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. 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.

Revenue is, however, 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 cannot accept an ongoing failure to meet tax commitments and allow a business to continue to trade and accumulate further debts. 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. 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 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 such an attitude, in the interest of fairness and equity for businesses that pay on time, Revenue must respond in an effective way.

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 futher 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 maximises 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.

Revenue Response

Revenue's overall approach to working with businesses and taxpayers experiencing cashflow difficulties, including in appropriate cases agreeing to phased payment arrangements, has worked well in developing and maintaining a strong voluntary compliance culture and in guiding the response to late or non-compliance. The case working principles informing that approach continue to have relevance in a challenging economic climate and remain valid for the vast majority of cases.

Arising from the economic downturn some financially viable businesses and taxpayers did experience particular difficulties in meeting their tax payment obligations. This had been due, for example,

- to particular cash flow problems arising from extended and ongoing late payment by their debtors, or
- from bad debt(s) that had been exceptionally incurred, or
- from a tightening of credit and overdraft facilities by financial institutions.

Such types of difficulties can continue to severely restrict the capacity of the business or taxpayer concerned to meet immediate financial obligations, including timely payment of tax debts as they fall due.

In recognition of these particular realities for otherwise viable businesses and to enhance Revenue's ability to find a solution that will get such businesses back to timely compliance with the minimum of delay, some additional considerations to those that normally or generally apply may be appropriate in determining the response to such businesses. In this regard, a Case Decision Escalation Framework [CDEF] is in place, which allows for the speedy and appropriate referral of cases for a higher-level decision. This process arises where particular regard may need to be had to factors largely outside of the control of a business but which negatively impact on the capacity of business to meet tax payment obligations in a timely fashion.

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.

Framework

Where additional considerations to those that normally or generally apply may be appropriate in determining how Revenue will respond to a business or individual as mentioned above, these case decisions will be made at Higher Executive Officer, Assistant Principal or Principal level, as appropriate. Cases that may be appropriate for these additional considerations are brought to the attention of the relevant manager.

Where the additional considerations encompass a phased payment arrangement, then the business or taxpayer will be required in every instance to provide sufficient information, to justify such an arrangement. A phased payment arrangement will only be allowed where Revenue is satisfied that the debt cannot be paid in a lump sum. Such an arrangement will include interest. The information required is determined by the size of the debt – as set out below:

Debt - Greater than €100,000

In every case

1 Completion and submission of the Phased Payment Application (PPA1). You can use the instalment calculator facility which will show the interest payable on the payment arrangement plan proposed.

2 Up to date bank statements that will allow Revenue to take a view as to whether there are increasing excesses on the account and to take a view on the extent of the account swing.

3 List of all/any assets and encumbrances thereon

4 Outline of what cost cutting measures have been implemented in the business including drawings by the owner/directors.

5 Cash flow projections for the following 6 months

6 Up to date management accounts

Debt - Less than €100,000

In every case

1. Completion and submission of the Phased Payment Application (PPA1). You can use the instalment calculator facility which will show the interest payable on the payment arrangement plan proposed.
2. Up to date bank statements that will allow Revenue to take a view as to whether there are increasing excesses on the account and to take a view on the extent of the account swing.
3. List of all/any assets and encumbrances thereon
4. Outline of what cost cutting measures have been implemented in the business including drawings by the owner/directors.

In some cases the following additional information at least may be required:

5. Cash flow projections for the following 6 months
6. Up to date management accounts

Contact with the Taxpayer, Business and/or Agent

Once the application for a phased payment arrangement is received it will be considered as quickly as possible and any issues requiring clarification will be raised in a timely fashion with the taxpayer, business or agent. Any additional information requirements will be clearly explained and a timeframe for their submission made explicit.

Approval of a Phased Payment Arrangement

Where an instalment arrangement is agreed, the instalment proposal agreement form will be issued with an appropriate letter to the taxpayer/agent/business for signing. The precise terms of the arrangement will be clear together with the commencement date for repayments under the agreed arrangement.

Refusal of a Phased Payment Arrangement

Where a phased payment arrangement is being sought, it is the responsibility of the taxpayer, business or agent concerned to provide all of the necessary information with the initial application or where there are follow up requirements to provide the information in a timely fashion. Incremental filing of new or irrelevant information to delay or frustrate the collection/recovery process will not be facilitated and in such instances appropriate collection/recovery/enforcement action will proceed.
A decision to refuse an application for a phased payment arrangement will be advised in writing together with a brief explanation of the basis for Revenue's refusal decision and an explanation of the consequences of continued non- payment of the debt.

A business or taxpayer or the tax practitioner/agent involved may want a decision to refuse a phased payment arrangement reviewed. The expectation is that the taxpayer, business or agent will have provided all of the relevant information in support of the original application at the initial application stage. In those circumstances, the decision to refuse the arrangement will normally be subject to review with the minimum of delay – this will give certainty to all involved. The line manager or supervisor of the original decision maker will normally complete the review.

Breakdown of or Anticipated Difficulties with Phased Payment Arrangements

Revenue's normal expectation and experience is that the taxpayer or business concerned complies with the terms and conditions of the phased payment arrangement and timely compliance is secured into the future.

Non-compliance or anticipated non-compliance with the terms of an agreed phased payment arrangement means that a case is considered as an immediate increased risk from a Revenue standpoint. Where problems of compliance with the terms of an agreed arrangement are encountered, the expectation is that the taxpayer, business or agent concerned will be proactive in approaching Revenue when those problems start to emerge.

The taxpayer, business or agent concerned will be expected to set out clearly the basis for non-compliance with the terms of the original arrangement, the steps that will be taken to restore compliance on the original basis agreed and the timeframe for such restoration.

Where the basic viability of the business into the future is not re-established to Revenue's satisfaction or where current taxes are not being paid as they fall due, then the case will be actively considered for cancellation of the original phased payment arrangement followed by appropriate collection/enforcement action.

Minor rescheduling of the phased payment plan may be appropriate given the overall duration of the arrangement and the extent of the short-term difficulties.
Where revised terms are sought to the arrangement, the taxpayer, business or agent concerned must set these out clearly and promptly in writing. Revenue will then consider the matter having regard to all of the circumstances and the risk of default.

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 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