

Revenue's Approach to Tax Payment, Collection and Enforcement in the Current Economic Climate

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Introduction

Issues surrounding the payment, collection and/or enforcement of tax collection have become very topical and increasingly difficult in recent times. Here I consider the dilemmas faced by the Revenue Commissioners (from a tax practitioner's perspective) in the current economic climate with respect to striking a balance between the need to collect tax revenues and the duty of care that must be shown towards the taxpayer. I will consider the methods of enforcement that the Revenue Commissioners have traditionally used to collect taxes and also cover the Case Decision Escalation Framework Guidelines ("CDEF") that they have recently issued to their staff.

Striking the Balance

The Revenue Commissioners are faced with the dilemma of collecting an ever increasing amount of unpaid taxes from taxpayers who have an ever dwindling supply of cash flow at their disposal. The Revenue Commissioners have stated that they are *"determined to maintain the current high levels of compliance notwithstanding the more difficult economic circumstances in which businesses and taxpayers are now operating"*. In doing this the Revenue Commissioners need to strike the balance between the taxpayer who *"won't"* pay their taxes and the taxpayer who genuinely *"can't"*.

Revenue Powers

The main methods the Revenue Commissioners use to encourage the timely payment of taxes are:

Charging Interest

Interest at 0.0219% per day or part of a day (circa 8% per annum) may be charged on the late payment of income tax, corporation tax, capital gains tax, gift tax and inheritance tax. A rate of 0.0274% per day or part of a day (circa 10% per annum) applies to late payment of indirect taxes such as excise duties, VAT, PAYE, RCT, PSWT, DIRT and other similar withholding taxes and exit taxes collected by other parties on a fiduciary basis for the Revenue Commissioners.

The Issue of Demands

The Revenue Commissioner may issue various types of demands for payment of outstanding tax liabilities i.e.

- An estimate/demand where a return and payment has not been received.
- An underpayment letter where a return has been received but with insufficient or no payment.
- A demand letter covering the amount of outstanding liability(ies).

The first two types of demand are generally issued on an automatic basis by the Revenue Commissioner's systems while the third type

is usually manually issued by a Revenue caseworker.

Other Measures

The Revenue may also encourage compliance by taking such measures as withdrawing a taxpayer's C2 certificate, withholding repayments of tax due to the taxpayer (or connected persons), making an offset of tax repayments due against tax liabilities due, not issuing a tax clearance certificate or prosecution for non-submission of returns.

Enforcement

The most frequently used enforcement options are Sheriff, Attachment, Solicitor and Liquidation.

Sheriff

Under this option the caseworker will refer the outstanding liabilities to the Sheriff for collection of the debts. The Sheriff may, if necessary, seize certain assets from the tax defaulter on foot of a warrant.

Attachment

Recovery by way of Power of Attachment allows the Revenue Commissioners to collect the debt of a taxpayer from a third party who is in debt to the taxpayer.

Solicitor

In general referral to a solicitor is usually used where the Sheriff or the Power of Attachment options are not suitable or have proved ineffective. A number of legal options are available to the Revenue Commissioners the first of which being their entitlement to obtain a Court judgment that an amount is due to them by the taxpayer. The taxpayer is held liable for any costs and fees that arise when a case has been referred to a solicitor once court proceedings have been initiated. If the judgment does not obtain the desired effect the judgment may be registered and published so that it will be in the public domain. The Collector General has a Specialised Enforcement Unit ("SEU") which may use exemplary measures to pursue cases of serious debt and non-compliance.

Liquidation

The Revenue Commissioners may apply for the grant of a bankruptcy summons under Section 8 of the Bankruptcy Act 1988 or present a petition for adjudication under Section 11 of that Act in respect of tax due by a taxpayer. The Revenue Commissioners may also petition the High Court to wind up a company as provided for in the Companies Act 1963.

It is clear that the enforcement options open to the Revenue Commissioners are wide ranging and severe. One of the ultimate responsibilities of the Revenue Commissioners is to collect taxes and therefore instead of pursu-

ing the options outlined above the Revenue Commissioners may in certain cases consider agreeing phased payment / installment arrangements.

Installment Arrangements

The Revenue Commissioners may as a concession consider agreeing to an installment arrangement if justifiable in the circumstances of the individual taxpayer or business. Every installment arrangement will also include interest.

Case Decision Escalation Framework Guidelines ("CDEF")

The CDEF Guidelines issued by the Revenue Commissioners to their staff aim to achieve a speedy and appropriate referral of cases for a higher level decision where factors that are largely outside the control of a business negatively impact the business' capacity to meet its tax payment obligations in a timely fashion.

The key determinant for Revenue in deciding to deviate from the routine decision making process will be whether the business concerned is viable and whether a business can show a capacity and commitment to meet all future tax payment obligations when they fall due. The extent of the leeway that Revenue will be prepared to give to a taxpayer will be *"significantly influenced by the level and timeliness of meaningful engagement by the business in the first instance"* according to the guidelines. It is therefore critical that the taxpayer engages with Revenue as early as possible if there is a risk that they may be unable to pay their taxes as a failure to do so will be considered *"a serious escalation of the risk"* from Revenue's point of view and may result in the serious enforcement measures outlined earlier in this article coming into play.

Conclusion

Through the issue of the CDEF guidelines the Revenue Commissioners has demonstrated its awareness that it needs to avoid falling into the trap of being *"penny wise and pound foolish"* when carrying out its tax collection and enforcement duties particularly in the current economic climate.

The effectiveness of the CDEF guidelines will very much depend on the Revenue Commissioner's ability to identify and apply leniency to the taxpayer who *"can't"* pay his taxes while continuing to apply the normal tax payment, collection and enforcement rules to the taxpayer who simply *"won't"* pay. It is very important that this balance is achieved as the economy needs its financially viable taxpayers to remain in business so that they can continue to contribute the much needed tax revenues into the future.