

Chapter 11 Revenue

Revenue Checks and Investigations

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11.1 This Chapter examines

- the extent and outcome of Revenue compliance checking including audits
- the risk to settlement collection in the current environment
- the extent of deterrence actions in non-compliant cases
- the extent of publication of defaulter details
- the outcome of special investigations.

Compliance Checks

11.2 The outcome of the 2008 programme of Revenue audits and assurance activity is summarised in Figure 37.

Figure 37 Revenue Audit and Assurance Activity

Category	2008		2007	
	Number Completed	Yield €m	Number Completed	Yield €m
Comprehensive Audits ^a	3,904	261.6	3,875	344.5
Multi Tax/Duty Audits	2,065	64.6	2,206	71.2
Single Tax/Duty Audits	6,082	184.2	6,603	151.6
Single Issue/Transaction Audits	1,363	58.8	1,624	120.3
Total Audits	13,414	569.2	14,308	687.6
Assurance Checks	347,445	63.1	237,626	46.2
Total Interventions	360,859	632.3	251,934	733.8

Note:

- a Includes random audits, details of which are set out in Chapter 12. Also includes the yield from audits of special investigation cases of approximately €90 million (€147 million in 2007).

Types of Audits or Intervention

11.3 Since most tax is collected on a self-assessed basis it is necessary to have a range of checks to ensure that taxpayers are compliant. Revenue seeks to tailor the audit intervention in any case to the perceived risk in that case. The Risk Analysis, Evaluation and Profiling System (REAP) (see Chapter 13) is increasingly used to identify cases for intervention as well as the particular risks associated with those cases. The types of intervention or audit undertaken by Revenue are as follows

- A comprehensive audit takes place mainly as a response to an Income Tax or Corporation Tax issue but in cases where there are significant risks associated with other taxes, these are also considered.
- Multi-taxhead and single taxhead audits arise where cases are selected primarily for reasons other than Income Tax or Corporation Tax and the audit covers compliance with one or more tax or duty types.
- Single issue or transaction audits focus on more specific tax matters including compliance work in relation to a particular tax relief or regime.

- Assurance checks are initiated with the intention of assuring Revenue, without recourse to a resource intensive audit or enforcement activity, that the customer is broadly compliant in the areas that are the subject of the check.

11.4 The number of assurance checks reported has grown significantly, from 98,981 in 2005 to 347,445 in 2008. Part of this increase may be due to previous non-recording and an increased awareness in Districts of the need to log such checks. An internal Revenue group is examining the current system of assurance checking and reporting. Assurance checks include

- verification of documentation and requests for additional information in relation to Income Tax, Corporation Tax, VAT and capital taxes (196,324 checks in 2008)
- checks of customs documentation (78,573)
- excise checks including VRT (50,631)
- checks arising from suspicious transaction reports (7,662)
- eligibility checks arising from special investigation voluntary disclosure schemes (1,404)
- special REAP assisted assurance checks carried out in the South West Region (12,851).

Comprehensive Audits

11.5 The outcome of the 3,904 comprehensive audits completed in 2008 is further analysed in Figure 38. The yield of €262 million includes interest charges of €82 million and penalties of €28 million. The highest settlements were €15.6 million for Income Tax and €10.02 million for Corporation Tax. Comprehensive audits were completed in 45 bogus non-resident account cases with settlements totalling €8.54 million. In 213 offshore assets cases settlements totalled €1.99 million and in 260 life assurance product cases settlements of €9.64 million were made³².

Figure 38 Yield from Comprehensive Audits

Agreed Settlements	2008		2007	
	Number	Yield €m	Number	Yield €m
€1 to €30,000	1,480	14.02	1,354	13.6
€30,001 to €100,000	516	29.41	612	35.2
€100,001 to €500,000	368	81.65	490	105.4
€500,001 to €1 million	55	36.19	66	46.8
Over €1 million	36	100.33	56	143.5
No Additional Tax Payable	1,449	—	1,297	—
Total	3,904	261.6	3,875	344.5

11.6 While the number of audits completed in other audit categories has fallen, the number of comprehensive audits has increased. Nevertheless, the yield from comprehensive audits fell by almost €3 million. Revenue has stated that this is due to a very significant yield in a number of large cases in 2007 that was not repeated in 2008. The continuing fall in the number of special investigation cases is also a factor.

³² Some of the yield in these special investigation cases was collected in earlier years.

Risks to Collection of Audit Settlements

11.7 The current economic situation affects many aspects of Revenue's operations, including its ability to recover tax from cases where compliance checks uncover additional liabilities. I sought the views of the Accounting Officer on the particular risks in this regard.

11.8 The Accounting Officer informed me that, generally speaking, when a tax liability arose in the context of an audit, the case was settled by the collection of the tax, together with the appropriate interest and penalties. However, Revenue auditors were meeting, more frequently than heretofore, requests for instalment arrangements or situations where there was agreement on the quantum of liability but the taxpayer was pleading 'inability to pay'.

11.9 In such cases, the Code of Practice for Revenue Auditors³³ provided instructions to Revenue auditors aimed at distinguishing between customers who genuinely had difficulty in paying and those who would not pay, and emphasised the need for the taxpayer to prove an inability to pay. The choice of action was a matter for judgement by an auditor, in consultation with management where necessary.

11.10 The Code of Practice for Revenue Auditors was being revised at present. As part of this, and in light of recent experience, consideration was being given to whether this aspect of the Code needed to be amended. If an audit ended in 'inability to pay', then there was a sense that tax evasion had 'worked'. Revenue were exploring introducing an option for the auditor to consider deferring the finalisation of an audit settlement in proven inability to pay cases with the full responsibility to prove inability to pay continuing to lie with the taxpayer. This option would also involve close monitoring of payment of current taxes during the deferral period and perhaps some other conditions. This type of approach would give the taxpayer time to provide for the additional liability.

³³ Code of Practice for Revenue Auditors, Office of the Revenue Commissioners, 2002.

Conclusions – Compliance Work and Settlements

The various special investigations undertaken by Revenue have been the source of a significant number of comprehensive audits in recent years. Audits sourced in this way are, by definition, more likely to identify non-compliance. There is a need for separation of special investigation cases from other cases for reporting and analysis purposes in order to better gauge baseline audit performance.

Because of the wide variety of interventions encompassed within assurance checks, meaningful evaluation of the resource requirements and results would be facilitated if the inputs and outputs related to the component categories were identified and reported.

In a self-assessed system, it is essential that when checks reveal under-declarations, the full amount of tax, interest and penalties is pursued for recovery. As well as acting as a deterrent, this ensures that the system is seen to be equitable and that the Exchequer receives its full entitlement. Revenue is reviewing its approach to audit settlements for the increasing number of audit cases who plead 'inability to pay'. In order to transparently record the results of audit, it would be desirable to capture information at three levels

- the liability assessed by the revenue auditor
- the settlement agreed
- the payments made.

Accordingly, Revenue should consider recording and reporting the full amount of tax, interest and penalties due as a result of audits, as well as the amount actually paid.

Non Compliance – Deterrence Actions

11.11 For a self-assessment system to work effectively, there has to be an adequate deterrent to non-compliance. This is especially important in cases where taxpayers choose not to declare and remit the true amounts due to Revenue. Tax legislation contains a number of provisions to which Revenue can have recourse in order to improve compliance and deter evasion. These can be broadly categorised into civil penalties and criminal proceedings.

Civil Penalties

11.12 The main instance in which Revenue imposes civil penalties is where incorrect returns are made fraudulently or negligently. Penalties for incorrect returns are generally imposed as a result of a Revenue audit. Figure 37 sets out the results of Revenue's audit interventions in 2008 and the total audit yield of €569.2 million includes €42.2 million in penalties³⁴.

11.13 The Finance (No. 2) Act, 2008 introduced amendments to the civil penalty regimes. Provision is now made for court determination of penalties in the event of failure to agree on the penalty or failure to pay. The amendments also placed on a statutory footing the Revenue practice of mitigating penalties based on the category of default, the level of co-operation and whether disclosure of the default was made.

³⁴ The audit yield of €569.2 million in 2008 comprised €416.6 million additional tax, €110.4 million interest and €42.2 million penalties.

11.14 Revenue can also impose civil penalties for failing to submit returns on time. In 2008, Revenue imposed penalties totalling €1.2 million in 759 cases which did not submit P35 returns on time. Civil proceedings for non-payment of these fines were taken in 236 cases.

Criminal Proceedings

11.15 Criminal proceedings arise in relation to the non-filing of returns, prosecutions for summary customs and excise offences and prosecutions for serious evasion.

Non-Filing of Returns

11.16 Criminal prosecutions of cases that failed to file VAT returns resulted in 48 cases being heard in Court in 2008 and fines of €374,719 being imposed. One person was sent to prison for failure to pay a fine. There were 1,169 convictions for failure to file Income Tax and Corporation Tax Returns with €2.26 million in fines imposed. Failure to pay fines led to criminal prosecutions in 50 cases.

Summary Prosecutions for Customs and Excise Offences

11.17 There were 455 successful summary prosecutions for customs and excise offences in 2008 resulting in fines of €654,071. These included cases of cigarette smuggling, marked oil offences and VRT prosecutions.

Prosecutions for Serious Tax Evasion

11.18 Revenue's prosecution procedures involve forwarding cases to Investigation and Prosecutions Division (IPD) for investigation with a view to criminal prosecution where there is *prima facie* evidence of serious revenue offences having been committed. Within IPD, these cases are further evaluated by a Prosecutions Admissions Committee before commencement of resource intensive criminal investigation work which can take several years before a case is presented in Court. In 2008, 36 cases were determined to be suitable for investigation with a view to prosecution (21 in 2007). Convictions were obtained in 15 of the 18 cases decided in Court in 2008. There were acquittals in two cases and a *nolle prosequi* was entered in the other case. Summary details of the 15 cases are set out in Figure 39.

Figure 39 Convictions in 2008 for Serious Tax Evasion

Occupation/Activity	Fine €	Custodial Sentence
Property Rental Company	1,800	None
Company Director	600	None
Landlord	6,050	None
Restaurant	6,000	None
Company Director	3,750	Three month term of imprisonment, suspended for 3 years conditional on good behaviour. 10 days in prison in case of default on fines
Property Developer	—	Three month term of imprisonment, suspended for 3 years conditional on good behaviour
Landlord	3,085	One month prison sentence suspended for 2 years. On appeal the prison sentence was rescinded and the original fine of €7,300 reduced
Timber Harvesting Company	4,500	None
Company Director	4,500	None
Farmer	125	None
Software Company	140,000	None
Plastics Company	—	Three year suspended sentence on each of four charges, bound to the peace for 5 years and a bond of €200 imposed
Caterer	—	Four sentences of three years each with two years and six months of each sentence suspended. Eight sentences of one year each with six months of each sentence suspended. All sentences to run concurrently.
Motor Company	50,000	None
Engineering Company	960,000	None

11.19 107 cases of serious tax evasion were under active consideration in IPD at the end of 2008. The updated status of those cases at the end of April 2009, the latest date for which information was available, is shown in Figure 40.

Figure 40 Status of Serious Tax Evasion Cases at April 2009

Status	Number of Cases
Under investigation	59
With the Revenue Solicitor's Office	10
Submitted to the DPP	9
Directions issued by DPP to prosecute	14
Before the court	10
Closed	2
Convictions obtained	3
Total	107

11.20 Of these 107 cases, 77 are in relation to individuals, 28 are companies and two involve both individuals and companies. 39 of the cases relate to the construction and property sector, 12 are in the motor industry, eight in the security industry and seven are engaged in haulage activities. The remaining 41 cases are spread across a range of different activities.

11.21 In addition, there were five convictions for serious Customs and Excise offences in 2008. Fines totalling €16,295 were imposed in these cases and in three of the cases suspended prison sentences were imposed.

Publication of Defaulters

11.22 To further deter evasion the details of audit settlements may, in certain circumstances, be published. Cases are not published where

- a 'qualifying disclosure' is accepted
- the settlement is less than €30,000
- the penalty does not exceed 15% of the tax ultimately due.

11.23 In 2008, details of 401 cases of non-compliance were published. The total amount of tax, interest and penalties in published cases settled in 2008 was €74.8 million.

Special Investigations

11.24 A number of special investigations have been carried out by Revenue in the past eleven years. The background to pre-2008 investigations is set out in previous reports. Figure 41 sets out the cumulative amounts received to the end of April 2009 as a result of each investigation.

Figure 41 Special Investigation – Revenue Collected

Investigation	Year Commenced	Number of Cases Involved	Payments to Date €m
DIRT - Look Back Audits (financial institutions)	1999	37	225
<i>DIRT Underlying Tax:</i>			
Voluntary Disclosure Scheme	2001	3,675	227
Post Voluntary Disclosure Investigations	2001	8,500 ^a	414
NIB – Offshore Investment Schemes	1998	465	60
Ansbacher-type Schemes	1999	289	106
Pick Me Up Schemes	1998	71	1
Tribunal-related reviews	1998	49	41
Offshore Assets	2004	14,832	939
Undisclosed Funds – Life Assurance Products	2005	5,376	469
Undisclosed Funds in Irish Bank Accounts	2008	1,232	74
Total			2,556

Note:

- a This is an estimated figure.

11.25 The total amount collected in 2008 was €76 million. Of the €2,556 million collected to date from all investigations, some €1,390 million or 54% was collected from the voluntary disclosure schemes which formed part of four of the investigations³⁵.

³⁵ Voluntary disclosure schemes were available for the investigations into DIRT Underlying Tax, Offshore Assets, Life Assurance Products and Undisclosed Funds in Irish Bank Accounts.

Undisclosed Funds in Irish Bank Accounts - 2008

11.26 The most recent investigation is one into undisclosed funds in Irish Bank Accounts. This investigation, which commenced in 2008, is pursuing tax owed by persons who held undeclared income or gains in domestic bank accounts. Under a regulation made in 2008³⁶, financial institutions are required to make returns to Revenue of interest and other similar payments on accounts or investments where the gross payment was more than €635 in a year. For the years 2005 and 2006 financial institutions were required to provide details of interest paid to their customers by 15 September 2008 and for 2007 by 31 October 2008. For 2008 and subsequent years, returns are required by 31 March in the year following the year in which interest is paid.

11.27 In advance of the first returns, Revenue gave taxpayers who had €100,000 or more (which included undeclared money) in accounts at any time between January 2005 and the end of 2007 an opportunity to make a voluntary disclosure. The benefits to those who did so were mitigation of penalties, non-publication of settlement details and the fact that Revenue would not investigate with a view to prosecution. The deadline for submission of a notice of intention to make such a disclosure was 15 September 2008 and full disclosure and payment was required by 15 January 2009.

11.28 Over 1,800 notices of intention to make a disclosure were received. Not all persons who submitted notices made a disclosure. 418 cases withdrew the notice of intention having established that there were no outstanding tax liabilities and, ultimately, 1,232 cases made a disclosure by the 15 January deadline. Revenue is following up the cases that submitted notices of intention but did not make a disclosure. The details provided by the financial institutions to date are being analysed by Revenue. As at 30 April 2009, €73.8 million had been paid to Revenue.

Overall Conclusions

€2.6 billion has been collected as a result of special investigations over the past decade. At the same time standard audit procedures have yielded an estimated €3 billion. It may be opportune at this juncture to extract the lessons to be learned from those special investigations in terms of taxpayer behaviours and collection system effectiveness in order to more effectively target future audit, compliance and assurance work.

³⁶ Return of Payments (Banks, Building Societies, Credit Unions and Savings Banks) Regulations 2008 (S.I. 136 of 2008)