



6 August 2010

Mr Séamus O'Cathasaigh
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Revenue Commissioners
1st Floor, Bishops Square
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Dear Séamus

Code of Practice for Revenue Audit

Following the recent meeting of the sub-group, I thought it may be useful to clarify our remaining issues in writing.

I believe there has been good progress on a number of important items in the Code over the last 18 months, in particular:

- The no loss of revenue provisions
- Recognition of the difficulties that may arise in paying audit settlements in the current economic environment.
- Clarity on what Revenue activities are covered by the Code and what are not.

Below are the areas in which we believe further progress may be possible prior to publication of the new Code in September.

1.5 Unannounced Visits

Section 1.5 sets out guidance on the visits of Revenue compliance staff to a taxpayer's business. A reference to visits of an investigative nature, section 1.7(b), is also noted within this section. To avoid any misunderstanding on the matter, it would be useful to make clear that unannounced visits as defined in 1.5 are for the purposes of compliance checking only. As such, the activities of Revenue on such visits are limited to for example testing purchases, stock checks and examination of cash registers.

Visits under section 1.7(b) are separate and distinct from "ordinary" unannounced visits

and only arise in the case of serious matters in the context of an investigation. If it is considered necessary to include reference to such visits under section 1.5 it would be helpful if this was made clearer.

1.7 Notification of a Revenue Audit

Section 1.7 provides information on the notice period for a Revenue audit and that the notification letters issued will clearly indicate the nature of the intervention. It would also be helpful if clarity could be provided on the focus of the audit. In this regard we would suggest that it be included in this section that notification of a Revenue audit will also indicate the taxhead(s) and period(s) subject to audit.

2.4.3 Qualifying Disclosure and Payment

One of the conditions of a qualifying disclosure is that the related liability must be paid – paragraph 2.4.3 refers. This section of the Code provides that an agreed phased payment arrangement will be satisfactory. However it notes that if a taxpayer fails to honour the agreement any disclosure will be deemed not to be a qualifying disclosure and Revenue may seek to prosecute.

Circumstances may arise where a taxpayer is unable to continue to meet the payments required under an agreed installment arrangement and some revision to the arrangement may be needed. In recognition of this the wording of this section could be amended to reflect that prosecution will be sought only in exceptional situations.

2.9 5 Year Rule Regarding Qualifying Disclosures

The Code provides that if a taxpayer makes no qualifying disclosure within 5 years of a previous qualifying disclosure, any further qualifying disclosure is treated as a first such disclosure. We note that the Code provides that although the 5 year rule was introduced in Finance (No. 2) Act 2008 it can be applied to qualifying disclosures accepted under the Code of Practice (2002).

In our view this is retrospective - the 5 year clock should begin on 24 December 2008.

2.14 Self-correction

Self-correction is a valuable mechanism for taxpayers, allowing them to review and correct errors in their returns in a timely manner. The self-correction provision for VAT allows correction in the next subsequent VAT return, without interest, if the underpayment of VAT is below a defined amount. This amount has been set at €6,000, an increase of €1,000 from the previous Code. We believe this is still too low to make the provision useful to the majority of taxpayers.

We also consider that in order to encourage self-correction the adjustment period should be linked to the period when the error is uncovered, rather than the date it occurred.

We welcome the inclusion of a facility for self-correction for CAT and hope that such a facility can also be provided for stamp duty.

2.17 No Loss of Revenue

The application of interest and penalties where there has been no loss to the Exchequer has been a core area of our representations on the Code and we welcome the amendments that Revenue are proposing.

We note that the maximum penalty applying in cases where the taxpayer co-operates but no qualifying disclosure has been made, stands at 9% up to a maximum of €100,000. We consider that this is very high for an error where there is no loss to the Exchequer. We would suggest that a penalty capped at €60,000 would be a sufficient deterrent.

2.18 Capital Gains Tax Valuations

As noted in our previous correspondence, it can be extremely difficult for a taxpayer to obtain a valuation in the current environment. This situation has in fact worsened since our last correspondence. We would continue to contend that there should be recognition in the Code for a taxpayer's best endeavours to obtain a valuation where it has not been possible to do so. We note that this matter is currently under consideration.

4.5.4 Issue of a Notice of Opinion

You will be aware in our previous submissions that we made two requests in relation to the operation of the Notices of Opinion regime.

1. We asked that a statement be included in the Code making it clear that Notices of Opinion would only be used in limited and intractable cases.
2. We also sought Assistant Secretary approval before Notices of Opinion could be issued and requested that the matter could be referred for internal/external review by the taxpayer if required.

If there is still scope to reflect these important requests we believe that they could be very useful in ensuring that Notices of Opinion only issue in very exceptional cases.

4.5.11 Overview of Tax-Geared and Duty-Geared Civil Penalties

We note that the tables in section 4.5.11 set out a summary of the position regarding a default pre and post 24 December 2008 and related practical examples to assist a taxpayer determine when a default occurred. These are very useful in aiding taxpayers understanding of the penalty regime.

It would be helpful if there was an introductory paragraph at section 4.5.11 explaining the context and distinction between defaults arising before and after 24 December 2008.

4.6.1(b) Careless Behaviour Penalties

We welcome the clarification that the 15% test for careless behaviour applies across the taxes. As noted in our discussions there are practical issues around the application of the test in the context of zero-rated sales for VAT. We would welcome a reflection in the Code that Revenue will take a pragmatic approach in such circumstances.

4.7 Timeframe for Concluding Audits

Our representations on the Code reflected the real concern of members that in some cases audits are ongoing for some time even though all relevant information has been provided to Revenue. As acknowledged in the Code it is in the interests of all sides that audits are conducted and completed promptly. We welcome the new provision in the Code that provides where a taxpayer has dealt with all outstanding queries within a reasonable timeframe and the audit remains open for a further three months that Revenue will advise the taxpayer of an estimated time for completion. Unless there are very exceptional circumstances we suggest that this period should not exceed a further three months. If at the end of that period the audit has not been formally concluded and during that time the taxpayer has dealt with all outstanding queries then the audit will be deemed concluded unless the taxpayer agrees to continue. We believe that such an approach would add to efficiencies for all sides.

4.8 & 4.10 Discharging Liabilities and Inability to Pay

Section 4.8 sets out the information Revenue will seek in support of a phased payment agreement for the liability due. Section 4.10 considers situations where there is demonstrable inability to pay the liability. To assist taxpayers grasp the difference between the two sections it may be helpful to add headings above these sections for example

- “Situations where additional time is required to pay the settlement” in relation to section 4.8.
- “Situations where the full settlement cannot be paid” in relation to section 4.10.

Should you wish to discuss these matters in further detail please do not hesitate to contact me.

Yours truly,



Cora O' Brien
Director