

# Collection of Tax Debts

## The Collector-General outlines Revenue's approach

### Introduction

Revenue, as the Irish tax and customs administration, plays a critical role in securing and delivering most of the financial resources required by Government to provide services and facilities that improve the quality of life of all our citizens. Tax laws are administered to ensure, inter alia, that tax revenue is collected on time, bearing in mind that a shortfall in revenue or delays in its collection, impact on the level and timeliness of financial resources available to Government. A delay in collection also facilitates those who by withholding tax payments and using those monies to improve cash flow, attempt to secure unfair competitive advantage. At a more macro level, delays in collection of tax revenues properly due adds to the level of Government borrowing and public debt interest.

Revenue expects that taxpayers and businesses organise their financial affairs to ensure that they pay their tax debts by the due date – indeed payment of all debts as they arise or in accordance with whatever credit agreement may be in place with its customers is what, after all, one would expect any prudent business to focus upon so that the viability of the business and compliance with the various legal requirements, including particularly company law and tax law requirements, is guaranteed. If a taxpayer or business does not pay what is due on time to Revenue or, when particular difficulties arise with the payment of tax, does not engage with Revenue in a timely fashion, then Revenue will proceed with appropriate collection and enforcement action to recover the debt.

The current economic slowdown is exerting additional pressures on some businesses in particular in terms of their ability to meet their tax obligations on a timely basis. Revenue is, of course, conscious that difficulties or delays experienced by a business in getting paid for goods or services from its customers in turn puts additional pressure on businesses in meeting their obligations to their customers, including Revenue. However, the legal obligations for payment of tax on a timely basis are the same for all businesses. Revenue is sympathetic to occasional cash flow difficulties caused by exceptional events but Revenue cannot and will not accept an ongoing failure to meet tax commitments and allow a business to continue to trade and accumulate further debts to Revenue. Crucial to Revenue's ability to work with a business towards restoring timely payment of tax debts is the quality and timeliness of engagement by the business with Revenue. Where that engagement is tardy or less than frank and realistic then Revenue will have little option but to initiate the necessary collection and enforcement measures needed to address that problem. Any other prudent creditor would take a similar approach to dealing with such a situation. Revenue cannot

simply allow a business experiencing difficulties in paying its tax debts, to stop paying its taxes and continue trading. Businesses or taxpayers who do not pay their taxes as they fall due, or pay them late, are in effect using Revenue as an unauthorised source of credit. Apart from the unacceptability of that from Revenue's standpoint, in the interest of fairness and equity for businesses that pay on time, Revenue must respond in an effective way.

### **The Collector-General's Office**

My Office is charged with responsibility for ensuring timely collection of the vast majority of the business and personal taxes. A structured and systematic approach is taken to

- Identifying incidences of late or non-payment of taxes as they fall due, and
- Engaging with businesses and taxpayers where such late or non-compliance arises, and
- Developing a strategy and agreed approach to addressing those incidences, including agreement on a timeframe for implementation or completion of an agreed approach.

Where meaningful engagement is not forthcoming or where commitments entered into are not fulfilled then my Office will move swiftly to apply the necessary measures to address that lack of engagement or that failure to fulfil the commitments agreed. The response by my Office will vary from the application of interest charges to the commencement of enforcement action. The enforcement action will entail court proceedings or action by the sheriff or liquidation of the business or prosecution and in some instances will involve a combination of a number of the measures referred to. A key feature of Revenue's approach, therefore, in responding to late or non-compliance is early intervention by Revenue. Each case is considered on its merits with a view to selecting the most effective collection, recovery or enforcement strategy to bring a case to compliance in the shortest possible timescale taking account of the individual case merits and features. A key concern for Revenue once it has intervened in a case is to prevent a further deterioration in what is probably an already difficult position. Where there is a real likelihood or risk of a further deterioration on an already difficult or unacceptable position from Revenue's standpoint, then the scope for flexibility in how matters might be resolved to Revenue's satisfaction is severely limited. In that context, therefore, early and proactive engagement by a business with Revenue when it starts to experience payment difficulties rather than at the stage when the impact of those difficulties is all too obvious is highly desirable.

### **What should a business do when problems arise paying its taxes?**

Simply sitting tight until things get better is not an approach that Revenue will accept. So what are some key actions for a business or taxpayer in a credit squeeze? Firstly, it is really important that a business understands what precisely is giving rise to the particular difficulties in meeting its tax payment obligations. It is quite surprising and not least very worrying on occasions to find that a business will have only a general awareness that it is having

difficulty but be unable to pinpoint the precise source of those difficulties. Statements like, "We are finding it difficult to get payments from our customers," without clear facts and details to support such a contention are not particularly helpful in a discussion with Revenue about how to manage an expected or actual delay in paying a tax debt - Which customers precisely are overdue in making their payments? What is the extent of the debts owed by those customers? When is payment expected? What measures have been taken to collect the debts from overdue customers? Are those problems of a short or long term duration? All of these questions raise key issues that a business will be expected to have addressed in the engagement and dialogue with Revenue. The answers to those and similar or related questions [depending on the particular case circumstances] will determine the scope for positive action and measures by the business itself to overcome those difficulties and will ultimately dictate the scale of the challenge it faces.

In summary, recognising or accurately identifying the specific pressure points will give Revenue a clearer understanding of key issues relevant to deciding on an agreed approach into the future. The extent of the debts owed by customers, whether a payment pressure relates to a particular customer or a category of customers, what attempts have been made to secure payment from those customers, whether payment has been promised and by when, and what steps have been taken to prevent the debt owed by a customer rising further are key pieces of information to have when approaching Revenue. Apart from the importance of these questions in determining the options for managing the challenge at hand the ready availability of such information in discussions with Revenue will show in a very tangible way the serious commitment of the business to managing the challenge overall and to dealing with the problem in a transparent and meaningful way. In the majority of cases the difficulties that businesses encounter that result in significant tax debts or significant delay in capacity to meet on-going tax obligations do not happen overnight. They are often a product of a deteriorating situation over a considerable period. Early, honest and realistic engagement with those difficulties maximise the possibilities for successfully applying remedial measures that are acceptable to Revenue and will enable the problem of non-payment of tax to be addressed.

### **Intervention by Revenue**

As I mentioned earlier, a key feature of our approach to compliance and debt management is early intervention by Revenue staff when payment and compliance problems arise. Sophisticated Revenue I.T. systems have been developed and refined to assist us in the timely identification of cases for direct intervention relating to either payment or return compliance. The riskiest cases will be targeted first but there is a structured programme in place to ensure that all cases that are non-compliant in any form are examined and subject to appropriate intervention. Problem cases are assigned to an individual caseworker, within a specific highly skilled team and that caseworker and team will determine the appropriate action needed in each case. The key deliverable from the caseworker's intervention is to bring the case to full compliance in the shortest timeframe possible.

Some businesses experience cash flow difficulties of a short-term nature that will prevent them from paying their tax debts on a timely basis but where the basic viability of the businesses is not in question. In other circumstances, the basic viability of a business will be an issue. Revenue is conscious that a one size fits all approach to dealing with such difficulties is not appropriate and so is quite prepared to engage with a business in working through the best approach that will bring matters to a satisfactory conclusion with the minimum of delay. This is normally achieved by the business presenting the full case circumstances to Revenue with a proposal outlining how timely compliance will be restored and maintained in the shortest possible timescale. Revenue will in the normal course seek to secure and insist on payment of debts as they arise. Where that is not forthcoming then interest will apply to late payment of the tax and that interest will be collected. This compensates the exchequer for the late payment of the tax concerned and provides a level playing field between the vast majority who pay what is due on time and those who do not.

Where difficulties may be of a more long-term nature or where a short term difficulty may have given rise to the accumulation of a significant debt to Revenue, then we will **in appropriate circumstances** [for example, previous non-compliance could be the result of an unwillingness to pay rather than an demonstrable inability to pay] consider a request to accept payment of the debt by way of a phased payment arrangement over an agreed period of time. Agreement to such an arrangement is critically dependant on the quality and timely engagement with Revenue to which I alluded earlier and will be an alternative to commencement of enforcement measures by Revenue. However all such phased payment arrangements will include interest.

### **Phased Payment**

Permission from Revenue to pay a tax debt by way of a phased payment arrangement is a concession and must be fully justified by reference to the circumstances of each individual taxpayer or business. Every phased payment arrangement will include interest. This can, therefore, entail substantial additional financial costs for businesses. Accordingly it is in the interest of a business or a taxpayer to minimise its exposure to interest by paying as much of the debt up front and any balance over the shortest possible timescale.

Businesses or taxpayers who seek an arrangement to pay their tax debt through a phased payment arrangement can expect to be asked to provide at least the following by Revenue:

- An explanation of the reasons for non-payment;
- A clear outline of the reasons why the debt due cannot be paid now and in full. This should be supported by a detailed statement or outline of the taxpayer's or businesses current financial position (including details of what steps have been taken to obtain funds to pay the debt and what arrangements are in place to pay other creditors, if they exist);

- Details of current creditors and debtors. This will assist in demonstrating the extent to which payment of other debts, such as payments to suppliers or financial institutions have been afforded a priority over payment of tax debts. Current management accounts will normally be requested by Revenue.
- A clear and time bound proposal for payment of the debt in full in the shortest possible timeframe, bearing in mind that the proposal must have a realistic prospect of success. Revenue may require such a proposal to be supported by details of the current financial position of the taxpayer or business. In appropriate cases we may ask for recent audited company accounts in addition to management accounts;
- The proposed level of down-payment at the commencement of the proposed phased payment arrangement. The level of payment proposed will need to be clearly justified and supported by reference to the various other matters referred to in this list of relevant considerations;
- Payment of the full costs of enforcement action that may have been undertaken to date by Revenue in regard to the debt concerned.

A decision to agree to or reject payment of a debt by way of a phased arrangement will be made by Revenue having due regard to the information provided [or perhaps not provided] by the taxpayer or business. Any phased payment arrangement agreed by Revenue must strike the necessary balance between ensuring payment of the debt due in the shortest possible timescale having regard to the circumstances of the taxpayer or business while at the same time ensuring that the arrangement is a viable way for the business to meet not just its obligation to pay the overdue debt but to have the capacity to meet future tax debts as they arise. An unrealistic arrangement that does not achieve these twin objectives will inevitably fail and would not, therefore, be in either the interest of the business or taxpayer or Revenue.

### **Enforcement Action**

Enforcement action to recover a tax debt, including interest, is taken by Revenue where a taxpayer or business fails to engage in a satisfactory manner with Revenue in relation to that tax debt. Revenue has available to it a range of enforcement powers to effect recovery of a debt. The most frequently used enforcement options are Sheriff, Solicitor, Attachment and Liquidation.

Recovery action by the sheriff is the most frequently used enforcement option by Revenue. My Office and indeed the Revenue Regions use the services of sixteen sheriffs to deal with the bulk of cases where enforcement action is required to secure the collection of unpaid taxes. As an alternative to sheriff action we may refer tax debts to one of six external solicitor firms contracted by Revenue for the purposes of pursuing collection through the court process. Subsequent to a judgment in Revenue's favour by the Courts and where the debt remains unpaid, Revenue will seek to recover the debt by way of enforcement of that judgment whether by way of forced sale of an asset that is the subject of a judgement mortgage, by way of Instalment Order granted

by the Court followed in appropriate cases by committal to prison in the event of non-payment or by way of Bankruptcy petition. Recovery by way of Attachment allows Revenue collect the debt of a business or a taxpayer from a third party in debt to the taxpayer or business.

A decision on whether to refer a debt to the sheriff or one of the external firms of solicitors will be influenced by a range of factors including the individual case circumstances, the success of previous enforcement actions that might have been taken in respect of the same customer or business, the quantum of the debt and whether the defaulter might have seizable assets. Attachment is used less frequently than sheriff and solicitor referral and would not normally be an enforcement option of first recourse.

Where a company has significant debts to Revenue or has significant debts and continues to trade and during the course of trade add to those debts, Revenue may have little alternative but to petition the High Court to wind up the company on the grounds that it is unable to pay its debts. This is particularly effective in submitting the actions of directors to the scrutiny of the Courts where concerns about possible fraudulent or reckless trading arise.

## **Conclusion**

Revenue is charged with the responsibility of collecting and securing the majority of the revenues required by Government to fund state services. It is recognised that the majority of taxpayers readily fulfil their obligations to pay what is due and on time.

Revenue requires that taxpayers and businesses meet their tax obligations on time. While taxpayers and businesses can and do encounter cash flow problems, these problems must be addressed so that timely tax compliance is assured. Addressing those problems in consultation with Revenue at the earliest opportunity is essential so as to avoid a situation where debt problems become insurmountable or where avoidable interest or enforcement costs are incurred. Bottom line is that early positive and realistic engagement with Revenue is necessary when tax compliance problems begin to emerge. With such an approach you maximise the opportunity of arriving at a successful and early resolution of those compliance difficulties in a way that will meet with Revenue's approval. Tardiness in recognising or addressing tax compliance problems merely serves to exacerbate the compliance challenge for business and taxpayers.

## **Collector General**