

Claims of Inability to Pay – Guidelines for Auditors

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Introduction

The purpose of these guidelines is to outline a consistent approach to dealing with claims of inability to pay. These guidelines are intended to supplement the guidelines already published in the Code of Practice for Revenue Audit and other Compliance Interventions at Paragraph 5.10.

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[...]

These guidelines must be followed in all cases where inability to pay is claimed and are applicable to settlements in all intervention types. The term ‘Inability to Pay’, in this context, refers to the inability of a taxpayer to pay additional liability in respect of any tax or duty arising from a Revenue intervention.

These guidelines apply generally to Customs duties as well as taxes. However, it should be noted that Customs duties form part of the “own resources” of the EU and that collection of Customs duty debts is governed by EU regulation.

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[...]

Steps to be taken in dealing with Inability to Pay Claims

The following steps should be taken with inability to pay claims:

1. Finalise the liability with taxpayer i.e. taxpayer to complete Formal Letter of Offer.
2. Ensure a formal inability to pay claim is made by the taxpayer.
3. Examine the inability to pay claim.
4. Decide on whether to accept or reject the inability to pay claim.
5. Record the inability to pay claim.

1 Finalising the Liability

An inability to pay claim will only be examined after the taxpayer has made an offer in settlement in line with the additional liabilities identified by the caseworker.

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[...]

2 Ensure a formal inability to pay claim is made by the taxpayer

It is the responsibility of the taxpayer to satisfactorily demonstrate to Revenue that they are unable to pay the agreed liabilities due. The taxpayer should be invited to specify the grounds on which the inability to pay claim is based, supported by the required documentation and to submit proposals as to how payment, if any, is to be made. The inability to pay claim form should be submitted immediately after the Formal letter of offer.

Documentary evidence of inability to pay must be submitted within two months of the date of the inability to pay claim. In order to support his or her claim, the taxpayer's evidence of inability to pay should be included in one comprehensive submission.

Claims of inability to pay that are not substantiated with documentary evidence will not be accepted.

The submission should include the following:

- A **Formal Inability to Pay Claim Form** (see Appendix II) completed and signed by the taxpayer. This claim form should be returned immediately to Revenue. This form details the taxpayer's offer in part payment and payment proposals.

The form stipulates that the taxpayer must advise Revenue, without delay, if their circumstances change (e.g. an unforeseen positive change in financial circumstances) and that collection of the tax foregone may be pursued.

- A Statement of Affairs (Form SA1), signed by the taxpayer, as at the last day of the month preceding the date of the Revenue intervention, or other date as agreed by the Audit Manager. The form should be issued to the taxpayer upon receipt of the inability to pay claim. The Form SA1 is a statutory form.

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[...]

- The market values of all assets currently held by the taxpayer.
- A copy of the latest accounts (if not already provided during the intervention) and a statement of projected annual income.
- The reason for non-disposal of assets to pay tax or duty liability.

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[...]

3 Examining the inability to pay claim

Once all the required documentation in support of the inability to pay claim has been submitted by the taxpayer, the claim must be examined. Remember, it is the responsibility of the taxpayer to demonstrate inability to pay to the satisfaction of Revenue.

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[...]

4 Deciding on the Inability to Pay claim

A decision on whether or not to accept a claim of inability to pay is a matter of judgement based on the information provided. The officer responsible for the intervention is the appropriate person to consider the documentation, supported by expertise available in the office or beyond, as required.

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[...]

5 Publication

Inability to pay does not preclude publication on the List of Tax Defaulters.

Where the criteria for publication are met, the case may be published even where the taxpayer fails to pay the specified sum within the relevant period (Section 1086 (2B) TCA 1997).

However, where a relevant Court determines a penalty, the case may be publishable under Section 1086 (2) (a) or (b) TCA 1997, provided the exclusions set out in subsection (4B) do not apply. Section 1086 (5)(c) provides that the tax amount, on which the Court determined the penalty, will also be published, whether the tax or penalty is paid or not.

6 Prosecution

Inability to Pay does not preclude the initiation of a prosecution.

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[...]

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[...]

Appendix II – Formal Inability to Pay Claim Form

Inability to Pay Claim in respect of additional liabilities arising from a Revenue intervention conducted under the Code of Practice for Revenue Audit and other Compliance Interventions

| | | |
|----------------------|--|--|
| Customer Name: | | |
| Tax Registration No: | | |

ToDistrict Manager.

District.....

I refer to my Formal Letter of Settlement Offer, dated xx of xx, 20xx.

I wish to claim 'inability to pay' in the amount of €xxxx. In relation to the balance of €xxxx, I propose to pay this amount as follows:

| | |
|----------------------|--|
| Proposal for payment | |
|----------------------|--|

I understand that if my circumstances change (e.g. an unforeseen positive change in financial circumstances) I will advise Revenue accordingly without delay and collection of the tax foregone may be pursued.

I am aware that my claim to inability to pay is subject to examination by the Revenue Commissioners and I undertake to provide full documentary evidence to support this claim.

| | |
|--------|--|
| Signed | |
| Date | |

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[...]