

Irish Tax Institute - Review of 2010 Code of Practice for Revenue Audit

Suggested Areas for Review

Paragraph in Code and Issue Identified	Institute Recommendation
Chapter 1	
<u>1.4 e-Auditing</u> This should include Revenue protocols for e-Audits.	The Institute has asked that appropriate protocols for carrying on e-Audits be included in the Code. There has been discussion at TALC Audit about what those protocols should include.
<u>1.6 Revenue Investigations</u> Paragraph 1.6 notes that a case will normally be subject to an investigation rather than an audit where “strong indications of serious tax evasion are known”. A number of members have concerns regarding instances which would seem to be inconsistent with paragraph. 1.6 and/or indicate that there is a lack of clarity in relation to the proper protocol in this area. These instances include: a) Audit cases which migrate to investigation cases without any obvious indications of	

<p>serious tax offences having taken place.</p> <p>b) Lack of clarity as to when a taxpayer is under investigation e.g. where a taxpayer is under investigation but this has not been disclosed to the taxpayer.</p> <p>c) No demarcation between settlement of the civil aspect of a case and progression of an investigation with a view to criminal prosecution simultaneously.</p>	<p>We would like to see the recommendations of the Revenue Powers Group report more fully adopted. The report recommended a clear demarcation and differentiation between audits and investigations and that the taxpayer be kept fully informed of developments.</p> <p>Page. 56 and 57 (paragraph 12.3 – 12.10) of the Revenue Powers Group Report (November 2003) cover these issues.</p>
<p><u>1.7(a) Notification of a Revenue Audit</u></p> <p>This paragraph notes that the scope of the intervention will also be set out in the letter notifying a Revenue audit, “and will range from a single issue for a specific period or year to a comprehensive audit for a number of years”.</p>	<p>Feedback from members has indicated many instances of Revenue audit letters covering multiple tax heads and multiple years. As Revenue has provision in the Code under paragraph 3.6 to open earlier years we think it would add to efficiencies for both taxpayers and Revenue if the initial audit letter is a focussed one in all but the most exceptional cases.</p> <p>Perhaps some reference could be included in the Code to note that “in general Revenue will not seek to impose a significant compliance burden on</p>

	<p>taxpayers by engaging in multiple year or multiple tax head audits unless there are specific reasons for doing so”. Where possible, these reasons should be disclosed to the taxpayer.</p>
<p><u>1.7 (b) Notification of a Revenue Investigation</u> There is no reference to agents being copied on correspondence from Revenue in relation to investigations. It is important that they are made aware of matters regarding their clients so they can advise them appropriately.</p>	<p>It should be noted in this section that the tax advisers will receive a copy of the Notification of Investigation, as is the case for Notifications of Revenue Audits.</p>
<p>Chapter 2</p>	
<p><u>2.2 Self-correction</u> There is no provision for self-correction for stamp duty in the Code.</p>	<p>The Code will need to be updated to provide for self-correction for stamp duty. An appropriate timeframe for self-correcting a return will be required.</p>
<p><u>2.3 Innocent error</u> In considering whether no penalty applies on the basis that the error is an “innocent error”, it appears in practice that Revenue require all 5 factors set out in paragraph 2.3 to be met.</p>	<p>It had been understood by advisers that these 5 factors are for consideration by Revenue in determining whether a penalty applies but are not exhaustive, nor do all the factors have to be satisfied.</p> <p>As such, it would be useful if this paragraph could indicate that “while Revenue will take into consideration the factors noted, these are not</p>

	exhaustive”.
<p><u>2.5 No loss of revenue</u></p> <p>It is noted in this paragraph specifically that the “no loss of revenue” provision applies to VAT and RCT. Instances may arise with other taxes where there is no loss of revenue to the Exchequer.</p> <p>The right to have Revenue’s decision to refuse a “no loss of revenue” claim reviewed is not clear in the Code.</p>	<p>As a matter of fairness, we believe that the “no loss of revenue” provision should not be limited to only VAT and RCT but should apply to any tax where no revenue is lost to the Exchequer.</p> <p>The Code notes that there is no right of appeal against Revenue’s refusal to accept a “no loss of revenue” claim. As with any other aspect of handling an audit it should be possible to seek a review of Revenue’s decision under the Revenue complaints and Review Procedures. A reference to the new procedures should be included in this section.</p>
<p><u>2.15 Qualifying Disclosures</u></p> <p>A note on the summary chart 2.15 specifies that where any tax return was made or submitted by a person, neither deliberately or carelessly, and it comes to that person’s notice that it was incorrect, then, unless the error is remedied without unreasonable delay, the incorrect return shall be treated as having been deliberately made or submitted by that</p>	<p>As the Institute has noted in previous representations on the Code this provision is problematic to apply in practice as it does not take account of genuine oversights. Application of this provision should be exercised with caution.</p>

<p>person – Section 1077E(9) TCA 1997.</p>	
<p>Chapter 3</p>	
<p><u>3.6 Auditing earlier years, periods or issues</u> Members have raised concerns on the practical application of this section.</p>	<p>We think it would be useful to discuss the practice of opening prior years where a substantial loss of revenue has not occurred, but for example there is a difference in opinion between Revenue and the adviser on a technical position.</p>
<p>Chapter 4</p>	
<p><u>4.6 Categories of Tax Default</u> Under paragraph 4.6, failing to operate fiduciary taxes automatically constitutes a deliberate default.</p>	<p>We think that this is too broad. It can be the case that an error is made in applying fiduciary taxes, for example, the application of an incorrect VAT rate in a retail environment or an error by a foreign based business in the application of the BIK regulations. It should be made clear in this section that deliberate default applies where there is a “serious” failing to apply fiduciary taxes.</p>
<p><u>4.7 Timeframe for concluding audits</u> This paragraph provides for Revenue to provide an indicative timeframe for closing an audit, where a taxpayer has answered all</p>	<p>If it is the case that the taxpayer or agent must request that Revenue advise them of the current status of the audit and the estimated time in which it is</p>

<p>outstanding queries and the audit remains open for a further 3 months.</p> <p>Revenue has stated verbally that you must ask them to estimate the time to completion of the audit. It will not occur automatically.</p>	<p>likely to be concluded, this should be stated clearly in the Code.</p>
<p><u>4.9 Inability to pay</u></p> <p>It is a requirement that an “accepted” proposal to pay is made for a disclosure to be treated as an unprompted qualifying disclosure, as highlighted in eBrief No.4/2012.</p>	<p>This makes it difficult for advisers to advise clients with any certainty as to whether they will face publication or prosecution when making an unprompted disclosure, as there is no certainty that a payment proposal will be accepted by Revenue.</p>
<p><u>4.10 Review Procedures</u></p> <p>Inclusion of the new Revenue Complaints and Review Procedures Leaflet.</p>	<p>This section of the Code will need to be updated with reference to the new Revenue Complaints and Review Procedures Leaflet.</p>
<p><u>Appendix IV Non-audit interventions</u></p> <p>There are a wide range of compliance interventions currently taking place that taxpayers may not be aware of. It is important that taxpayers are aware of the different types of interventions in operation and have clarity as to where they stand vis-à-vis making a</p>	<p>Appendix IV should be updated to reflect the range of non-audit interventions currently taking place for example:</p> <ul style="list-style-type: none"> - Self-reviews - Activities of dedicated divisions such as the Large Enterprise Branch <p>It should be clear that an unprompted disclosure is possible in these cases.</p>

disclosure, publication and penalties.	
<p><u>New Self-assessment regime</u></p> <p>Consideration will need to be given to matters arising from introduction of “full” self-assessment for 2013, for example:</p> <ul style="list-style-type: none"> • S959R(5) TCA 1997 – this deals with the conditions applying where you are relying on ROS, where ROS is subsequently corrected and you can amend without penalty or interest. • S959S and S959U TCA 1997 – this deals with “self-assessment” by Revenue. • Section 959X TCA 1997 – issue of a fixed penalty for failure to make or amend a self-assessment. • Section 959Y /S959Z/S959AD TCA 1997 – this concerns Revenue’s right to raise assessments or make enquires “at any time”. • S959AH TCA 1997 – this concerns the requirement to have paid the 	<p>There may need to be some reference in the Code to the implications of the changes for example:</p> <ul style="list-style-type: none"> • Record -keeping of ROS calculations and catering for instances where the taxpayer is unaware that Revenue has corrected ROS and an amendment to a return was not made within the required period. • Clarity that the self-correction time limits under paragraph 2.3 of the Code applies • Under paragraph 4.4 of the Code a tax-geared penalty in any settlement is regarded as covering any fixed penalties chargeable for filing an incorrect or late return. This should also include the penalty in 959X. • Clarity on the meaning and use of “reasonable grounds” to open years outside of the 4 year general rule.

undisputed tax, interest and collection costs prior to lodging an appeal.

- Clarity that phased payment arrangements will satisfy the payment requirements for taking an appeal.