disclosure, Revenue will quantify the undercharge in respect of tax, duty, interest and penalties (if any) and invite a written offer and payment of the liabilities so quantified. If publication of the settlement arises, the taxpayer and agent are so advised in writing.

An offer made by a taxpayer will not be regarded as being in full and final settlement of liabilities unless it is made without demur or qualification. Conditional offers of settlement are not accepted by Revenue.

All qualifying disclosures and other offers of settlement (paid or unpaid) received from a taxpayer are subject to approval by the Revenue Commissioners and/or Revenue Senior Management. All offers sent for approval are accompanied by a report that carries the Revenue auditor's recommendation.

Most audit/intervention settlement offers are agreed and approved without undue delay and are subject to quality assurance procedures. Under these procedures, Revenue managers examine a number of audits/interventions to ensure they have been carried out in accordance with this Code of Practice.

Once the interviews and discussions with the taxpayer/agent have been concluded, Revenue will have a final meeting (if necessary) with the taxpayer to outline the compliance intervention findings. Should a monetary settlement arise, the taxpayer will be required to forward a written settlement offer to Revenue. The taxpayer may also be required to confirm, in writing, that issues identified during the course of the intervention have been rectified.

At the conclusion of the Revenue Audit or compliance intervention, Revenue will then confirm the position in writing to the taxpayer as follows:

(i) Where the audit/intervention result indicates that the taxpayer's return is acceptable, (there is no change required) a letter will issue to the taxpayer and agent notifying them accordingly

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

Prior to the issue of a final letter from Revenue, all settlement offers (including qualifying disclosures) are subject to the approval of the Revenue Commissioners and/or Revenue Senior Management

(iii) Where agreement is not reached with the taxpayer (and agent) on the audit/intervention result, a clear, concise letter will issue from Revenue summarising the proposed adjustments that gave rise to the additional liability to tax, duty, interest and penalties (if they arose)

The letter will invite the taxpayer to agree to the figures or, if they are unable to agree, to explain why not.

In most cases agreement is reached once the taxpayer/agent is satisfied that Revenue’s approach to settlement is appropriate.

If formal agreement is not reached (or if payment is not forthcoming in agreed cases) Revenue will make all necessary assessments, amendment of assessments or estimates and will issue the relevant notices to the taxpayer and agent.

If no formal appeal is received or if, after the appeal has been determined or otherwise disposed of, 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 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 paragraph 5.5.4 below.

5.3 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 under the relevant interest provisions. **Interest due is not mitigated**.

Where an underpayment arises and is satisfied by the offset of an excess payment from a later period, interest is charged on the underpayment from the due date to the date of the excess payment.

As regards interest on tax, payment must be made within one month of the taxpayer making an offer in settlement. If the payment is not received within one month, the interest charge in the settlement is re-calculated. Where, exceptionally, a settlement can only be paid over a period, additional interest covering the period of an instalment arrangement will arise.

Where, in the absence of agreement between the taxpayer and Revenue, it is necessary to raise assessments or estimates and refer the tax for enforced collection, interest will arise from the original due dates up to the date of payment.

For interest charges in ‘no loss of revenue’ cases – see paragraph 3.5.5

Customs

Interest charges will be applied in accordance with Article 114 of the Union Customs Code & Article 232 of the Community Customs Code [Council Regulation (EEC) No 2913/92].

Excise

Interest charges will be applied in accordance with section 103, Finance Act, 2001 (as amended by section 97, Finance Act, 2003) and section 74, Finance Act, 2002.

Environmental Levy

Interest charges arise under section 72(4A), Waste Management Act, 1996 (inserted by section 50, Protection of the Environment Act, 2003).

5.4 Surcharge for Late Submission of Returns

5.4.1. Section 1084 TCA 1997 – IT, CT and CGT

Taxpayers are liable to a surcharge, under the provisions of section 1084 Taxes Consolidation Act, 1997, for the late filing of a return.

The surcharge applicable will always be added to an audit or intervention settlement where an Income Tax (IT), Capital Gains Tax (CGT), Corporation Tax (CT), Capital Acquisitions Tax (section 53A CATCA 2003) or Local Property Tax (see below) return was not filed on or before the specified return date.

Section 1084 also provides that the filing, on time, of an incorrect return, either carelessly or deliberately, 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 a tax-geared penalty was applied to a settlement.

5.4.2. Section 38 Finance (Local Property Tax) Act 2012 - LPT

Circumstances that will trigger a Local Property Tax generated Surcharge

Chargeable Persons for Income Tax/Corporation Tax/Capital Gains Tax who are also liable persons for LPT may incur a LPT generated surcharge of **10% of their IT/CT/CGT** liability (*subject to maximum surcharge of €63,485*) unless, at the timely **date of filing** the IT/CT/CGT Return

- all LPT Returns required are filed **and**
- LPT liability has been paid in full or an agreed payment arrangement has been entered into (this does not include any Household Charge arrears – see note below)

Where a person incurs a LPT generated surcharge and subsequently files the LPT Return and/or pays the tax, (or enters into an agreed payment arrangement), the surcharge is capped at the amount of the LPT liability (excluding any Household Charge arrears – see note below) where this is lower than the amount of the surcharge.

Note: Non-payment of the Household Charge will not incur a surcharge when filing IT/CT/CGT Returns nor will the arrears be included when computing the cap applying to a surcharge, after the taxpayer has resolved the LPT issues that gave rise to the surcharge.

5.4.3. Section 14A Stamp Duties Consolidation Act 1999

Section 14A of the Stamp Duties Consolidation Act 1999 provides for the addition of a surcharge to the stamp duty payable on an instrument where an accountable person fails to cause the delivery of a stamp duty return on or before the specified return date.

5.5 Penalties

The legislation relevant to the application of penalties in tax and duty settlements is set out in **Appendix III**.

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

There are no provisions for tax-geared penalties in relation to Customs defaults. Fixed administrative penalties for contravention of the Union Customs Code and its Delegated & Implementing Acts apply under section 40 of the Customs Act 2015.

Fixed administrative penalties for contravention of the Community Customs Code and its Implementing Provisions apply under section 54 of the Finance Act 2011 (see paragraph 5.7 of this Code of Practice).

In Stamp Duty cases, for instruments executed on or after 7 July 2012, where an instrument is submitted for stamping (by way of filing a Stamp Duty return) after the time allowed, taxpayers are liable to pay interest on late payment where the unpaid duty exceeds €30, and a surcharge under sections 14 and 14A, respectively, of the Stamp Duties Consolidation Act, 1999.

Where the aggregate amount of a person's tax or duty default is less than €6,000 and the default is not in the deliberate behaviour category, the default shall not render that person liable to a penalty.

Where a tax-geared penalty has been agreed in relation to a tax/duty default for a specific period or periods, the overall level of tax-geared penalty will be regarded as covering any fixed penalties for the filing of an incorrect or late return in respect of any period covered in the settlement.

5.5.1 Calculating the 'difference' for tax & duty-geared penalty purposes

Liability to a tax-geared percentage penalty generally arises on the 'difference' between the amount of tax that 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 the amount of tax that would have been payable or refundable if the tax was computed in accordance with the true and correct return or claim. [Section 1077E (11) TCA 1997]

For VAT, the 'difference' is generally calculated between:

a) 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

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

[Section 116 (11) Value-Added Tax Consolidation Act 2010]

- for Capital Acquisitions Tax, see section 58 (5) Capital Acquisitions Tax Consolidation Act 2003
- for Stamp Duty, see section 134A (7), (8) & (9), Stamp Duties Consolidation Act 1999

5.5.2 Penalties by Agreement

In the course of all compliance interventions, Revenue is concerned mainly with civil penalties. Not every type of adjustment arising as a result of a Revenue compliance intervention will give rise to a liability to a penalty.

The following issues normally give rise to penalties;

- undisclosed sales, receipts, income or gains
- undisclosed remuneration or relevant contract 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 profit and loss account or otherwise
- improper claims for capital allowances or other allowances or reliefs
- failure to disclose all the facts and circumstances relating to a Stamp Duty liability
- substantially understated chargeable value of property or properties for Local Property Tax
- failure to disclose all the facts and circumstances relating to a Capital Acquisitions Tax liability.

This is not an exhaustive list and the circumstances of each case dictate whether liability to a penalty arises.

Revenue will exercise care in considering whether a taxpayer may be liable to a penalty in any particular case. Where there is doubt as to the correct category of tax default, or a doubt as to whether a person is liable to a penalty, the Revenue auditor will discuss the matter with his or her Revenue manager.

Having identified a person's breaches of tax and duty legislation, Revenue will, having regard to guidance outlined in this Code of Practice, inform that person as to the statutory penalties (and the quantum of those penalties) that such breaches attract. The penalty will be agreed with the taxpayer and paid.

5.5.3 Penalties Determined by a Relevant Court

The majority of settlements for tax, interest and penalties are resolved by agreement with the taxpayer in the manner outlined in this Code of Practice.

However, where a person does not agree liability to a penalty or does not pay a penalty which that person has agreed liability to, then it is a matter for a relevant court to determine whether that person is liable to a penalty.

The term 'relevant court' means the District Court, the Circuit Court or the High Court, as appropriate, by reference to the jurisdictional limits for civil matters laid down in the Courts of Justice Act, 1924, as amended, and the Courts (Supplemental Provisions) Act, 1961, as amended.

The jurisdictional limits are as follows;

- District Court – amounts up to €15,000.00
- Circuit Court – amounts up to €75,000.00
- High Court – amounts in excess of €75,000.00 (unlimited)

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

Step 1: Based on the evidence available, a Revenue auditor may form an opinion that a taxpayer is liable to a penalty.

Step 2: If the penalty is to be pursued, a Notice of Opinion must issue to the taxpayer (and a copy will also be sent to the taxpayer's agent) – see Notice of Opinion, paragraph 5.5.4 below. If the taxpayer agrees with the opinion of the Revenue auditor and pays the penalty, then that is the end of the matter.

Step 3: If there is no agreement on the amount of the penalty or no payment of an agreed penalty (or no response from the taxpayer) within 30 days, the Revenue auditor may make an application to a relevant court for that court to determine that the taxpayer has contravened a relevant statute giving rise to a penalty – see paragraph 5.5.5 below.

Step 4: 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 may collect and recover the amount in like manner as the collection of tax – see paragraph 5.5.7 below.

5.5.4 Issue of a Notice of Opinion regarding a Penalty

[Section 1077B TCA 1997]

This section of the Code of Practice refers to cases where no agreement can be reached with the taxpayer regarding liability to a penalty. It also covers any case where a penalty is agreed but not paid.

In these circumstances, the Revenue auditor expresses an opinion as to a person's liability to a penalty and gives notice of that opinion to the taxpayer and to the taxpayer's agent.

The Notice of Opinion will include details of;

a) the statutory provisions under which the penalty arises

b) the circumstances in which that person is liable to the penalty

c) the amount of the penalty to which that person is liable, and

d) such other details as the Revenue auditor considers necessary

For tax-geared penalties, the quantum of the tax must be finalised before a Notice of Opinion is issued.

A Revenue auditor may at any time amend an Opinion and will give notice of the amended Opinion to the taxpayer (and agent) in the same manner as the original Notice of Opinion outlined above. [Section 1077B (2) TCA 1997]

For consistency and ease of administration, all Revenue Divisions use a standard Notice of Opinion.

When forming an opinion as to a person's liability to a tax-geared penalty, the Revenue auditor will take into account whether a qualifying disclosure and/or full cooperation has already been given by the taxpayer.

The Notice of Opinion will be issued to the taxpayer and a copy sent to the agent.

Where a taxpayer does not respond to correspondence relating to a Notice of Opinion of a Revenue auditor, Revenue cannot assume or decide that the taxpayer is liable to a penalty – that is a matter for a relevant court to determine.

5.5.5 Application to a Relevant Court for Penalty Determination

[Section 1077B (3) TCA 1997]

Where the taxpayer to whom a Notice of Opinion is issued does not, within 30 days after the date of the notice (or within 30 days after the date of the amended notice), agree in writing with the opinion or the amended opinion contained in the notice and pay the Revenue Commissioners 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.

The fact that a Notice of Opinion is issued by Revenue or that an application is made by Revenue to a relevant court does not negate the taxpayer's entitlement to a reduced or mitigated penalty for full cooperation or for making a qualifying disclosure. The amount of the penalty will be shown on the Notice of Opinion.

5.5.6 Determination of Penalty by a Relevant Court

Based on the evidence before it, it will be a matter for the court to determine whether the taxpayer has breached the legislation giving rise to the liability to a penalty.

5.5.7 Recovery of Penalty determined by a Relevant Court

[Section 1077C TCA 1997]

Where a court has made a determination that a taxpayer is liable to a penalty, the court may also, where a relevant application is before it, make an order as to the recovery of that penalty, and without prejudice to any other means of recovery, that penalty may be collected and recovered in like manner as an amount of tax.

5.5.8 Appeals against a Penalty determined by a Relevant Court

Under the penalty determination structure it is important to understand that a court (rather than Revenue) has determined that a taxpayer has a liability to a penalty. There is, therefore, no right of appeal of such determination to the Tax Appeals Commission.

Appeals against a determination by a relevant court lie, therefore, within the Rules of Court applicable to each relevant court and not within the Taxes Acts.

5.5.9 Penalties – Time Limits

Except for cases mentioned in paragraph 5.5.10 (Penalties in Death Cases), there is no time limit for proceedings or applications for the recovery of penalties.

5.5.10 Penalties in Death Cases

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, where 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 had existed, then a penalty is due and Revenue can take proceedings to enforce it and to collect it from the taxpayer's estate. [Section 1077D TCA 1997]. A more comprehensive statement of the position is outlined at **Appendix VII**.

5.5.11 Tabular Overview of Tax-Geared and Duty-Geared Civil Penalties

The Finance (No.2) Act 2008 passed into law on 24 December 2008.

The procedure, where a 'relevant court' is asked to determine whether a taxpayer is liable to a penalty (in a situation where agreement on a penalty is not reached or where an agreed penalty is not paid), is available to resolve all tax default penalty cases **irrespective of when the default occurred**. [Section 1077B TCA 1997 (as inserted by Finance (No.2) Act 2008)]

A summary of the pre and post Finance (No.2) Act 2008 position regarding tax-geared penalties is as follows:

	Cases where the tax default occurred before 24 December 2008	Cases where the tax default occurred on or after the 24 December 2008
Level of Penalty	The level of civil penalty to apply in such cases is the 100% tax-geared penalty as mitigated in accordance with the category of default and default frequency set out in Penalty Table 2 (Appendix IV)	The level of civil penalty to apply in such cases is the tax-geared penalty as set out in the Tax Acts (S1077E TCA 1997, S116 VATCA 2010 ETC.) (Penalty Table 1 paragraph 5.6.2)
Categories of Default	The categories of default giving rise to a civil penalty are those carried out 'fraudulently' or 'negligently': (a) *Deliberate default*; (b) *Gross carelessness*; (c) *Insufficient care*.	The categories of default giving rise to a civil penalty have been changed to: (a) *Deliberate behaviour*; (b) *Careless behaviour with significant consequences*; or *Careless behaviour without significant consequences*.
Mitigation	The mitigation where certain conditions are fulfilled is as outlined in Penalty Table 2, Appendix IV of this Code of Practice	Whilst the general power of mitigation is retained in statute, the tax and duty-geared penalties contained in the Finance (No.2) Act 2008 include reduced penalties where certain conditions are fulfilled (Penalty Table 1, paragraph 5.6.2)

The key issue is, therefore, to determine when the tax default giving rise to a penalty occurred, and this is illustrated in the following examples:

Tax Period	Document Submitted	When Submitted	Contravention	Contravention Occurred	Penalties to Apply
2007	Form 11	1/09/2008	Incorrect Return	1/09/2008	Section 1053 TCA 1997 Penalties
2007	Form 11	1/03/2009	Incorrect Return	1/03/2009	Section 1077E TCA 1997 Penalties
2007	Form 11	Not filed	Failure to Comply	01/11/2008	Section 1053 TCA 1997 Penalties
2008	Form 11	Not filed	Failure to Comply	01/11/2009	Section 1077E TCA 1997 Penalties
2008 Jan-Feb	VAT 3	14/03/2008	Incorrect Return	14/03/2008	Section 27 VAT Act 1972 Penalties
2009 Mar-Apr	VAT 3	10/05/2009	Incorrect Return	10/05/2009	Section 116 VATCA 2010 Penalties
2008	Form 11	1/10/2009	Incorrect Return	1/10/2009	Section 1077E TCA 1997 Penalties

Where a taxpayer fails to comply with a requirement to deliver a return or statement of a kind mentioned in any of the provisions specified in column 1 of Schedule 29 TCA 1997 that taxpayer shall be liable to a penalty.

5.5.12 – Tax Avoidance Surcharge

The Notice of Opinion and Court Application procedures outlined above also apply to the ‘tax avoidance surcharge’ described in Chapter 8.

In a case where a ‘tax avoidance surcharge’ arises, the amount of the ‘tax avoidance surcharge’ is generally computed by Revenue, agreed with the taxpayer and paid. Where a person does not agree liability to a ‘tax avoidance surcharge’ or does not pay a ‘tax avoidance surcharge’ which that person has agreed liability to, then it is a matter for a court to determine whether that person is liable to a ‘tax avoidance surcharge’.

5.6 Categories of Behaviour: Careless and Deliberate

The categories of tax default giving rise to a civil penalty are as outlined below;

5.6.1 Categories for tax defaults that occurred on or after 24/12/2008

The level of civil penalty to apply for deliberate or careless tax defaults is the tax-geared penalty as set out in legislation.

a) Deliberate Behaviour penalties

Deliberate behaviour is not defined in the Acts and is, therefore, given its normal meaning.

In general, *deliberate behaviour* involves either a breach of a tax obligation with indicators consistent with intent on the part of the taxpayer or a breach that cannot be explained solely by carelessness.

For *deliberate behaviour* penalties to apply, Revenue is satisfied;

- that the facts of the case are consistent with intent to default, or
- alternatively, that the taxpayer’s actions or omissions were likely to result in a tax default and those actions or omissions cannot be explained solely by carelessness.

Indicators consistent with *Deliberate Behaviour* would include;

- 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 of the business
- 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.

This list is not exhaustive.

The tax-geared penalty for a default in this category is outlined in Penalty Table 1, paragraph 5.6.2.

b) Careless Behaviour penalties

Taxpayers must exercise care in fulfilling their tax obligations. *Careless behaviour* is a lack of due care rendering tax liabilities returned by the taxpayer, or repayment claims made, incorrect.

Careless behaviour is distinguished from *deliberate behaviour* by the absence of indicators, in the facts and circumstances of the default, which are consistent with intent.

'Carelessly' is defined in the Acts as meaning the "*failure to take reasonable care*".

The test of reasonable care is "whether a taxpayer of ordinary skill and knowledge, properly advised, would have foreseen as a reasonable probability or likelihood the prospect that an act (or omission) would cause a tax underpayment, having regard to all the circumstances". The taxpayer cannot devolve the responsibility of making a correct return to an agent. If all relevant matters have not been brought to the attention of the agent, the taxpayer has not taken due care.

Where there is careless behaviour, the penalty to apply depends on whether that careless behaviour gave rise to significant consequences.

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 concerned.

Significant consequences: this phrase is not defined in the Acts but is used to describe the statutory penalty applicable 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 the case of a reduction in a repayment made, if any, compared with the repayment claimed, if the reduction exceeds 15% of the amount of the repayment claimed by the taxpayer a penalty in the category of *careless behaviour with significant consequences* will apply if the incorrect claim arose from a lack of due care by the taxpayer.

Indicators consistent with *careless behaviour* on the part of the taxpayer would include the following non-exhaustive list of examples, to the extent that they lead to substantial underpayments of tax (by reference to the guidance in the next paragraph below);

- estimation of accounts items
- neglecting to categorise expenditure into allowable and disallowable categories for tax purposes
- neglecting to take advice on an issue of interpretation where either a tax agent or Revenue should have been approached for guidance
- whether the taxpayer obtained advice before deciding on action
- the extent of the tax at risk. The greater the tax at risk, 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
- 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.

c) **Careless behaviour WITH significant consequences**

The tax-geared penalty for a default in this category is outlined in Penalty Table 1, paragraph 5.6.2

d) **Careless behaviour WITHOUT significant consequences**

The tax-geared penalty for a default in this category is outlined in Penalty Table 1, paragraph 5.6.2

Examples of Careless Behaviour categories;

- Example A – careless behaviour WITH significant consequences
- Example B – careless behaviour WITHOUT significant consequences

Careless Behaviour	Example A	Example B
Tax payable as per an incorrect tax return, say	€10,000	€55,000
Tax ultimately due	€30,000	€63,000
Tax underpaid	€20,000	€8,000
Penalty	*The careless behaviour with significant consequences* penalty applies as the tax underpaid exceeds 15% of the €30,000 ultimately due	*The careless behaviour without significant consequences* penalty applies, as the tax underpaid does not exceed 15% of the €63,000 ultimately due.

5.6.2 Penalty Table 1 – Penalty Percentages (on or after 24/12/2008)

Penalty Table 1 refers to defaults that occurred on or after 24/12/2008 where the taxpayer makes a qualifying disclosure and also to defaults where no qualifying disclosure is made.

Liability to a tax-geared percentage penalty arises on the ‘difference’ between the amount of tax that would have been payable or could have been claimed if the tax had been computed in accordance with the incorrect or false return/claim, and the amount of tax that would have been payable/refundable if the tax was computed in accordance with the true and correct return or claim [s1077E TCA 1997].

See note on calculating the ‘difference’ for VAT etc. at paragraph 5.5.1 above.

Section 134A Stamp Duties Consolidation Act 1999 provides for tax-geared and/or fixed penalty of €1,265 for stamp duty defaults.

PENALTY TABLE 1	CATEGORY OF BEHAVIOUR	PENALTY	QUALIFYING DISCLOSURE MADE	
DISCLOSURES		%	FULL COOPERATION PENALTY REDUCED TO	
All tax/duty defaults where there is a qualifying disclosure	Penalty table for tax/duty defaults that occurred on or after 24/12/2008	Where full cooperation not given by taxpayer	Prompted Qualifying Disclosure and full cooperation – penalty reduced to:	Unprompted Qualifying Disclosure and full cooperation – penalty reduced to:
All qualifying disclosures in this category	*Careless[1] behaviour without significant consequences*	20%	10%	3%
First qualifying disclosure in these categories	*Careless behaviour with significant consequences[2]*	40%	20%	5%
	Deliberate[3] 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)
PENALTY TABLE 1	**CATEGORY OF BEHAVIOUR**	**PENALTY**	**NO DISCLOSURE MADE**	
NO DISCLOSURE		**%**	**FULL COOPERATION PENALTY REDUCED TO**	
All defaults where there is no qualifying disclosure	*Careless behaviour without significant consequences*	20%	15%	
	Careless behaviour with significant consequences	40%	30%	
	Deliberate behaviour	100%	75%	
Where a 'qualifying disclosure' is made, the taxpayer is not subject to prosecution in relation to the matter that gave rise to the tax/duty default or publication on the list of tax defaulters. For third or subsequent qualifying disclosures in the 'careless behaviour with significant consequences' or deliberate' behaviour categories, the percentage penalty is not reduced.				
Liability to a tax-geared percentage penalty arises on the "difference" (paragraph 5.5.1) between the tax liability/tax claim on the incorrect and correct returns				

See also paragraph 3.16 regarding 'Full Cooperation with a Revenue Compliance Intervention'

1 In tax legislation, instead of 'careless behaviour ….[etc.], the term used is 'carelessly but not deliberately'. The penalty percentages are as outlined in legislation.
2 'Significant consequences' is explained in paragraph 5.6.1 (b) of this Code of Practice
3 In tax legislation, the term used is 'deliberately'. The penalty percentages are as outlined in legislation.

5.7 Fixed Penalties

In certain situations, a person may be liable to a fixed penalty for failure to fulfil an obligation under tax or duty legislation. Examples of such fixed penalties include-

INCORRECT RETURNS

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

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 the intention of Revenue to consider prosecution under section 1078 in appropriate circumstances.

VALUE ADDED TAX

Taxpayers have a duty to keep full and true records of all transactions for Value Added Tax.

Under section 115 (1) Value Added Tax Consolidation Act 2010 a person is liable to a penalty of €4,000 for non-compliance with the duty to keep full and true records.

Under section 116 (18) Value Added Tax Consolidation Act 2010, 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.

PAYE Employers – for years up to and including 2018

Failure by an employer to comply with tax legislation or any of the PAYE Regulations can result in liability to a penalty of €4,000 for each breach of Regulation.

- Requirement to register with Revenue as an employer

  [Regulation 7, **Income Tax (Employments) Regulations 2012**]

  Further information regarding the **Registration of Employers for PAYE Purposes** is available on the Revenue website.

- Requirement to keep and maintain a 'Register of Employees in paper or electronic format

  [Regulation 8, **Income Tax (Employments) Regulations 2012**]

- Requirement to submit details of new employee on Form P45 to Revenue

  [Regulation 20, **Change of Employment**]

- Requirement to notify Revenue where employer has not received a Form P45 from a new employee

  [Regulation 22, **Emergency Basis of Tax Deduction**]

Additional information on income tax employments regulations is available here: **Income Tax (Employments) (Consolidated) Regulations 2001**.

PAYE Employers – with effect from 1 January 2019

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.

- Requirement to register with Revenue as an employer - section 988 TCA 1997. Further information regarding the **Registration of Employers for PAYE Purposes** is available on the Revenue website
- Requirement to keep and maintain a 'Register of Employees' in paper or electronic format - section 988A TCA 1997
- Requirement to operate Emergency Basis of Tax Deduction - Regulation 19
- Requirement to make a monthly return to Revenue by an employer - section 985G TCA 1997
- Notification of payment of emoluments to Revenue prior to payment - Regulation 10 Income Tax (Employments) Regulations 2018
- Failure to comply with the USC legislation - Part 18D TCA 1997 and USC Regulations 2018
- Failure to comply with PRSI legislation - Social Welfare Consolidation Act 2005 and Social Welfare (Consolidated Contributions and Insurability) Regulations 1996.

INFRINGEMENTS OF UNION CUSTOMS CODE

Section 40 of the Customs Act 2015 provides for the application of administrative penalties for infringements of the Union Customs Code and its Delegated and Implementing Acts and are effective from 31 December 2016.

INFRINGEMENTS OF CUSTOMS CODE

Section 54 Finance Act 2011 provides for the application of administrative penalties for infringements of the EU Customs Code (Council Regulation 2913/92) and its Implementing Provisions (Commission Regulation 2454/93).

The accuracy of a trader's declarations and their general compliance with the requirements of customs legislation is a cornerstone of the effective management of customs business and it is intended that the implementation of these penalties will reinforce this message to all involved.

For more details on the application of administrative penalties regarding Customs issues – see **Administrative Penalties for Infringements of Customs Rules**.

LOCAL PROPERTY TAX

In Local Property Tax cases, for non compliance with Deduction of Local Property Tax at Source, employers are liable to penalties under section 145 of Finance (Local Property Tax) Act 2012. For failure to deliver a return or for false statement or false representation or an incorrect return, taxpayers are liable to penalties under section 146 and section 147 of Finance (Local Property Tax) Act 2012 (as amended).

STAMP DUTY

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

5.8 Timeframe for Concluding Revenue Interventions

It is in everybody's interest that an audit or compliance intervention is concluded as quickly as possible. Where the taxpayer has dealt with all outstanding queries, and has done so within a reasonable period of time, and the audit/intervention remains open for a further period of three months, Revenue will, on request from the taxpayer or agent, advise the taxpayer of the current status of the audit/intervention and will estimate, in so far as possible, when the audit/intervention is likely to be concluded.

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

5.9 Payment

Discharging Liabilities where additional time is required by taxpayer to pay the agreed settlement

In the majority of audits and compliance interventions, any additional 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.

A phased payment arrangement 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, which can be accessed from the Revenue website.

- **General Information on Tax Collection and Debt Management**
- **Guidelines for Phased Payment – Instalment Arrangements**

The taxpayer is required in every instance to provide sufficient information to justify consideration for a phased payment arrangement. The following should be considered;

- 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 that will allow Revenue to take a view as to whether there are increasing excesses on the account and to take a view on the extent of the account swing
- aged debtor and creditor profile.

The level of the down payment required, and the duration and commencement of the arrangement, can vary depending on the circumstances of the case.

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

- the interest due must be included in the instalment arrangement, and
- 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 chargeable, are paid.

5.10 Inability to Pay Claims

It is the responsibility of the taxpayer claiming 'inability to pay' a tax or duty default settlement to satisfactorily demonstrate that inability. Documentary evidence of 'inability to pay' must be submitted to Revenue.

Claims of 'inability to pay' that are not in writing or are not substantiated with documentary evidence will not be accepted.

Revenue will sometimes encounter claims that the financial resources of a taxpayer do not permit payment in full of the tax due. Revenue will give careful consideration to such claims. A taxpayer's maximum capacity to pay is determined by their assets and the earning potential of the trade, profession or employment. In considering the claim, the health and age of the taxpayer may also be relevant.

All evidence that will support the claim of ‘inability to pay’ should be included in one comprehensive submission to Revenue.

Documentary evidence of ‘inability to pay’ should include any or all of the following items that the taxpayer deems appropriate:

- 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 statement of affairs is required to clarify the taxpayer’s financial affairs and help Revenue make an informed decision on the recoverability of debt. [Collector-General requirement – section 960R TCA 1997]
- 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 referred to at paragraph 5.9
- 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 tax default that gave rise to the additional liability has now been rectified

  Important Note: A disclosure made by a taxpayer cannot be accepted by Revenue as a ‘qualifying disclosure’ unless the taxpayer makes full payment of the outstanding agreed liability. A ‘qualifying disclosure’ is not accepted in ‘inability to pay’ situations.

  - See paragraph 3.7 of this Code of Practice for a full definition of a ‘qualifying disclosure’
  - See paragraphs 3.7.3 and 5.9 of this Code of Practice in relation to payment and phased payment arrangements

Customs

Article 112 of the Union Customs Code (952/13) provides for the granting of payment facilities in the form of payment by instalments. The granting of such facilities is conditional on the provision of security to cover the amount of the debt, although this condition may be waived on production of written evidence by the debtor that its provision would create serious economic or social difficulties.

For more information, see the **Collection of Customs Debt Manual**.

This Manual explains the action taken in relation to the collection of customs debts. In the majority of cases import duties are collected at the time of importation of the goods using the electronic customs declaration system (AEP). This Manual is only concerned with the situation where outstanding import duties (i.e. a customs debt) are identified post importation; this will usually arise as a result of a customs audit or other post importation compliance check.

5.11 Complaint and Review Procedures – Appeal Procedures

Under Revenue’s Quality Assurance programme, a selection of audit/intervention cases is monitored to ensure quality. However, where a difference of opinion arises, in relation to the audit or 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.

5.11.1 Complaint and Review Procedures

Revenue's Complaint and Review Procedures provide taxpayers with an open and transparent mechanism for making a complaint and seeking a review of Revenue handling of a case.

Full details of the procedures are outlined in the CS4 leaflet:

Revenue Complaint and Review Procedures – CS4.

Customs

A taxpayer has the right to be heard (right of reply) before an adverse decision is taken in relation to the payment of Customs duty. Details are available in the

Right to be Heard Manual.

Customs Appeals

See **Leaflet C&E 5** governing Customs Appeal Procedures.

Excise Appeals

See **Leaflets C&E 6** and **VRT 6** governing Excise Appeal Procedures.

5.11.2 Appeals Procedures

A taxpayer is entitled to lodge an appeal against Revenue's findings in relation to the income and gains to be assessed in a revised assessment or tax estimate. An appeal can also be made against a stamp duty assessment.

Statutory interest will only be charged when the tax is determined and may not be appealed. Tax-geared penalties may only be quantified when the tax is determined.

Reviews, as described in the previous paragraph, do not interfere with the taxpayer's statutory rights of appeal. If, following a review, a taxpayer still considers that the proposed settlement is unacceptable, they may proceed with an appeal to the Tax Appeals Commission, provided that an appeal has been lodged within the statutory timeframe.

- In order to lodge an appeal against an assessment the liability **not under appeal** must be paid. Where a taxpayer has entered into an agreed phased payment arrangement to pay the tax (including interest and collection fees), the liability will be considered to have been paid.
- Details regarding appeals against penalties determined by a judge in a relevant court are covered in paragraph 5.5.8.

Further information regarding appeals can be accessed in the **Revenue Tax and Duty Appeals Manual**.

Chapter 6

Publication in List of Tax Defaulters

This chapter covers:

- Revenue’s obligation to publish settlements
- Exclusions from publication
- Publication thresholds

6. PUBLICATION IN LIST OF TAX DEFAULTERS

6.1 Obligation to Publish

Section 1086 TCA 1997 imposes an obligation on the Revenue Commissioners to publish a list, within three months of the end of each quarter, of the name, address and occupation of every taxpayer:

- on whom a fine or other 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 is paid or not
- where Revenue has agreed with a taxpayer to refrain from initiating proceedings for the recovery of any fine or penalty and accepted a specified sum of money in settlement of any claim by Revenue for:
  (i) payment of tax or duty,
  (ii) payment of interest on that tax or duty, and
  (iii) 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.

This provision applies even where the taxpayer fails to pay the specified sum within the relevant period. [Section 1086 (2B) TCA 1997]

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

The provisions of section 1086 TCA 1997 oblige Revenue to publish the list of settlements, within three months of the end of each quarter, in Iris Oifigiúil.

In addition, Revenue is given the discretion;

- to 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 as Revenue thinks fit.

Revenue will advise the taxpayers who meet the publication criteria that they will be published in the List of Tax Defaulters, and will advise them of the particulars that will be published.

Qualifying Disclosure for Non-publication

Where a qualifying disclosure has been accepted, details of the settlement made with the taxpayer will not be published in a list of tax defaulters. For disclosures that occurred on or after 24 December 2008, the disclosure is excluded from publication only where it is a qualifying disclosure as defined in the Acts (See definition of ‘qualifying disclosure’ in paragraph 3.7). A verbal disclosure is not regarded as a qualifying disclosure for the purposes of non-publication.

6.2 Exclusions from Publication

Statutory Exclusions

Section 1086 TCA 1997 provides for the following statutory exclusions from publication – Revenue does not publish the following cases;

- cases where a qualifying disclosure is accepted; [section 1086 (4)(a) TCA 1997]
- cases where the specified sum referred to in paragraph (c) or (d) of section 1086 subsection (2) does not exceed €35,000 (figure for tax, interest and penalty) [section 1086 (4)(c) TCA 1997]
- cases where the penalty (agreed with taxpayer or determined by a court) does not exceed 15% of the amount of the tax ultimately due [section 1086 (4) (d) TCA 1997]
- cases where a ‘qualifying avoidance disclosure’ is accepted and/or a ‘tax avoidance surcharge(s)’ occurs [section 811D TCA 1997].

Customs

Whilst Customs cases are publishable under section 1086 (2)(a) and (b) TCA 1997, they are not publishable under section 1086 (2)(c) or (d) Taxes Consolidation Act, 1997.

6.3 Publication Figure

The figures published include the tax, duty, interest and penalties that make up the settlement.

- Publishable amounts are aggregated for all taxes and for all years/periods covered by the intervention
- Overpayments of tax which have not arisen directly from the intervention will not reduce the figure for publication.

Certain tax and interest is excluded from publication if a penalty does not apply.

In particular:

- 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 amount of that tax.

  This test applies separately to each tax-head included in an aggregated settlement.

All tax settlements are subject to approval by Revenue Senior Management. A ‘Letter of Acceptance’ will be issued by Revenue in all cases where an ‘offer of settlement’ from a taxpayer is agreed and approved by Revenue Senior Management. The letter issued by Revenue will confirm the publishable amount (if any). The settlement is published within three months of the end of the quarter in which the letter of acceptance is issued by Revenue.

All settlements that meet the publication criteria are published in Iris Oifigiúil, irrespective of whether the agreed amount due for tax, duty, interest and penalties is paid or not paid, in accordance with S1086 (5) TCA 1997.

Examples: Publication under section 1086 TCA 1997

1. Settlement (Income Tax, PAYE and VAT) reached for 2 years or periods to 31 December 2011. The agreed penalties were in respect of a tax default in the category of *deliberate behaviour* with full cooperation from the taxpayer but no qualifying disclosure was made. The percentage penalty was 75%.

   The settlement of €51,700 was made up as follows:

Tax Period	Tax	Interest	Penalties	Total
Year to 31/12/2010	€12,000	€4,000	€9,000	€25,000
Year to 31/12/2011	€14,000	€2,200	€10,500	€26,700
Total				€51,700

   VAT repayment on credits due (current period): € 5,000

   Payment due €46,700

   Publication figure €51,700

2. Settlement (Income Tax, PAYE and VAT) reached for 1 year/period to 31 December 2011. The agreed penalties included in the settlement were in accordance with a default in the *careless behaviour without significant consequences* category of tax default. No qualifying disclosure was made but there was full cooperation by the taxpayer during the course of the audit. The percentage penalty was 15%.

   The settlement of €35,200 was made up as follows:

Tax Period	Tax	Interest	Penalties	Total
Year to 31/12/2011	€30,000	€700	€4,500	€35,200
Total				€35,200

   Publication does not arise as the tax-related penalty does not exceed 15% of the tax included in the settlement.

Chapter 7

Prosecution

This chapter covers:

- An overview of prosecution
- Types of tax offences
- Provision and use of sales suppression software
- Incorrect returns, statements or accounts

7. PROSECUTION

7.1 Introduction

The main drive against tax evasion is through the Revenue Compliance Intervention, Revenue Audit and Revenue Investigation programmes. These programmes have proved to be extremely effective in collecting tax, duty and interest and in penalising tax fraud and tax evasion.

The tougher stance taken against the most serious tax offenders/offences through the prosecution programme means that those convicted (in addition to paying tax, duty, interest and penalties) are liable to a fine or imprisonment or both.

The Director of Public Prosecutions makes decisions as to whether a case should be prosecuted.

7.2 Types of tax offences that are most likely to be prosecuted

The types of offences that are most likely to be prosecuted are set out below;

- deliberate omissions from tax returns
- false claims for repayment
- use of forged or falsified documents
- facilitating fraudulent evasion of tax
- systematic scheme to evade tax
- use of offshore bank accounts to evade tax
- insidious schemes of tax evasion
- failure (as distinct from minor delays) in remitting fiduciary taxes
- failure to produce business records when required.

7.3 Decision to investigate with a view to prosecution

Having identified an offence of the type described above, the following factors are generally considered before the decision to investigate with a view to prosecution is taken;

- the strength of the available (or likely to be available) admissible evidence. It must be considered sufficiently strong to enable the prosecution to prove beyond reasonable doubt that the alleged offender was guilty of the alleged offence
- the period of time since the alleged offence was discovered bearing in mind that delay in initiating proceedings may damage a case
- the likely length and expense of a trial. The cost of pursuing prosecution should not be disproportionate to the possible benefit to be obtained
- the degree of culpability, responsibility and experience of the alleged offender
- the need for deterrence, both personal and general, in relation to particular offences
- whether the alleged offender has made a full disclosure of the irregularities; has cooperated in reaching settlement and has paid all the tax, duty, interest and penalties that are due.

This list of criteria is not exhaustive but aims to give an outline of the type of offences that can be prosecuted, and some of the factors, which, alone or in combination, can influence a decision to investigate a case with a view to prosecution.

7.4 Other Prosecutable Offences

Revenue also pursues a vigorous prosecution policy for;

- failure to file tax returns
- failure to produce books, records etc., when obliged to do so
- failure to submit a Statement of Affairs when required 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.

7.5 Provision of 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 press for prosecution of such offences.

7.6 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 press for prosecution under the above provisions in appropriate circumstances.

Chapter 8

Tax Avoidance

This chapter covers:

- Tax Avoidance
- General Anti-Avoidance Rule
- Specific Anti-Avoidance Provisions
- Tax Avoidance Surcharge
- Protective Notification
- Mandatory Disclosure
- Qualifying Avoidance Disclosure

8. Tax Avoidance

8.1 Introduction

Chapter 8 outlines tax law, Revenue policy and procedures for regularising tax and duty liabilities that arise due to certain types of tax avoidance.

8.1.1 What is Tax Avoidance?

Taxpayers are fully entitled to organise their affairs in a tax efficient manner. However, there is a difference between organising a person's affairs in a tax efficient manner by, for example, claiming reliefs in the manner in which they were intended to be claimed by the Oireachtas, and tax avoidance.

In general, tax avoidance is entering into a transaction which gives rise to a tax advantage of some kind (e.g. a reduction, avoidance or deferral of tax or duty, or a refund or increased refund of tax or duty) and which was not undertaken primarily for some non-tax purpose. Sham transactions (e.g. where a taxpayer claims that a loan or investment was taken out or made when, in fact, this was not the case) are not tax avoidance and this chapter does not apply in such cases.

Where a transaction is undertaken with a view to the realisation of profits in the course of a business and where the main purpose, or one of the main purposes, of the transaction is not to give rise to a tax advantage then the transaction would generally not be regarded as tax avoidance.

Also, a transaction undertaken with a view to obtaining the benefit of a relief, allowance or exemption provided for in legislation in the way intended by the legislation would generally not be regarded as tax avoidance unless there is a misuse or abuse of the legislation, having regard to the purpose for which the relief, allowance or exemption was intended.

8.1.2 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. Early disclosure of such tax avoidance can save the taxpayer money.

In addition to the methods outlined in Chapter 3 of this Code of Practice 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.

A 'qualifying avoidance disclosure' can be made at any time up to the hearing of the taxpayer's appeal by an Tax Appeals Commission regardless of whether any Revenue Compliance Intervention has been commenced.

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 (paragraph 8.10).

The level of 'tax avoidance surcharge' which will arise upon the making of a 'qualifying avoidance disclosure' will be determined by a number of factors including:

- when the 'qualifying avoidance disclosure' was made,

- how far any Revenue Compliance Intervention has progressed,
- whether a valid protective notification was filed by the taxpayer, and
- whether the transaction:
  - gave rise to a reporting obligation under the mandatory disclosure regime, and
  - whether the taxpayer assists Revenue in identifying and pursuing a promoter or marketer who has failed in their obligations under the mandatory disclosure regime.

If a transaction gives rise to a tax-geared penalty then the ‘tax avoidance surcharge’ provisions do not apply.

8.2 General Anti-Avoidance Rule

Section 811 and section 811C TCA 1997 are general anti-avoidance provisions. These provisions are 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.

8.2.1 Transactions commenced on or before 23 October 2014

For transactions which commenced on or before 23 October 2014 the general anti-avoidance rule, contained in section 811 TCA 1997, provides that the Revenue Commissioners (or a nominated officer) may form an opinion that a transaction is a tax avoidance transaction and give notice to that effect to each person affected by the opinion.

8.2.2 Transactions commenced after 23 October 2014

For transactions which commenced after 23 October 2014 the general anti-avoidance rule is contained in section 811C TCA 1997 and now must be considered by a taxpayer when preparing their return. 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 arose as a result of the tax avoidance transaction.

8.2.3 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.

8.3 Specific Anti-Avoidance Provisions

Schedule 33 TCA 1997 provides that the sections listed in Table 1 below are ‘specific anti-avoidance provisions’. The classification of these sections as ‘specific anti-avoidance provisions’ does not have any impact on how they apply to taxpayers. However, as outlined in paragraph 8.4.2 of this Code of Practice, 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.

Table 1 List of specific anti-avoidance provisions	
TCA 1997	**Section Title**
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 807A	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

8.4 Tax Avoidance Surcharge and Interest

8.4.1 Transactions commenced on or before 23 October 2014

Section 811A TCA 1997 provides that a ‘tax avoidance surcharge’ and interest is payable where a taxpayer is found to have entered into a tax avoidance transaction and section 811 TCA 1997 applies. This section applies to transactions which commenced on or before 23 October 2014.

The rate of ‘tax avoidance surcharge’ depends on when the transaction took place:

- A ‘tax avoidance surcharge’ of 20% applies where any part of the transaction was undertaken or arranged on or after 19 February 2008.
- A ‘tax avoidance surcharge’ of 10% applies where:
  - any part of the transaction was undertaken or arranged on or after 2 February 2006, and
  - no part of the transaction was undertaken on or after 19 February 2008.

8.4.2 Transactions commenced after 23 October 2014

Section 811D TCA 1997 provides that a ‘tax avoidance surcharge’ is payable where a taxpayer is found to have entered into a tax avoidance transaction and section 811C TCA 1997 is applied by Revenue. 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 certain timeframe (see paragraph 8.6.3) or in certain circumstances where a valid protective notification is submitted (see paragraph 8.5).
- a ‘tax avoidance surcharge’ will not arise where a taxpayer incurs a tax geared penalty under section 1077E(2) or (5) TCA 1997, section 116(2) or (5) 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 in paragraph 5.6 of this Code of Practice.
- 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 paragraphs 5.5.3 to 5.5.10 of this Code of Practice, also apply to the ‘tax avoidance surcharge’.

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.

8.5 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 provided the taxpayer has filed a protective notification under section 811A or section 811D TCA 1997.

A valid protective notification will;

- give protection against a ‘tax avoidance surcharge’ that would otherwise arise as a result of a successful challenge by Revenue under section 811 or section 811C, and
- defer the commencement of the accrual of interest:
    - where the transaction is commenced on or before 23 October 2014, until a final determination is made that the general anti-avoidance rule applies, and
    - where the transaction is commenced after 23 October 2014, until one month after a Revenue officer makes or amends an assessment using the general anti-avoidance rule.

In order 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, and
- 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.

For transactions which commenced after 23 October 2014 the following additional conditions must be met in order for a protective notification to be valid;

- the protective notification must include the 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 which is the subject of the protective notification, 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 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 paragraph 8.7.3 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.

8.6 Qualifying Avoidance Disclosure

When a transaction is ultimately found to be a tax avoidance transaction or where a specific anti-avoidance provision is applied by Revenue, a taxpayer may contend that the 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 reconsideration of the matter, decide to settle a Revenue challenge made under the anti-avoidance legislation. A valid 'qualifying avoidance disclosure' may result in a reduced 'tax avoidance surcharge'.

A taxpayer can make a 'qualifying avoidance disclosure' prior to a Revenue challenge or the commencement of a Revenue Audit or Revenue Investigation and can benefit from a greater level of reduction of their tax avoidance surcharge if they do so.

8.6.1 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 8.5)

(ii) Whether a 'qualifying avoidance disclosure' was made (see definition in paragraph 8.6.2)

(iii) The stage of any Revenue Audit or Revenue Investigation, assessment and litigation at the time the 'qualifying avoidance disclosure' was made (see categories of disclosure in paragraph 8.6.4)

(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 8.7.3)

8.6.2 Definition of Qualifying Avoidance Disclosure

A 'qualifying avoidance disclosure' 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', **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 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.

Important Note: Where a taxpayer makes a disclosure and the additional liability due (tax, duty and interest) is not paid, then the disclosure will not be accepted by Revenue as a 'qualifying avoidance disclosure' and the amount of the 'tax avoidance surcharge' will be re-calculated. The criteria outlined in paragraph 3.7.4 of this Code of Practice with regard to what will be regarded as a payment for the purposes of a 'qualifying disclosure' will also apply to a 'qualifying avoidance disclosure'.

8.6.3 Tax Avoidance Surcharge

In certain circumstances a 'qualifying avoidance disclosure' can result in a reduction of the 'tax avoidance surcharge'. A 'qualifying avoidance disclosure' may be made at any time up to the hearing of the taxpayer's appeal by the Tax Appeals Commission. The 'qualifying avoidance disclosure' may only be 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 a specific anti-avoidance provision.

A valid 'qualifying avoidance disclosure' results in a reduced 'tax avoidance surcharge' as summarised in Table 2.

Table 2 Tax Avoidance Surcharge when a Qualifying Avoidance Disclosure is made

Stage of Revenue Audit or Revenue Investigation or assessment or appeal	Not a Disclosable Transaction or Taxpayer Initiated Disclosure*	Disclosable Transaction
A Revenue Audit or Revenue Investigation has not commenced and disclosure is submitted within 24 months of the end of the chargeable period	0%	3%
Revenue officer has not withdrawn or denied a tax advantage	3%	6%
Tax advantage has been withdrawn and no appeal is filed by the taxpayer	5%	10%
Taxpayer has filed an appeal but that appeal has not been heard by the Tax Appeals Commission	10%	20%

*See paragraph 8.7 for a description of a 'Disclosable Transaction' and a definition of 'Taxpayer Initiated Disclosure'.

The making of a ‘qualifying avoidance disclosure’ of this type has no effect on interest – statutory interest is still chargeable.

8.6.4 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 any Revenue Compliance Intervention has reached.

The four categories of disclosure are as follows:

(i) A Revenue Audit or Revenue Investigation has not commenced and the disclosure is made within a period of 24 months of the end of the chargeable period in which the transaction was commenced.

(ii) A Revenue Audit or Revenue Investigation has commenced or a period of 24 months after the end of the chargeable period in which the transaction was commenced has elapsed but a Revenue officer has not yet withdrawn or denied the tax advantage.

(iii) A Revenue officer has withdrawn or denied a tax advantage but the taxpayer has not made an appeal.

(iv) 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.

The level of ‘tax avoidance surcharge’ applicable to transactions falling within paragraphs (i) to (iv) is shown in Table 2.

8.6.5 Transactions commenced on or before 23 October 2014

A separate ‘qualifying avoidance disclosure’ regime applied to transactions which were commenced on or before 23 October 2014. In order to avail of this ‘qualifying avoidance disclosure’ a taxpayer must have made the disclosure on or before 30 June 2015. Full details of how this type of ‘qualifying avoidance disclosure’ operated are contained in eBrief 16/2015.

8.7 Mandatory Disclosure – Protective Notification & Qualifying Avoidance Disclosure

The mandatory disclosure regime requires advisors or taxpayers to provide Revenue with specified information about a transaction that has certain characteristics. A taxpayer may need to confirm with their advisor whether or not a transaction is a disclosable transaction under that regime in order to be in a position to determine whether or not this regime will apply to them. If the transaction is a disclosable transaction the taxpayer is obliged to include a transaction number (or Revenue Reference number) in their return. Transaction numbers (or Revenue Reference numbers under the old regime) are issued by Revenue to a promoter following the submission of a valid mandatory disclosure.

For more information on whether or not a transaction is one which is disclosable and details of taxpayer’s obligations under the Mandatory Disclosure regime, taxpayers should consult the ”Guidance Notes on the Mandatory Disclosure Regime” which were published in January 2015 and are available on www.revenue.ie.

8.7.1 Additional consequences of a transaction being classified as a disclosable transaction

A transaction which is a disclosable transaction has the following consequences in addition to any obligations arising under the mandatory disclosure regime:

- The taxpayer cannot file a valid protective notification for a transaction which commenced after 23 October 2014. (see paragraph 8.5)
- While the taxpayer may make a ‘qualifying avoidance disclosure’ in respect of the transaction a higher rate of ‘tax avoidance surcharge’ applies than for non-disclosable transactions. (see Table 2)

8.7.2 Impact of a Taxpayer Initiated Disclosure

In certain limited circumstances, a transaction which is a disclosable transaction will be treated as not being disclosable 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 in 8.7.3 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 2).

8.7.3 Conditions for a Taxpayer Initiated Disclosure

A ‘taxpayer initiated disclosure’ may arise if all of the following four circumstances occur in the same case.

(i) The transaction was disclosable by a promoter and not by a person 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 in the first instance where the promoter is located outside of the State, where there was no promoter or where the promoter has claimed legal professional privilege.

(ii) 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.

(iii) 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.

(iv) 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 on the promoter or marketer for failing to comply with their obligations under the mandatory disclosure regime.

8.8 Qualifying Avoidance Disclosure and Self-Correction Without Penalty

Paragraph 3.2 of this Code of Practice 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 a Revenue Audit or Revenue Investigation has not commenced 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 their 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 because a tax geared penalty rather than a ‘tax avoidance surcharge’ was incurred. The Form QAD1 disclosure would then be treated as a self-correction without penalty, if the disclosure also meets all of the criteria for a self-correction without penalty as set out in paragraph 3.2 of this Code of Practice. In such a case the tax avoidance surcharge will still not apply.

8.9 Technical Adjustment

Paragraph 3.4 of this Code of Practice provides that, where a technical adjustment to a tax or duty liability arises, a taxpayer will not be liable to a penalty. In summary, paragraph 3.4 provides that Revenue must be satisfied that the taxpayer has taken due care, the treatment concerned was based on a mistaken interpretation of the law or practice and 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 itself serve to make the issue one of ‘technical adjustment’. In such a case a taxpayer may still be subject to a tax geared penalty irrespective of the level of complexity of the technical issue or of the transaction undertaken if the taxpayer is found to have engaged in careless or deliberate behaviour.

8.10 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 1086 TCA 1997. See paragraph 6.2 of this Code of Practice for other statutory exclusions from the publication provisions.

8.11 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. In order 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.

8.12 Surcharge for Late Filing of Return

Taxpayers are liable to a late filing surcharge, under the provision of section 1084 TCA 1997, for the late filing of a return. The late filing surcharge applicable will always be added to an audit or intervention settlement where an income tax, capital gains tax, corporation tax, capital acquisitions tax (section 53A Capital Acquisitions Tax Act 2003) return was not filed on or before the specified return date. Section 14A of the Stamp Duties Consolidation Act 1999 provides for the addition of a surcharge to the stamp duty payable on an instrument where an accountable person fails to cause the delivery of a stamp duty return on or before the specified return date.

Section 1084 TCA 1997 also provides that the filing, on time, of an incorrect return, either deliberately or carelessly, is deemed to be late filing. Section 14A of the Stamp Duties

Consolidation Act 1999 includes a similar provision. However, a late filing surcharge will not be sought where the return was filed on or before the specified return due date and either a ‘tax geared penalty’ or a ‘tax avoidance surcharge’ was applied to a settlement.

8.13 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.

Table 3 Transactions commenced after 23 October 2014				
			Tax Avoidance Surcharge	
		Interest	**Not a Disclosable Transaction or Taxpayer Initiated Disclosure****	**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				
A Revenue Audit or Revenue Investigation has not commenced and disclosure is submitted within 24 months of the end of the chargeable period		Statutory Interest	0%	3%
Revenue officer has not withdrawn or denied a tax advantage		Statutory Interest	3%	6%
Tax advantage has been withdrawn and no appeal is filed by the taxpayer		Statutory Interest	5%	10%
Taxpayer has filed an appeal but that appeal has not 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 paragraph 8.7 for a description of ‘disclosable transaction’ and a definition of ‘Taxpayer Initiated Disclosure’.

Table 4 Transactions commenced on or before 23 October 2014			
	Interest	Tax Avoidance Surcharge	
		Not a Disclosable Transaction	Disclosable Transaction
Protective Notification			
Protective notification filed	No Interest	0%	0%
Qualifying Avoidance Disclosure			
Qualifying avoidance disclosure made on or before 30 June 2015	Statutory Interest (20% reduction)	0%	0%
Other Cases			
Transaction / Tax Advantage on or after 19 February 2008	Statutory Interest	20%	20%
Transaction / Tax Advantage on or after 2 February 2006	Statutory Interest	10%	10%

Appendices

Appendices included:

- ***I*** Customer Service Charter
- ***II*** Timelines and Disclosure Opportunities
- ***III*** Penalty Legislation references
- ***IV*** Penalty Table 2 – defaults prior to 24/12/2008
- ***V*** Maintenance of Proper Records
- ***VI*** Revenue Powers
- ***VII*** Penalties in Death Cases

Appendix I – Customer Service Charter

CUSTOMER CHARTER

Revenue collects taxes and duties that fund the provision of public services for the benefit of all citizens.

Revenue protects society through its Customs Service working on frontier control.

The effective and fair administration of tax and customs law requires Revenue and citizens to recognise certain basic rights and responsibilities.

This Customer Charter sets out mutual expectations in this context.

Consistency, Equity and Confidentiality

- Revenue will administer the law fairly, reasonably and consistently and will seek to collect no more than the correct amount of tax or duty
- Revenue will treat the information you give us in confidence and ensure that it will not be used or disclosed except as provided for by law.

Courtesy and Consideration

You can expect:

- To be treated courteously, with consideration and in a non-discriminatory way in your dealings with Revenue.

We expect you:

- To treat Revenue officials with courtesy and to give them all reasonable cooperation.

Information and Assistance

You can expect:

- To be given the necessary information and all reasonable assistance to enable you to clearly understand and meet your tax and customs obligations and to claim your entitlements and credits

We expect you:

- To provide true and correct information in all your contacts with Revenue and to advise Revenue in a timely manner of developments (such as change of address, commencement or cessation of business) that are relevant to your tax and customs affairs.

Presumption of Honesty

You can expect:

- To be treated as honest in your dealings with Revenue unless there is clear reason to believe otherwise and subject to Revenue's responsibility for ensuring compliance with tax and customs law.

We expect you:

- To deal in an honest way with Revenue by returning the tax and duty which you are due to pay and seeking only those entitlements and credits to which you are due.

Compliance Costs

You can expect:

- That Revenue will administer the tax and duty regimes in a way that will minimise, as far as possible, compliance costs.

We expect you:

- To maintain proper records and accounts and to ensure that your Returns and Declarations are completed fully, accurately and in a timely manner.

Complaints, Review and Appeal

There are comprehensive complaints and appeal procedures open to all customers of Revenue and we encourage you to avail of these if you are in any way dissatisfied with the service you receive from us.

You can expect:

- That if you make a complaint, Revenue will deal with it promptly, impartially and in confidence
- That availing of Revenue's own complaints procedures will never prejudice your rights to raise issues with the Ombudsman or lodge, within the statutory time limits, a formal appeal to the Tax Appeals Commission against an assessment raised by Revenue or against certain determinations made by Revenue officials.

Full details, including contact points, are contained in **Revenue Complaint and Review Procedures – Leaflet CS4** which is also available in any Revenue public office and from our Forms and Leaflets LoCall number 01 738 3675.

Appendix II – Timelines and Disclosure Opportunities

Item	Time
Notification of a Revenue Audit	Generally 21 days
Notification of a Revenue Investigation	Generally notification is given, but there are situations where Revenue Investigations are regarded as on-going without formal notification to the taxpayer
Unprompted qualifying disclosure	Available before the taxpayer is notified of a Revenue Audit or before the commencement of a Revenue Investigation
Prompted qualifying disclosure	Available after the audit notification has issued from Revenue but before an examination of the books and records has begun
Written Notice of Intention to make an unprompted qualifying disclosure and seeking 60 days to prepare it	Notice of intention must be submitted in writing with a request to allow the extended period of time to make the unprompted disclosure
Written Notice of Intention to make a prompted qualifying disclosure and seeking 60 days to prepare it	Notice of Intention must be submitted in writing within 14 days of the Notification of a Revenue Audit
Extension of audit by Revenue	An additional 21 days will generally be given to make a prompted qualifying disclosure
***'Self–Correction without Penalty' for Income Tax (IT), Corporation Tax (CT), Capital Gains Tax (CGT), Local Property Tax (LPT), Stamp Duty (SD) and Capital Acquisitions Tax (CAT)**	Within 12 months of the due date for filing the relevant return
***Self–Correction without Penalty for VAT**	Before the due date for filing the IT or CT return for the chargeable period within which the relevant VAT period ends
***'Self–correction without Penalty' for PAYE (Income Tax/PRSI/USC)**	Self–correction without Penalty for employer's PAYE/PRSI/USC annual return – Within 12 months of the due date for filing the annual return (relating to 2018 and preceding years) and Self–correction without Penalty for employer's PAYE monthly returns (Income Tax/PRSI/USC) in 2019 - By the due date for filing the annual IT/CT return within which the relevant PAYE period ends. (Note: The self-correction without penalty timeframe for monthly returns after 2019 is to be considered further).
***Self–correction without interest or notification to Revenue**	For bi-monthly/quarterly/half-yearly remitters of VAT, if the net underpayment of VAT for the period being corrected is less than €6,000, the amount of the tax can be included as an adjustment on the VAT return to be submitted for the bi-monthly/quarterly/half-yearly period immediately following that in which the error was made.
***not applicable after Revenue has notified a taxpayer of a Revenue Compliance Intervention (Revenue Audit, Revenue Investigation, Aspect Query or Profile Interview) or where a Revenue Investigation has commenced**	

Disclosures

Notification of intervention	*Disclosure that may be available*
Assurance checks	Unprompted qualifying disclosure
Aspect Queries and Profile Interviews	Unprompted qualifying disclosure
Audit	Prompted qualifying disclosure
Investigation	Benefits of a qualifying disclosure not available

Qualifying Avoidance Disclosure

A ‘qualifying avoidance disclosure’ can be made at any time up to the hearing of the taxpayer’s appeal by the Tax Appeals Commission regardless of whether or not any Revenue Compliance Intervention has been commenced. However, the rate of tax avoidance surcharge will increase as the Revenue Compliance Intervention progresses. Please see Chapter 8 of this Code of Practice for further details.

Appendix III – Penalty Legislation

Revenue auditors are mainly concerned with civil penalties that arise under the following legislation:

Legislation – For tax defaults that occurred on or after 24/12/2008

- Section 1077E TCA 1997 – Income Tax/PAYE Employers/Capital Gains Tax/ Corporation Tax/Income Levy/Excise Duties/Local Property Tax
- Section 1054 TCA 1997 – Penalties in the case of a secretary of a body of persons
- Section 115 (Penalties generally) and section 116 VATCA 2010 – Value Added Tax
- Section 530F (2)(b) TCA 1997 – Relevant Contracts Tax (obligation on principals to deduct tax)
- Section 987 TCA 1997 – PAYE and Local Property Tax, breach of regulations
- Section 886 TCA 1997 – Obligation to keep certain records
- Section 58 Capital Acquisitions Tax Consolidation Act 2003
- Sections 8(4A), 8A, 8B and 134A Stamp Duties Consolidation Act 1999 – Stamp Duties – Penalties
- Section 1052 TCA 1997 – Failure to make certain returns, etc
- Section 40 Customs Act 2015 – Administrative Penalties for contravention of Customs Acts (with effect from 31/12/2016)
- Section 54 Finance Act 2011 – Customs Administrative Penalties (with effect until 30/4/2016)
- Sections 145, section 146 and section 147 Finance (Local Property Tax) Act 2012 (as amended)

Legislation – For tax defaults that occurred before 24/12/2008

- Section 1053 Taxes Consolidation Act 1997 – IT/CT/PREM/Capital Gains Tax
- Section 1054 TCA 1997 – Penalties in the case of a secretary of a body of persons
- Section 115 VATCA 2010 and section 27 VAT Act, 1972 – Value Added Tax
- Section 987 (Penalty for breach of regulations) and section 1053 TCA 1997 – PAYE
- Section 886 TCA 1997 – Obligation to keep certain records
- Section 58 CAT Act 2003 – Capital Acquisitions Tax
- Section 8 Stamp Duties Consolidation Act 1999 – Stamp Duties

Legislation – For all tax defaults where penalty is not agreed and paid

A relevant court will make a determination regarding liability to a penalty:

- Section 1077A, section 1077B and section 1077C, TCA 1997

The Notice of Opinion and Court Application procedures apply.

Legislation – For all tax defaults where serious tax evasion is suspected

Where serious tax evasion is suspected, criminal proceedings under the following sections will be considered:

- Section 1078 TCA 1997 – Revenue offences
- Section 531 TCA 1997 – Relevant Contracts Tax, payments to subcontractors
- Section 1056 TCA 1997 – Penalty for false statement made to obtain an allowance.

A tax return prepared and delivered on behalf of a taxpayer by some other person acting on his or her behalf is treated in all respects as if the taxpayer had made it. The taxpayer's statutory responsibility to complete and file a correct return cannot be devolved to his or her agent.

Legislation – Fixed Penalty Issues

- Section 1055 TCA 1997 – person who assists or induces the making of an incorrect return for the purposes of income tax or corporation tax
- Section 115 (1) VATCA 2010 – duty to keep full and true VAT records
- 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
- Regulation 17 Income Tax (Employments) Regulations 2018 - requirement to send details and notify Revenue when an employee commences or ceases an employment.
- Section 530F (2)(b) TCA 1997 – obligation on Principals to deduct tax – penalty for not operating RCT in accordance with section 530F (1)
- Section 900 TCA 1997 – person who refuses or fails to comply with a notice requiring the person to make books and records available etc.
- Section 40 Customs Act 2015 – Administrative penalties for contravention of the Customs Acts
- Section 54 Finance Act 2011 – infringements of EU Customs Code and its implementing Provisions

Legislation - for Tax Avoidance Surcharge

- Section 811D TCA 1997

  Where a 'tax avoidance surcharge' is not agreed or an agreed 'tax avoidance surcharge' is not paid, a relevant court will make a determination regarding liability to a 'tax avoidance surcharge'. While the surcharge applied by section 811D TCA 1997 is not a penalty it is collected as a penalty.
  See also Chapter 8 – Tax Avoidance.

Appendix IV – Penalty Table for Tax Defaults that occurred before 24/12/2008

Mitigated penalties for defaults arising before 24/12/2008 are computed as outlined below.

Penalty Table 2 refers to defaults that occurred before **24/12/2008** where the taxpayer makes a qualifying disclosure and also to defaults where no qualifying disclosure is made.

Liability to a tax-geared penalty arises on the "difference" between the amount of tax that would have been payable if the tax had been computed in accordance with the incorrect or false return […], and the amount of tax that would have been payable if the tax was computed in accordance with the true and correct return […]

See note on calculating the 'difference' for VAT etc. at paragraph 5.5.1 above.

PENALTY TABLE 2	CATEGORY OF DEFAULT	QUALIFYING DISCLOSURE Code of Practice for Revenue Audit (2010) – Mitigated Penalty	
All defaults where there is a qualifying disclosure	Penalty table for defaults that occurred before 24/12/2008	Prompted qualifying disclosure and full cooperation	Unprompted qualifying disclosure and full cooperation
All qualifying disclosures in this category	*Insufficient care* [4]	10%	3%
First qualifying disclosure in these categories	*Gross carelessness* [5]	20%	5%
	Deliberate default [6]	50%	10%
Second qualifying disclosure in these categories	*Gross carelessness*	30%	20%
	Deliberate default	75%	55%
Third or subsequent qualifying disclosure in these categories	*Gross carelessness*	40%	40%
	Deliberate default	100%	100%
NO QUALIFYING DISCLOSURE MADE	**CATEGORY OF DEFAULT**	**NO COOPERATION**	**FULL COOPERATION**
All defaults where there is no qualifying disclosure	*Insufficient care*	20%	15%
	Gross carelessness	40%	30%
	Deliberate default	100%	75%

4 In tax legislation, the term used is 'fraudulently or negligently'; the Code of Practice category of 'Insufficient Care' is used to describe minor defaults where the 100% penalty is mitigated as outlined.

5 In tax legislation, the term used is 'fraudulently or negligently', the Code of Practice category of 'Gross Carelessness' is used to describe more serious defaults where the 100% penalty is mitigated as outlined.

6 In tax legislation, the term used is 'fraudulently or negligently'; the Code of Practice category of 'Deliberate default' is used to describe deliberate defaults where the 100% penalty is mitigated as outlined.

Appendix V – Legislation governing maintenance of records

Note: The list below is not exhaustive.

The obligations imposed on taxpayers to maintain proper records are set out in section 886 ‘Obligation to keep certain records’ and section 886A ‘Retention and inspection of records in relation to claims by individuals’, of the Taxes Consolidation Act 1997.

Section 887 TCA 1997 – where records are kept using any electronic data process

Section 912 TCA 1997 specifies that the obligations in relation to record maintenance apply equally to the data equipment together with any associated software, data, apparatus or material

For VAT: Value-Added Tax Regulations, 2010 [in particular, see Regulation 27 – Accounts]

Section 84 (1) Value-Added Tax Consolidation Act 2010 – duty to keep full and true records

Section 108 Value-Added Tax Consolidation Act 2010 - ‘Inspection and removal of records’

MOSS – The Mini One Stop Shop EU legislation specifies the VAT record keeping requirements for MOSS and these requirements are listed on the Revenue website.

For CAT: Section 45A Capital Acquisitions Tax Act, 2003 – ‘Obligation to retain certain records’

For Stamp Duty: Section 128 Stamp Duties Consolidation Act 1999 [Rolls, books, etc., to be open to inspection] and section 128A [Obligation to retain records]

Section 8(2) (c) Stamp Duty Consolidation Act 1999

For Customs: the obligation to keep records is laid down in Article 51 of the Union Customs Code, Article 14 and Article 16 of the Community Customs Code [Council Regulation (EEC) No 2913/92]

For Excise: the obligation to keep records is laid down in:

S.I. No 231 of 2012 – Mineral Oil Tax Regulations 2012 – PART 5 outlines records to be kept by mineral oil traders

Regulations 70 and 71 of the Control of Excisable Products Regulations 2010 (S.I. No. 146 of 2010) – for traders involved in intra-EU movements of excisable products:

- Part 5 of Alcohol Products Tax Regulations 2004 (S.I. No. 379 of 2004)
- Sections 97A, 97B, 99A and 104 of Chapter 1 of Part 2 of Finance Act 1999 (as amended)
- Parts 5,6 and 8A of Mineral Oil Tax Regulations 2012 (as amended)(S.I. No. 231 of 2012)
- Section 83 of Chapter 3 of Part 2 of Finance Act 2005 (as amended)
- Parts 4 and 5 Tobacco Products Tax Regulations 2006 (S.I. No. 261 of 2006)
- Reg 7 of Electricity Tax Regulations 2008 (S.I. No. 385 of 2008) – records to be kept
- Reg 15 of Air Travel Tax Regulations 2009 (S.I. No. 134 of 2009) – records to be kept
- Reg 4, Natural Gas Carbon Tax Regulations 2010 (S.I. No. 191 of 2010) – records to be kept
- Reg 8 of Betting Duty Regulations 2004 (S.I. No. 801 of 2004) - records to be kept

- Reg 17 of Vehicle Registration and Taxation Regulations 1992 (S.I. No. 318 of 1992)
- Reg 11, Solid Fuel Carbon Tax Regulations 2013 (S.I. No. 191 of 2013) – records to be kept

For the Environmental Levy: the obligation to keep records is laid down in regulations made under section 72(2), Waste Management Act, 1996 [inserted by section 9, Waste Management (Amendment) Act, 2001]

Section 1078 TCA 1997: A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person [fails without reasonable excuse] to comply with any provision of the Acts requiring-

- the keeping or retention of books, records, accounts or other documents for the purposes of any tax, or
- the production of books, records, accounts or other documents, when so requested, for the purposes of any tax

Appendix VI – Revenue Powers

The Revenue Commissioners policy on the use of Revenue Powers is contained in relevant Statements of Practice, which are available in local tax offices and on the Revenue website.

Overview of Revenue Powers.

Statement Of Practice – Revenue Powers exercised in places other than at a Revenue Office.

Appendix VII – Penalties in Death Cases

Where, before an individual's death –

a) that individual had agreed in writing (or it had been agreed in writing on his or her behalf) that he or she was liable to a penalty under the Acts; or

b) that individual had agreed in writing with an opinion or amended opinion of a Revenue auditor that he or she was liable to a penalty under the Acts (or such opinion or amended opinion had been agreed in writing on his or her behalf); or

c) the Revenue Commissioners had agreed or undertaken to accept a specified sum of money in the circumstances mentioned in paragraph (c) or (d) of section 1086(2) TCA 1997 from that individual; or

d) a relevant court had determined that the individual was liable to a penalty under the Acts,

then, the penalty shall be due and payable and any proceedings for the recovery of such penalty under the Acts which have been, or could have been, instituted against that individual may be continued or instituted against his or her executor, administrator or estate, as the case may be, and any penalty awarded in proceedings so continued or instituted shall be a debt due from and payable out of his or her estate.

However, such proceedings may not be brought outside the time limits stated in section 1048, Taxes Consolidation Act 1997 (section 1077D (2) TCA 1997).

Those time limits are as follows:

- if a grant of probate or letters of administration issued in the year the individual died, the time limit is three years after the end of that year in which the individual died
- if the grant of probate or letters of administration issued in a year subsequent to the year in which the individual died, the time limit is two years after the end of that year, or
- if an additional Inland Revenue affidavit is required, the time limit is two years after the end of the year in which the new affidavit is delivered.

Section 1077D applies as and from the passing of the Finance (No.2) Act 2008 on 24 December 2008 and, therefore, applies to all open or unsettled audits or compliance interventions where the taxpayer is now deceased. The provision is not backdated to death cases settled prior to 24 December 2008.

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