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Oifig na gCoimisinéirí Ioncaim
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Ms. Cora O Brien,
Director,
Irish Tax Institute,
South Block,
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20th November 2015

Re: Revenue Operational Instruction (OI) 063 of 2015: Failure to Cooperate Fully with a Revenue Compliance Intervention

Dear Cora,

I refer to your letter dated 21st August 2015 which was also referred to during the TALC Audit sub-committee meeting on 29th September 2015.

You will be aware that the issue of agents and taxpayers failing to cooperate fully with Revenue compliance interventions has been a long-standing concern for this Office. Indeed, you will recall a public expression of our concerns to the Institute was as far back as the Joint Conference in June 2011 and the publication of the above Operational Instruction on 24th March 2015 is the culmination of our work in this area in that period.

It is worth re-stating at this point that the Audit Code of Practice has, for many years, provided a mechanism to recognise full cooperation on the part of taxpayers, and by extension agents, by mitigating the level of penalties applying to compliance interventions. The OI provides necessary guidance to Revenue caseworkers on the circumstances in which mitigation is warranted.

I do not agree that the Instruction was published without notice or consultation. A significant amount of consultation was undertaken through Main TALC, the TALC Audit sub-committee and bi-laterally with professional bodies over the course of a number of years. As the OI is an internal Revenue instruction, and as is the case with all internal instructions, it is our prerogative to issue such guidance when we believe it is ready. Our view is that the consultation process had concluded and there was no reason not to publish the OI last March.

Regarding the specific points you make, my replies are set out below:-

The wide-ranging and subjective nature of the factors that can constitute "non cooperation".

As stated in the OI it is expected that taxpayers and their agents will cooperate fully with the compliance intervention. The examples cited reflect incidents that **may** be regarded as failure to cooperate. As advised, each case will be examined on its own merits. Where a person believes that reasonable grounds exist that would prevent them from cooperating fully with an intervention, they are entitled to make a written submission on the matter.

No recognition of the mutual obligations on Revenue to engage in a timely and reasonable manner.

Revenue policy and procedures including the obligations of Revenue Officers are covered in detail in the Code of Practice for Revenue Audit and other Compliance Interventions and other Operational Instructions issued internally to Revenue staff under Revenue's Quality Intervention Programme. Through our Quality Programme, any significant delays by Revenue caseworkers in settling cases are addressed internally. In addition, the Customer Service Charter (Appendix 1 Code of Practice 2014) sets out mutual expectations in this context and the Revenue Complaint and Review Procedures provide a process for a wide range of issues to be raised and reviewed.

The lack of redress for a taxpayer/practitioner.

We have asked, on many occasions, from the professional bodies at TALC for specific examples of cases where there was excessive delay by Revenue caseworkers but have never been provided with any such examples. As is explained above, quality assurance checks are carried out to identify any instances where there was undue delay on our part and steps are taken to minimise the incidence of recurrence. We believe that this is the best way to deal with such matters and redress for a taxpayer is not appropriate.

The interaction with the Audit Code and its implications for Qualifying Disclosures.

Where a 'voluntary disclosure' has been made, it is a matter for Revenue to determine whether the disclosure is regarded as a 'qualifying disclosure'. Such disclosures are in relation to tax/duty and interest. Liability to a penalty is a separate matter to the disclosure. As you know, the behaviour of the taxpayer in relation to the tax/duty default influences the quantum of penalty e.g. was the default careless or deliberate, was full cooperation given, were there previous disclosures etc.

Where Revenue is unable to verify that all the requirements of a 'qualifying disclosure' have been met, due to non-cooperation, the taxpayer may not continue to avail of the relevant treatment. All taxpayers are allowed reasonable time to respond to queries raised by Revenue.

Reference to the possibility of an investigation being commenced.

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The letter references an extract from the template letter set out in Appendix A of the OI. I can clarify that the template letter is written in the context of a Revenue investigation or inquiry that has already started where full co-operation has not been provided by an agent. I trust that this explains this point for you..

As advised at the TALC Audit sub-committee meeting on 29th September 2015 it is intended to review the operation of the OI in March 2016.

Yours sincerely,

Declan Rigney
Assistant Secretary
Planning Division.