IRELAND

Revenue Audits*Article by Eamon Staunton, MBA AITI, CPA, Examiner - Formation 2 Taxation*

What is a Revenue Audit

A Revenue audit is an examination of the information and figures shown by a taxpayer in their tax returns against those shown in their business records. Therefore, the auditor needs to see all books and records in relation to the tax for the period being audited and these should be available on the first day of the audit.

It is normally concerned with the review of the taxpayer's return of income for one year, but where significant discrepancies arise during the audit, the Revenue may extend the examination for prior or subsequent years.

Objectives of Revenue Audits

The primary objectives of Revenue audits are to promote voluntary compliance and monitor tax compliance. The function of a Revenue audit is to:

- Determine the accuracy of a return in relation to tax liability or claim for repayments;
- Identify any additional liabilities or other matter requiring adjustment;
- Collect tax, interest and penalties where applicable;
- Specify any remedial action required to put the taxpayer on a compliant footing for the future;
- Publish defaulter's name under the provisions of *S.1086 TCA97*;
- Where indicators of serious evasion occurs to consider prosecution.

Audit Selection

- The vast majority of audits are selected by screening tax returns. This process involves examining the returns of taxpayers and reviewing their tax compliance history. The figures in the returns may be evaluated in the light of trends in particular businesses or profession and analysed against available information.
- Revenue may receive information from third parties in relation to particular taxpayers
- Occasionally audits are conducted to examine tax compliance levels in particular trades or professions. The tax returns of a large number of taxpayers in a particular sector are examined in detail and a proportion are then selected for audit.
- A small number are carried out on a random basis giving the possibility of all taxpayers being audited.

Audit Types

There are essentially two types of audit

(i) Field audit which is conducted at the taxpayer's principal place of business and generally applies to trades and professions and will involve a comprehensive review of the books, records and returns.

(ii) Desk audit which is conducted at the Revenue office and generally applied to investment and rental income The Revenue may seek verification in relation to a particular transaction.

Books and Records

Section 886 Taxes Consolidation Act 1997 imposes an obligation on a trader to keep such records as will enable true returns to be made. Records are defined as including accounts, books, documents and other data relating to:

(a) all sums received and expended
(b) all sales and purchases of goods and services
(c) all assets and liabilities
(d) all transactions which constitute an acquisition or disposal for capital gains tax purposes.

The records must be retained by the taxpayer on a continuous and consistent basis, and entries must be made in a timely manner.
Linking documents must also be kept. Linking documents are defined as documents which are drawn up in the making up of accounts and which show details of the calculations linking the records to the accounts. The records must be retained by the taxpayer for a period of six years from the delivery of the tax return.

Voluntary Disclosure

Under s.1086 Taxes Consolidation Act 1997, the Revenue are required to compile and publish every three months a list of names, addresses and occupations of all tax defaulters with whom they make settlements in excess of € 30,000. However, there is no publication if a qualifying voluntary disclosure is made. The Revenue regard a qualifying voluntary disclosure to have taken place if it is made prior to the commencement of a Revenue audit. It is also Revenue practice to mitigate penalties where such disclosures are made. A taxpayer who has given notice within the time allowed of their intention to make a qualifying disclosure will be given 60 days in which to quantify the shortfall and to make the relevant payment.

Non Application of Penalties

The Revenue code sets out the manner in which penalties will be applied by Revenue where tax adjustments arise from items discovered in the course of the audit.
No penalties will apply where:

- The aggregate of the tax due does not exceed €3,000; OR
- A mistake was made through ‘innocent error. Innocent error can be described as a tax default which was not a deliberate tax default and was not attributable in any way to the failure by the taxpayer to take reasonable care to comply with tax obligations; OR
- A difference arises through a technical adjustment. Technical adjustments are essentially conflicts that arise as a result, from differences in the interpretation or application of legislation. OR
- A self-correction is made. Revenue allow a period of grace generally 12months from the date of return for taxpayers to self-correct errors on tax returns.

Application of Penalties

The law provides for monetary penalties to be charged, in addition to tax and interest, where specific breaches of tax law have occurred. The Revenue can impose tax geared penalties as follows:

- 100% of the tax underpaid if the error is made under deliberate default. Deliberate default is the existence of indications of intent on the part of the taxpayer to secure a tax advantage, or alternatively, indifference to the accuracy of the liabilities returned.
- 40% of the tax underpaid if the error is classified as gross carelessness - Gross carelessness is described as being greater in materiality terms than insufficient care but exists where the taxpayer does not display intent.
- 20% of the tax underpaid if the error is made under insufficient care. Insufficient care - Revenue apply a test of reasonable care as to whether a taxpayer of ordinary skill and knowledge properly advised could have foreseen the act or omission giving rise to the undercharge.

As a general guide where the shortfall for a particular tax exceeds 15% of the tax liability ultimately due – a penalty in the gross carelessness category rather than insufficient care will apply.

There is also the concept of Revenue offences under which a person can be sent to prison for up to five years and fined up to €12,700. In addition the Revenue will usually seek interest for late payment which is currently .0219% per day.

Mitigation of Penalties

The level of penalties will be mitigated dependent on whether or not there is voluntary/qualifying disclosure, co-operation and the view taken with regard to the size and gravity of the offence.

Cooperation includes having all books and records available, responding to requests for information and explanations, responding to correspondence, and prompt payment of the audit settlement liability.

It is possible to reduce the penalties even further by the use of a qualifying disclosure. This leads to non-publication under section 1086 TCA 1997. The use of this form of disclosure can reduce the penalties to 10% of the tax in the case of insufficient care.

Qualifying Voluntary Disclosure

The qualifying disclosure must be in writing and must state:

- In the case of a prompted disclosure the amounts of all previously undisclosed liabilities of tax, interest and penalties within the scope of the audit and outside, and
- In the case of all disclosures the amounts of all previously undisclosed liabilities of tax, interest and penalties.

There is a risk with making a qualifying disclosure that the Revenue could use it to mount a prosecution.

The Revenue have indicated that they may prosecute where:

- No qualifying disclosure is made of the default,
- The qualifying disclosure is incomplete.

The ultimate responsibility for taking a prosecution lies with the Director of Public Prosecutions.

If the Inspector has commenced an examination of the books, it may not be possible to obtain agreement that a qualifying disclosure can be made. This is due to the fact that the intention to make a qualifying disclosure must be indicated on receipt of the audit notice.
Publication will not apply where the amount of settlement is kept to below €30,000 or, where higher, the penalties do not exceed 15% of the tax figure.

Conduct of Revenue audit
At the initial meeting the auditor identifies himself/herself to the taxpayer and explain the purpose of the audit while giving an indication of its duration. At this meeting the inspector will outline his/her authority and draw the taxpayer's attention to the Charter of Rights.

The auditor will invite a voluntary disclosure thus giving the taxpayer an opportunity to disclose all inaccuracies in the tax returns. The auditor will ask questions about book-keeping and accounts systems in operation to obtain information about the business and the taxpayer's lifestyle and financial commitments. He/she will then commence to examine the books and records of the business in order to verify that the figures in the tax return.

During the course of the audit, the auditors will ask questions and may look for explanations to help on assessing the accuracy of your tax returns.
The auditors may, in the course of the audit, inspect the business premises, manufacturing or other processes or items of machinery or stock.
The auditor will inform the taxpayer that, in the event that discrepancies are discovered, he/she will seek a meeting to discuss the results of the audit and making a formal settlement offer for all outstanding liabilities.

Co-operation
Co-operation with the auditors is important in helping conclude the audit promptly. Co-operation is also one of the factors which Revenue takes into account in deciding what level of penalties, if any are to apply in a particular case. Cooperation includes having all books and records available, responding to requests for information and explanations, responding to correspondence, and prompt payment of the audit settlement liability.

Conclusion of Audit
Where the auditor finds adjustments are necessary, he/she will quantify the adjustments and the additional tax, interest and possibility penalties. The taxpayer will be given time to consider the proposed adjustments, and if they wish may take independent advice. The inspector will also make the taxpayer aware of his or her rights in relation to the appeal procedures and also the review procedures.
When the audit has been completed the Inspector will request a meeting with the taxpayer and their accountant, at which s/he will present the findings, inform them as to whether the records and returns are satisfactory, and where there are discrepancies he/she will work towards agreeing the undercharges under each tax heading. At the closing meeting he/she will ask for responses to any discrepancies discovered e.g. queries on gross profit, undeclared sales etc. The Revenue auditor will quantify the undercharge in respect of tax, interest and penalties if applicable and invite a written offer and payment from the taxpayer. Where publication arises, the taxpayer and his/her agent will be so advised.

At this final meeting, the auditor will ask for agreement to the total settlement figure. This figure will include tax, interest and, if they arise, penalties. If the total settlement exceeds €30,000 (including interest and any penalties) for all accounting periods and where a full voluntary disclosure was not made, details of the settlement will be included in the annual list of tax defaulters published by the Revenue Commissioners. Once agreed, the full amount should be paid to the auditor.