Regularising an individual's tax affairs and dealing with a Revenue audit

By: Claire Scott McAteer, BSc, MSc Advanced Accounting, ACA, AITI, CTA, Examiner in Professional 2 Advanced Taxation and Niall McAteer BSc, PGDip Advanced Accounting, ACA

The Irish Revenue Commissioners have issued their 'Code of Practice for Revenue Audit and other Compliance Interventions.[1] Generally speaking, the purpose of this code is to provide a set of guidelines which are to be followed in the carrying out of all Revenue Compliance Interventions.

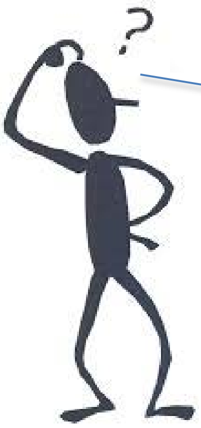
Section 1 Opportunities to regularise a taxpayer's affairs BEFORE Revenue audit notification is received.

The Revenue Code of Practice states that taxpayers can save money by reviewing their tax affairs regularly. If, after a self-review, tax irregularities are found, they should be quantified and reported to Revenue. There are a number of ways in which a taxpayer can regularise their affairs including:

1. Self-correction without penalty (within certain time limits)
2. No loss of Revenue claim
3. Unprompted qualifying disclosure

[1] The 2014 Code of Practice for Revenue Audit and other Compliance Interventions was last updated on 20 November 2015 and is available from http://www.revenue.ie/en/practitioner/codes-practice.html. All references in this article are relevant for the 2016 exam cycle as all content was included within the 2014 code of practice which was published on 14 August 2014.

It is 15 April 2016 and a number of errors have been identified



Error 1 – Sam prepares her own income tax return each year and she has just realised that she omitted to disclose her UK dividend income on her 2014 income tax return which was filed on 31 October 2015.
Advice: Sam should avail of self-correction without penalty.

Error 2 - TaxWise Ltd prepare the VAT returns for a client and they have realised that the formula used in the spreadsheet which was used to prepare the client's January/February 2016 VAT return did not calculate the output VAT correctly and now the VAT is underpaid by €5,000.
Advice: The client's March/April 2016 VAT return should include the underpayment of €5,000.

Error 3 - Mal prepared the 2013 capital gains tax (CGT) computation for the sale of his investment property. He included a gain of €15,000 on his 2013 tax return. On review of his computation, he realises that the indexation rate he used was too high and he has therefore underpaid his CGT for 2013.
Advice: Mal should make an unprompted qualifying disclosure.

1.1 Self-correction

Revenue allows taxpayers to 'self-correct without penalty' any return, subject to the following conditions:

1. Revenue must be notified of the adjustments to be made in writing or electronically through the Revenue On-Line (ROS) service
2. A computation of the correct tax and statutory interest payable must be provided
3. A payment in settlement must accompany the submission, and
4. The correction must be made within specific time limits.

Where an underpayment of VAT arises (within the time limits outlined below) and the net underpayment of VAT for the period being corrected is less than €6,000, the amount of the tax can be included (without interest or notification to Revenue) as an adjustment on the next corresponding VAT return following that in which the error was made.

The time limits for self-correction are as follows:

- Income tax - within 12 months of the due date for filing the return
- Corporation tax - within 12 months of the due date for filing the return
- Capital gains tax - within 12 months of the due date for filing the return
- Capital acquisitions tax - within 12 months of the due date for filing the return
- VAT - before the due date for filing the income tax or corporation tax return for the chargeable period within which the relevant VAT period ends
- PAYE/PRSI/USC - within 12 months of the due date for filing the annual return

Once the time limits for self-correction without penalty have lapsed, an unprompted qualifying disclosure may be made to Revenue as long as a Revenue audit notification has not been received.

1.2 No loss to Revenue claim

The Revenue Code of Practice states that ‘no loss of revenue’ claims may be considered in relation to VAT and RCT and other exceptional circumstances.

Revenue clearly state that it is the taxpayer’s responsibility to demonstrate by written submission that no loss of revenue has arisen.

1.3 Unprompted qualifying disclosure

An unprompted qualifying disclosure can arise where a taxpayer voluntarily discloses errors, omissions or irregularities which give rise to an underpayment of tax.

An unprompted qualifying disclosure must be made in writing, it must be signed by or on behalf of the taxpayer and it must be accompanied by:

1. A declaration that all matters contained in the disclosure are correct and complete
2. A payment of the tax and interest
3. A full explanation in relation to the amounts previously undisclosed and a computation for the amount of tax due.

In addition to the above, an unprompted qualifying disclosure must include one of the following statements. The statement required is dependent on the tax default category:

- Where the tax default is in the deliberate behaviour category - the disclosure must state the amounts of all liabilities to tax and interest, in respect of all tax heads and periods, where liabilities arise, as a result of deliberate behaviour
- Where the tax default is in the careless behaviour category - the disclosure must state the amounts of all liabilities to tax and interest in respect of the tax head and periods that are the subject of the unprompted qualifying disclosure.

The benefits of making an unprompted qualifying disclosure are:

1. Non-publication
2. Non-prosecution
3. Greater mitigation of penalties (see table A)

Table A below outlines the level of penalty mitigation available where an unprompted qualifying disclosure is made and where the taxpayer co-operates with Revenue.

PENALTY TABLE A	UNPROMPTED QUALIFYING DISCLOSURE MADE		
DISCLOSURE	CATEGORY OF BEHAVIOUR	PENALTY	FULL COOPERATION PENALTY REDUCED TO
		%	
All Unprompted Qualifying Disclosures in this category	Careless Behaviour without significant consequences	20%	3% of tax/duty default
First Unprompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	5% of tax/duty default
	Deliberate behaviour	100%	10% of tax/duty default
Second Unprompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	20% of tax/duty default
	Deliberate behaviour	100%	55% of tax/duty default
Third or subsequent Unprompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	40% of tax/duty default (no reduction)
	Deliberate behaviour	100%	100% of tax/duty default (no reduction)

[Source: Code of Practice for Revenue Audit and other Compliance Interventions p41]

Section 2 Dealing with Revenue about a taxpayer's affairs AFTER Revenue audit notification is received.

2.1 Prompted qualifying disclosure

Once a Revenue audit notification has been received, only a prompted qualifying disclosure can be made.

A prompted qualifying disclosure must be made in writing, it must be signed by or on behalf of the taxpayer and it must include:

1. A declaration that all matters contained in the disclosure are correct and complete
2. A payment of the tax and interest
3. A full explanation in relation to the amounts previously undisclosed and a computation for the amount of tax due.

In addition to the above, a prompted qualifying disclosure must include the following statements:

- Where the tax default is in the deliberate behaviour category - the disclosure must state the amounts of all liabilities to tax and interest, in respect of all tax heads and periods, where liabilities arise, as a result of deliberate behaviour
- Where the tax default is in the careless behaviour category - the disclosure must state the amounts of all liabilities to tax and interest in respect of the relevant tax head and periods, within the scope of the audit.

The benefits of making a prompted qualifying disclosure include non-publication, non-prosecution and mitigation of penalties (see table B). However, the level of penalty mitigation is not as generous as an unprompted qualifying disclosure.

Table B below outlines the level of penalty mitigation available where a prompted qualifying disclosure is made and where the taxpayer co-operates with Revenue.

PENALTY TABLE B	PROMPTED QUALIFYING DISCLOSURE MADE		
DISCLOSURE	CATEGORY OF BEHAVIOUR	PENALTY	FULL COOPERATION PENALTY REDUCED TO
		%	
All Prompted Qualifying Disclosures in this category	Careless Behaviour without significant consequences	20%	10% of tax/duty default
First Prompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	20% of tax/duty default
	Deliberate behaviour	100%	50% of tax/duty default
Second Prompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	30% of tax/duty default
	Deliberate behaviour	100%	75% of tax/duty default
Third or subsequent Prompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	40% of tax/duty default (no reduction)
	Deliberate behaviour	100%	100% of tax/duty default (no reduction)

[Source: Code of Practice for Revenue Audit and other Compliance Interventions p41]

2.2 No qualifying disclosure made

As noted above, two of the benefits of making a qualifying disclosure are non-publication and non-prosecution. These benefits are lost where no qualifying disclosure is made. In addition, the only way for a taxpayer to reduce his/her penalty exposure, where no qualifying disclosure is made, is to cooperate fully with Revenue.

Table C below outlines the level of penalty mitigation available where no qualify disclosure is made but where the taxpayer cooperates fully with Revenue.

PENALTY TABLE C	NO QUALIFYING DISCLOSURE MADE	
CATEGORY OF BEHAVIOUR	PENALTY	FULL COOPERATION PENALTY REDUCED TO
	%	
Careless Behaviour without significant consequences	20%	15% of tax/duty default
Careless behaviour with significant consequences	40%	30% of tax/duty default
Deliberate behaviour	100%	75% of tax/duty default

[Source: Code of Practice for Revenue Audit and other Compliance Interventions p45]