



Mr Gerard Harrahill
Collector General
Revenue Commissioners
Sarsfield House
Francis St
Limerick

6 October 2008

Dear Mr Harrahill

I would like to take this opportunity to bring to your attention a number of issues of serious concern that have been raised by the Irish Taxation Institute's (ITI) members in relation to the administration of the collection of taxes. In particular, our members are experiencing a lack of reasonableness in light of the significant problems faced by taxpayers in the current economic climate.

This letter highlights members' specific concerns in relation to:

1. Delays in issuing refunds
2. Issuing Notices of Attachment
3. Application of interest charges where payment or returns are late by a few days
4. Offset of Relevant Contracts Tax (RCT) against other tax liabilities
5. Swift referral to the Sheriff's office


On a related point, we ask that leniency and pragmatism be observed in situations where a taxpayer, or their agent, approaches your office in order to negotiate an installment arrangement to meet their tax payment obligations. It must be appreciated that while a lump-sum payment would alleviate pressure for all concerned, including the taxpayer, in the current climate it is often not possible to arrange for one to be made. We believe this should not represent an insurmountable obstacle to negotiating an installment arrangement.

We also understand that it is advisable for taxpayers to contact your office in situations where they feel they may have difficulty in making an upcoming tax payment. We hope that contacting the correct people within your office will be made as straightforward as

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possible and that pragmatism and leniency will prevail. We trust that this leniency can be based upon the bona fides of the taxpayer and their desire to resolve the situation in as positive a way as possible for all concerned in these challenging times.

1. Delays in issuing refunds

You will be aware from representations made by practitioners, including those through the TALC Collections forum, that delays with the issuing of refunds are often experienced in the ordinary course of events. The ITI appreciates that certain procedures need to be followed by the Revenue Commissioners as regards verifying the issuing of refunds, especially as amounts increase in size.

While delays have been experienced in the past 12 months, any delay to current refunds due would have much more serious consequences for taxpayers in the current climate. With the passing of 21 September, which represents a pay and file deadline for many corporate taxpayers, and with 31 October and 17 November fast approaching, we ask that the processing of current refunds be prioritised and that a pragmatic approach be taken to any verification checks that are deemed necessary. This approach should arguably include reference to the following attributes of the case: compliance, consistency, use of information already supplied and relativity of the amount to the size of the business.

While we appreciate that your office serves one function in a chain of events leading to a refund, which also involves the tax district in question, we believe greater coordination is needed between the tax district and your office and greater communication is needed between Revenue, as a whole, and the agent/taxpayer. To date, our experience of delays have often hinged on verification checks for very small amounts. Again we ask that the bona fides of compliant taxpayers be taken into consideration in administering these refunds.

2. Issuing Notices of Attachment

I refer to the power granted to Revenue to issue a Notice of Attachment by Section 1002 of the Taxes Consolidation Act 1997 (TCA). We would strongly caution against the use of this approach in the current economic climate, given the potential loss to not only the taxpayer, but also the Exchequer, as illustrated in the following real-life examples provided to us by members:

- A Notice of Attachment was issued by Revenue to the bank of a taxpayer. On receiving the notice, the bank was concerned about the taxpayer's financial difficulties and proceeded to rescind the overdraft which they had extended. As a result of this lack of financial support the taxpayer's business subsequently failed with the loss of 10 jobs. Insufficient funds were available to pay the outstanding creditors, including the Revenue.
- A Notice of Attachment was sent to a taxpayer's largest customer. As a result the customer refrained from ordering supplies from the taxpayer for a period of time.

This resulted in the taxpayer going into examinership. The customer subsequently purchased the business at a reduced cost resulting in all creditors, including Revenue, not recovering the full amounts owed to them.

In the examples given above it is clear that both the taxpayer and the Revenue suffered as a result of the approach taken. In both situations the economic reality of the situation was clearly outlined to the Revenue caseworker but no avenue was available or offered to allow for an intervention. Given the current context, it is imperative that other avenues are explored and that the lines of communications are open. A pragmatic, common sense approach must be taken to avoid the recurrence of drastic outcomes similar to those demonstrated above. Members request that direct personal contact be made by the responsible Revenue caseworker with the taxpayer and agent to establish the up to date facts in each particular case before a Notice of Attachment is considered and that all other avenues are thoroughly exhausted before the final decision to issue a Notice is taken.

3. Application of Interest Penalties where Payments or Returns are Late by a Few Days

The majority of Irish taxpayers do their best to meet their tax obligations. However, even with the best of intentions, in the current economic environment it is much harder for them to do so where taxpayers are experiencing difficulty obtaining payment for sales/supplies they themselves have made. Given these pressures, it is reasonable to say that where a payment is made within a week of the due date it is clear that the taxpayer is not trying to flout the law and avoid payment of due liabilities but rather that cash-flow pressures have simply pushed them a little beyond the due date.

Feedback we have received from our members indicates that interest charges are being applied where payments are made only a few days late. In addition, while these interest demands may be small in amount, they appear to be subject to the same enforcement procedures as larger debts. This includes referral to the Sheriff's office. We believe that these cases must be dealt with with some leniency which would prevent interest from being applied where the payment is made within 5 working days of the due date. As a result of audit activity and day-to-day dealings with taxpayers, Revenue personnel are presumably in a position to appreciate that there is genuine difficulty in making payments in this "credit crunch" era and we ask that this appreciation be kept to the fore at all times.

4. Offset of Relevant Contracts Tax (RCT) against other tax liabilities

According to Revenue practice, as confirmed in Tax Briefing 64, a subcontractor may make a claim to have the RCT deducted, as detailed on the Relevant Contracts Tax Deduction Certificate (Form RCTDC), allocated against his/her liabilities arising under other tax heads. Revenue practice provides that it is not possible for the subcontractor to make a claim for offset of the RCT paid against any outstanding tax liability until the original RCTDC has been submitted to Revenue.

In the current economic climate it has become increasingly difficult for many subcontractors who do not hold a certificate of authorisation (C2) to receive an RCTDC from a principal within a reasonable time of completion of the work. This subsequently results in a delay in applying for an offset of the RCT suffered against other tax liabilities. This in turn can result in the imposition of interest charges on outstanding liabilities and possible referral to the Sheriff's office, with all the costs associated with this avenue.

In one example provided to us, a subcontractor who had a VAT liability for November/December 2007 had also suffered RCT in that period. The RCT had been accounted for through the RCT30 by the principal. However the completed RCTDC was not received by the subcontractor until March 2008. As a result of the delay interest accrued on the outstanding VAT liability and the debt was passed to the Sheriff for collection, resulting in additional fees. The subcontractor could do nothing to prevent this. This case is not unique.

In cases similar to the above it seems inequitable that although the RCT has been paid over to Revenue and noted as deducted on the RCT30 and RCT35, no recognition is made of this in considering the subcontractor's tax liabilities. We appreciate that legislation provides for a fine on conviction of €1,265 where the principal fails to give the subcontractor an RCTDC when making payment. However due to the downturn in the construction market it is increasingly difficult for subcontractors to receive payment in a timely manner, quite apart from ensuring that they have received the required paperwork. Also, the right of Revenue to impose a fine on the principal is of no benefit to the subcontractor in obtaining payment.

To alleviate the current difficulties some provision should be made to allow a subcontractor claim credit on an interim basis for RCT suffered prior to the submission of an original RCTDC. In addition, it would be helpful if there were clearly defined and published procedures for agents and taxpayers to follow in electing for an offset of RCT against outstanding taxes i.e. so that the offset can be made against the appropriate tax liability. This would enable the offset to be made promptly and would be especially helpful in cases where audit settlements are being made or the Sheriff's office has been involved.

5. Swift Referral to the Sheriff's Office

The above difficulties facing taxpayers are further compounded by the promptness at which referral appears to be taken to the Sheriff's Office to enforce collection. We appreciate that the Sheriff's office operates as a commercial entity independent from the Revenue. Accordingly we are not commenting in this letter on the operation of the Sheriff's office itself.

Based on feedback from members' experiences we have a number of concerns at the speed at which referral is currently made to the Sheriff in collecting outstanding liabilities. In addition, it would appear referral is currently made to the Sheriff for much

smaller sums of money. If there has been a change of policy or lowering of the monetary level at which the Sheriff is engaged, the ITI and its members would appreciate information on the change. This course of actions brings with it additional, significant costs for the taxpayer.

We ask that referral to the Sheriff's office only be taken following the exploration of all other avenues and detailed consultation with the taxpayer. To this end we echo the above need for communication with the taxpayer/agent to establish the up to date factual position and the need for coordination between your office and the relevant tax district based on these facts in order to reach a mutually satisfactory solution.


In an example similar to that involving RCT at Section 4 above, which had been referred to the Sheriff, a taxpayer subsequently agreed to enter into an instalment arrangement with Revenue, subject to a substantial payment being made upfront. As part of this arrangement the taxpayer returned the RCTDC original to Revenue, which was copied to the Sheriff. The original was mislaid and Revenue requested that an original letter be provided by the principal confirming the RCT deducted. The obligation was put on the subcontractor to pursue this letter from the principal. Notwithstanding that the taxpayer had agreed to enter into a payment arrangement with Revenue in the interim, the case was referred back to the Sheriff's office for collection.

Another set of experiences our members have had relate to situations where PAYE taxpayer clients were taxed under self assessment for one tax year due to the exercise of stock options. The agents duly notified the tax districts in question that the taxpayers were no longer self assessment cases but this notification was not duly processed. As these PAYE taxpayers were no longer required to, they did not pay preliminary tax or file self assessed returns. In these cases the matter was escalated at extraordinary speed through the enforcement process via the Revenue Solicitor. Proceedings were eventually halted at which point the taxpayers in question had suffered significant stress and additional, entirely unnecessary, costs. These cases demonstrate the unnecessary cost, use of resources and stress that could have been avoided if there was greater communication between all Revenue functions and if more attention had been paid to the fundamental communication with the tax districts explaining that the cases were no longer subject to self assessment.

We also note that it appears that there is much more frequent referral of cases to the Revenue's Solicitor in conjunction with referrals to the Sheriff's office.

This letter has been compiled based on actual feedback received from our members, including that received via the ITI Branch Network and has been project managed by Úna Maguire. As the matters raised in this letter are of such significance to our members we request an opportunity to meet with you and your colleagues as soon as possible in order to progress them.

Yours truly

A handwritten signature in black ink, appearing to read "Jim Ryan", with a stylized flourish extending to the right.

Jim Ryan
President

Cc Ms Josephine Feehily, Chairman, Revenue Commissioners