



Revenue RCT Compliance Interventions

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Introduction

As advisers, our role includes guiding and advising clients on various aspects of complex tax legislation from both a planning and a compliance perspective, while being cognisant not only of the tax impact of a particular course of action but also of the commercial implications that tax may have for the underlying transactions.

Clients often rely more heavily on their tax advisers if, or rather when, Revenue raises queries or announces an audit. Both clients and advisers need to be cautious when responding to even the most innocuous of queries and should consider the rationale for the queries raised and the possible outcomes before responding. Has the transaction/return/position adopted that is the subject of the query already been considered and treated correctly for

tax purposes? Is further analysis required? Should a disclosure be made to Revenue?

As the Irish tax system is predominantly based on self-assessment principles, three out of the four key Revenue strategies are relevant to this article: (1) make it easier and less costly to comply, (2) increase timely compliance and reduce debt and (3) target and confront those who do not comply.

To maintain the integrity of the voluntary tax-compliance regime, Revenue is continually developing and enhancing procedures both to encourage compliance and to tackle instances of non-compliance. “Non-compliance” with tax legislation can encompass a wide variety of issues, from relatively simple ones – such as not having all of the information on invoices that is required by VAT Regulations, or late filing of tax returns or payments – to more serious ones – such as failure to make tax returns, or making incomplete or misleading returns. For all of these and many other issues, there are specific provisions for the imposition of penalties.

With a self-assessment regime, there is an onerous obligation on taxpayers to be familiar with, or at least aware of, the tax treatment of actions and transactions under numerous tax heads, the implications of same and the manner in which these need to be recorded and reported for tax purposes. Revenue’s compliance programmes aim to encourage compliance and, more importantly, to identify situations where there is non-compliance.

Information Available to Revenue

Revenue adopts a wide variety of methodologies to deal with non-compliance, depending on the particular circumstances of each case, ranging from “light touch” early interventions to criminal prosecutions for serious tax issues, particularly in instances of fraud. Revenue uses sophisticated risk-assessment, analytics and intelligence-gathering systems for targeting compliance interventions and is intervening in “real time” more often.

Revenue has developed a social-network analysis system, which is a powerful IT compliance tool used to identify links between businesses and people by way of data already available in their systems. This system should not be confused with social or business media sites, but readers may already be aware that publicly available information from these types of sites and from,

say, planning applications, press releases, blogs, advertising material and even job adverts can also be useful to Revenue for profiling and targeting purposes.

Compliance interventions can range from relatively straightforward “aspect or assurance queries”, to the more complex or worrying for clients, “profile interviews” and “unannounced visits”, to comprehensive “Revenue audits” or even “Revenue investigations”. As Revenue has finite resources and capability, in most cases, before making any contact with a taxpayer, an information-gathering and analytical exercise will have been carried out and the manner of intervention carefully considered. One should remember that Revenue is continually amassing vast amounts of data from numerous sources, such as results/information from other enquiries or audits of suppliers, customers and competitors, in addition to information from third parties or the public domain, all of which can be quickly analysed using dedicated software such as the Risk Evaluation Analysis and Profiling (REAP) system.

Revenue’s Joint Investigation Units also work closely with the Department of Social Protection’s Special Investigation Units and with the National Employment Rights Authority in conducting interventions and tackling non-compliance.

Current Revenue Interventions

Even though the 2014 Revenue Annual Report confirmed that the highest number of audits carried out per sector was in the construction sector, it was announced in eBrief No. 77/2015 that Revenue was increasing compliance interventions in that sector, with particular reference to Relevant Contracts Tax. Revenue last conducted a specific national construction sector project in 2006–7, which yielded c. €276m in settlements, with c. 700 “sub-contractors” reclassified as employees.

Revenue has indicated that this project will focus on compliance risks, including:

- › proper operation of the eRCT system generally, to include ensuring that:
 - › principal contractors are fully reporting payments through the eRCT system and
 - › principal contractors are reporting “unknown” sub-contractors;

- › reconciling reported activity under the Home Renovation Incentive with VAT returns filed;
- › reconciling reported activity under the eRCT system and in PAYE/PRSI and VAT returns and examining profit margins;
- › proper operation of the VAT reverse charge;
- › proper operation of PAYE/PRSI obligations;
- › ensuring that employees are not misclassified as sub-contractors; and
- › ensuring that the obligations of non-resident principals/sub-contractors are being fully met.

Revenue strongly encourages a self-review for those operating in the construction sector and recommends that principals/sub-contractors regularise their affairs before any compliance intervention begins.

Revenue also stated that the increased interventions would include additional aspect queries, profile interviews and audits, as well as a greater number of unannounced visits to construction sites.

Revenue Focus Areas

The eRCT system was introduced quite successfully from 1 January 2012, with relatively few amendments since then. Although there may have been some minor teething issues, the new system appears to be working well and has proved to be a mine of information for Revenue. Apart from the withholding tax obligation where a contractor's compliance is not up to scratch, the eRCT system has two fundamental information-gathering tools.

The first, known as a Contract Notification, gathers information regarding construction activity. A "principal" is obliged to submit details of contractors engaged, with their tax registration number, and details of the location, nature, value and commencement/completion dates of the work. Revenue eBrief 85/2015 advises that from December 2015 new Contract Notifications will be assigned an "eRCT Site Identifier Number" (SIN). The SIN will be a system-generated number applied to the location or locations

where relevant operations are taking place and will require input of both the site/project name and the address.

The second, known as a Payment Notification, relates to "following the cash", whereby Revenue authorisation is obtained before issuing a payment to a contractor. Revenue has indicated that RCT will be a focus of the interventions, and these two notifications provide powerful "real time" information. Before arriving on a construction site, Revenue will be aware of who is reportedly on site and what work they are carrying out.

In terms of settlement yield from audit or other interventions, RCT is second only to VAT. The introduction of the VAT reverse-charge procedure in relation to activities within the scope of RCT significantly

reduced the "risk" in this area from Revenue's perspective; however, it is clear that VAT errors are still arising and often prove very costly. Is the business reclaiming VAT that was incorrectly charged where the reverse charge should have been applied? Is VAT accounted for in respect of any goods provided that are unrelated to a construction service?

Another area of focus is noted as an examination of the operation of PAYE procedures and whether "employees" being misclassified as "contractors". Such misclassification can lead to underpayment of not

only PAYE and PRSI on what should be considered "wages" but also other payments made to the "contractors". Such misclassification will also have implications from a VAT, RCT and corporate/income tax perspective. Even where employees have been correctly classified, other issues can arise on various subsistence or expenses payments, which may not meet the specific requirements for being paid tax-free.

Intervention Methods

As mentioned, Revenue employs a range of compliance interventions, and the method is chosen carefully. The Code of Practice for Revenue Audit and Other Compliance Interventions confirms that a taxpayer can make an "unprompted qualifying disclosure", which has benefits such as mitigated penalties and non-publication,

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provided that the taxpayer has not received the appropriate notification of a “Revenue audit” or a “Revenue investigation”.

Aspect queries and assurance checks

These interventions are typically used by Revenue to verify the accuracy of tax returns submitted or to request specific information or documents pertaining to a transaction. Revenue can telephone, write to or send a secure e-mail to taxpayers or their agents requesting the information. A typical example of an assurance check, which appears to be being used more frequently, is a VAT refund verification letter. Revenue will normally request confirmation of the business activities being carried out and copies of the largest sales and purchase invoices included in a specific VAT period. Before responding, the accuracy of the tax treatment applied should be verified and, if appropriate, remedial action such as self-correction or disclosure should be taken.

Profile interviews

Revenue will use information available, together with its REAP system, to create a risk profile in respect of specific taxpayers and/or transactions. Among other functionalities, the REAP system can identify and assign “risk ratings” to individual cases where there are patterns of late filing or payment, unusual returns or inconsistencies between, say, corporate tax, PAYE, RCT and VAT returns.

If selected, clients and their agents will receive a letter 21 days in advance advising that a profile interview is scheduled, which will normally identify the specific concerns or “risks” that are to be discussed. This provides advisers with an opportunity to discuss the issues mentioned with their clients. At the Revenue meeting, discussions or the provision of documentation may satisfy the Inspector that no further action is required, or the option to make an “unprompted qualifying disclosure” can still be used. The client/agent will normally receive a letter within about two

weeks confirming whether the “risk” has been resolved or further action, such as an audit, is required.

Revenue audit

A formal letter advising a taxpayer that a Revenue audit will be conducted will issue from Revenue and provide at least 21 days’ notice. The notification will set out the tax heads and periods that are to be examined and the location at which Revenue intends to conduct the examination, which is normally the business address.

Once an audit letter issues, advisers should make the client aware that a “qualifying disclosure” can still be made to Revenue before the books and records are examined; however, such a disclosure is considered to be a “prompted” rather than an “unprompted” disclosure. Although there still can be non-publication of any settlement and some mitigation of penalties, the mitigation will not be to the same extent as for an unprompted disclosure. If no disclosure is made and Revenue uncovers in its audit additional liabilities or overclaimed refunds/reliefs, higher penalties are likely to apply and there is the risk of publication, or even prosecution for serious cases, depending on the overall position.

In contrast, an unannounced visit may also commence with Revenue presenting a “Notification of a Revenue Investigation” to the taxpayer at the start of the visit. In these circumstances it would be prudent for taxpayers to make immediate contact with their tax agent and/or a tax-practising solicitor for guidance. A disclosure can still be made, but it will no longer be considered “qualifying”, and therefore higher penalties and publication are likely to arise, with enhanced potential for prosecution should liabilities be established.

Unannounced visits

This is when Revenue calls to a taxpayer’s business or a construction site without prior notification or appointment. On arrival, the Revenue officers should present their identification and “safe pass”. I do not propose to examine the Revenue powers in this area, but suffice it to say that they are quite extensive and include entering construction sites at all reasonable times subject to health-and-safety legislation being adhered to.

Revenue officials can request sight of any records held, which may be copied or extracted during these visits. The officials will initially seek to speak with either senior management or the site foreman. Again, it should be remembered that an unannounced visit is not a “Revenue audit”, and an “unprompted qualifying disclosure” can still be made.

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What to Expect and How to Prepare

In the case of unannounced site visits, the purpose in many cases will not be directed at the main contractor but will focus on other contractors/individuals on site. Revenue will typically request a copy of that day’s “sign-in” or “attendance” record, which is required under health-and-safety legislation. It would not be unusual for Revenue to request these records covering an extended period. In some instances Revenue may have carried out a surveillance operation from early morning, or over a few days, noting the number of people entering and leaving the site, in addition to any commercial vehicles in the area.

Armed with this information and existing data garnished from RCT notifications and other sources, Revenue will want to “walk” the site, requesting individuals to confirm their identity, who they work for, whether they are “self-employed” or employees, and what role they are performing on site.

An aspect/assurance query or an on-site visit may be only a small part of the intervention, with the pre- and post-visit analysis conducted by Revenue confirming whether further examination or an audit or investigation is warranted, particularly where any anomalies, such as the following, are uncovered:

- › Contractors on site have not been notified on the eRCT system, or contractors who have been notified are not present on site, and/or VAT returns and back-up data contain details of contractors who do not appear on the attendance sheets.
- › Individuals who have claimed to be employees or contractors are not registered on a specific employer’s PAYE record or on the eRCT system.
- › The Payment Notifications or PAYE returns made cannot be justified based on the number of contractors/employees on site because they are either much too high or too low.
- › Corporate/income tax returns do not reflect the level of activity suggested by VAT returns or the RCT system, or vice versa.
- › VAT returns do not reflect the level of payments reported through the eRCT system.

This is a non-exhaustive list of issues that are easily identifiable to Revenue. RCT regulations provide that a principal must obtain and retain documentary evidence of identification from contractors; additionally, the principal is obliged to provide the contractor with copies of Contract and Payment Notifications made. It is not clear if even these basic requirements are being adhered to by many within the RCT net; and with the introduction of revised RCT penalties at the start of 2015, along with existing penalty and interest provisions and the possibility of publication or even prosecution, what may be perceived as innocent errors or omissions could prove to be very costly and reputationally damaging.

Conclusion

Given that Revenue has publicly announced its intention to focus on and examine the construction sector, those involved, and their advisers, have been provided with fair warning and opportunity to review their existing tax compliance and avail of the various disclosure procedures, if appropriate, ideally before any Revenue intervention.