



The powers that be

Eamon Coates assesses the new powers given to Revenue by government in recent years

As part of the continual campaign to detect and deter tax evasion, and to maximise compliance in relation to both the filing of returns and payment of tax, the Oireachtas, in each recent Finance Act, has provided Revenue with additional powers. This article considers some of the more recent powers provided to Revenue in Finance Acts 2010, 2011 and 2012.

Suppression Devices

An automated sales suppression device (or 'zapper', as it is commonly known) is a software programme that falsifies the electronic records of point-of-sale systems for the purpose of facilitating tax evasion.

The use of a zapper enables businesses to alter point-of-sale records so as to delete a number of sales transactions. The use of a zapper can be difficult to trace and is unlikely to be detected by either an auditor or an accountant preparing accounts. However, Revenue has detected the use of such devices using their software programmes.

While the understatement of sales or profits is, of course, an offence under many tax statutes, Finance Act 2011 introduced a specific Revenue offence, under Section 1078 TCA 1997, in relation to zappers. Effective from 6 February 2011, apart from any other offence which a person may have committed, a Revenue offence is committed where a person knowingly or willfully possesses or uses, for the purpose of evading tax, a computer

programme or electronic component which modifies, corrects, deletes, cancels, conceals or otherwise alters any record stored or preserved by means of any electronic device without preserving the original data and its subsequent modification, correction, cancellation, concealment or alteration.

In addition, it is also an offence to provide or make available to another person such a programme for the purpose of evading tax. A person guilty of a Revenue offence may be liable to a fine of up to €126,970 or imprisonment for a term of up to five years, or both.

Power of attachment

Under the provisions of Section 1002 TCA 1997, Revenue can compel certain persons who owe money to or hold financial assets of a taxpayer who has defaulted in paying tax, interest or penalties due to Revenue to make payment to it in discharge or part discharge of the taxpayer's liabilities. Typical of persons who Revenue would require to make such a payment would be a trade debtor of the taxpayer or a financial institution holding funds belonging to the taxpayer.

Under the legislation, as originally enacted, a specific exclusion was made for wages or salaries owed by an employer to an employee. Previously, an employer could not be compelled to pay to Revenue tax liabilities of the employee out of wages or salaries due to the employee. Such a situation might have arisen where an employee

had unpaid liabilities to Revenue on investment or rental income or capital gains.

However, under the provisions of Section 74 Finance Act 2011, the situation has changed. Effective from 6 February 2011, Revenue may compel an employer to discharge tax liabilities of an employee out of salaries or wages due to the employee. The Notice of Attachment served on the employer will specify the period of time over which these payments are to be made by the employer to Revenue. Such payments, of course, will be deducted from the employee's gross salary in addition to the usual statutory deductions for PAYE, PRSI, etc.

The collector general

The Finance Act 2012 grants new powers to the collector general when dealing with persons with unpaid tax liabilities. Section 125 Finance Act 2012 empowers the collector general to require any person who has failed to discharge tax due to deliver a comprehensive statement of assets and liabilities. Where a person is jointly assessed to income tax, his or her spouse or civil partner will also be required to deliver a statement of affairs. The statement or statements of affairs must include all assets, wherever situated, to which the person or persons are beneficially entitled and all liabilities for which the person or persons are liable on the specified date. Certain assets of a minor child of a person, his/her spouse or civil

partner must also be included.

Persons acting in a representative capacity for another person or as trustees of a trust may also be required to file a statement of affairs with the collector general. The section sets out the assets/liabilities that must be included in a statement of affairs of such persons. For example, in the case of a trustee, the statement must include all assets and liabilities comprised in the trust on a specified date. Any statement of affairs filed under this section must be signed by the person by whom it is delivered and must include a declaration by that person that it is correct and complete to the best of that person's knowledge, information and belief. There is also a provision whereby the declaration may be required to be made on oath.

Section 126 of the Finance Act 2012

empowers the collector general to require a person carrying on a business to give security to the collector general for the payment of certain fiduciary taxes that are or may become due from that person. The taxes are PAYE/PRSI, Relevant Contracts Tax, VAT and Universal Social Charge.

Security may be required only where:

- (a) In relation to businesses that have ceased, tax which arose while the business was trading; or
- (b) In relation to a current business, where tax due has not been paid within 30 days of the due date.

The section states that the security shall be of such an amount and in such form as the collector general considers appropriate. The legislation contains no further detail on this point.

Where a person is required under this section to provide security to the

collector general, it shall be an offence for that person to engage in business until the relevant security has been provided to the collector general. Any person served with a notice under this section requiring that person to provide security to the collector general may appeal the notice within 30 days to the Appeal Commissioners. The person can continue in business pending the Appeal Commissioners' determination.

The implications for persons served with notices requiring that they provide security to the collector general are very serious. Particularly serious is the prohibition on carrying on business until such time as the required security is provided to the collector general. In addition, the definition of 'management of the business' has the potential to bring a wide group of persons within the section.



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Given the serious implications for persons within the ambit of the section and the lack of detail contained in the section, it will be interesting to see how Revenue propose to implement the legislation. Before implementing the section, Revenue should provide detailed guidance as to the circumstances in which the legislation will apply, the type of security that will be sought, and the range of persons who may be served with notices.

Credit cards

In the course of its audits and other interventions, Revenue has come across situations where payments made by way of credit card by customers for goods and services were not included in the merchant's accounts or tax returns. For example, in a situation where

a merchant or trader may have a number of terminals for use by customers to make payment by credit card, payments made using a particular terminal or terminals may not be properly recorded.

Under Section 122 of the Finance Act 2012, an obligation will be imposed on payment settlers, i.e., persons who make payment to merchants or traders who have supplied the goods or services to the customer, to make a return to Revenue of amounts paid to traders or merchants. Access to this information will assist Revenue in verifying the accuracy of the trader's tax returns.

The legislation does not specify when payment settlers will first be required to make returns to Revenue or the year or years for which they will be required to make returns other

than to state that returns shall not be required for a year earlier than 2010.

Conclusion

Practically every Finance Act of recent years has provided Revenue with new powers. Generally, these provisions do not attract high profile media attention, which tends to focus on changes to tax rates, introduction of new reliefs, or the abolition of existing reliefs. It is, therefore, very important for practitioners to familiarise themselves with the details of new Revenue powers by reading the Finance Acts and publications by professional bodies so as to be aware of potential sanctions facing their clients.

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