

# **Notes for Guidance - Taxes Consolidation Act 1997**

## **Finance Act 2021 edition**

### **Part 47**

## **Penalties, Revenue Offences, Interest on Overdue Tax and Other Sanctions**

**December 2021**



The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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Part 47 Penalties, Revenue Offences, Interest on Overdue Tax and Other Sanctions

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**PART 47**  
**PENALTIES, REVENUE OFFENCES, INTEREST ON OVERDUE TAX AND**  
**OTHER SANCTIONS**

CHAPTER 1  
*Income tax and corporation tax penalties*

**Overview**

This Chapter deals with income tax and corporation tax penalties.

**1052 Penalties for failure to make certain returns, etc**

**Summary**

This section provides for a penalty of €3,000 for failure to make certain returns, etc. which have been requested by notice. This penalty may be increased to €4,000 where the failure continues after the end of the tax year in which the notice was served.

**Details**

Any person who has been required, by notice or precept under or in compliance with any of the provisions listed in *Schedule 29, column 1* or *2*, to deliver a return, statement, declaration, list or other document, to give any particulars, to produce any document or to make anything available for inspection and who fails to comply with the notice or precept is liable to a penalty of €3,000. (1)(a)

Any person who has delivered a tax return without including in it additional information in relation to certain specified reliefs, which the form indicates are to be supplied, is liable to a similar penalty. This penalty will not apply, however, unless it can be shown that after the delivery of the return it had been brought to the person's attention or that it came to the person's notice that the details required had not been included on the form and the person does not rectify matters within a reasonable time. (1)(aa)

Any person who fails to do any act, to furnish any particulars or to deliver any account in compliance with any of the provisions listed in *Schedule 29, column 3* is also liable to a penalty of €3,000 (1)(b)

The penalty of €3,000 is replaced — (2)

- by a penalty of €4,000, where the notice received by the person is under or in compliance with the provisions listed in *Schedule 29, column 1*, and the failure to comply with the notice continues after the end of the tax year following the tax year in which the notice was given, or
- by the increased penalties which apply where the person concerned is a “body of persons” – see *section 1054*.

The penalty of €3,000 or €4,000— (3)

- is to be reduced so as not to exceed €5 for any one offence, where a person proceeded against for not complying with *section 877(5)* (returns by persons chargeable) proves that he/she is not chargeable to income tax, and
- are not to be imposed on an employer who omits the name or place of residence of any employee who is not employed elsewhere from a return made under *section 897(5)* (return of employees' emoluments), where that employee is exempt from income tax.

In proceedings to collect a penalty under this section, **section 1053** (which is concerned with penalties for fraudulently or negligently making incorrect returns prior to the date of passing of the Finance (No. 2) Act 2008 (24 December 2008)) or **section 1077E** (which provides penalties for deliberately or carelessly submitting incorrect returns after the passing of the Finance (No. 2) Act 2008) a certificate signed by an officer of the Revenue Commissioners certifying that — **(4)(a), (b) & (d)**

- a notice or precept issued to a defendant,
- a notice or precept has not been complied with during a stated period by a defendant,
- according to the relevant records a defendant has failed to do a particular act, provide requested information or deliver a stated account in accordance with any of the provisions listed in **Schedule 29, column 3**,

is to be evidence of the issue, non-compliance or failure to act, respectively, until the contrary is proved.

In the case of proceedings relating to a return referred to in **section 879** (returns of income) or **section 880** (partnership returns), a certificate signed by an inspector certifying that according to the relevant records a stated return was not received during a stated period is to be evidence, until the contrary is proved, that the defendant did not make the return during that period. **(4)(c)**

Any such certificates purporting to be signed by an officer of the Revenue Commissioners or, as the case may be, an inspector may be tendered in evidence without proof and is deemed, until the contrary is proved, to have been signed by such officer or inspector. **(4)(e)**

## **1053 Penalty for fraudulently or negligently making incorrect returns, etc**

### **Summary**

This section, which applies up to the passing of the Finance (No. 2) Act 2008 (24 December 2008), provides for penalties where incorrect returns, records, statements, declarations, accounts, etc are submitted either fraudulently or negligently or where no return has been submitted.

### **Details**

A penalty of €125, plus a sum amounting to the difference between the amount of tax payable by the person for the relevant tax years and the amount which would have been the correct amount payable had the return, statement, declaration or accounts submitted by the person been correct, applies to a person who fraudulently or negligently — **(1), (5) & (6)**

- delivers an incorrect return or statement of the kind mentioned in any of the provisions listed in **Schedule 29, Column 1**,
- makes an incorrect return, statement or declaration for any allowance, deduction or relief, or
- files incorrect accounts with the Revenue Commissioners, the Appeal Commissioners or an inspector in relation to ascertaining his/her liability to income tax.

The penalties outlined in this subsection are subject to increase where the person concerned is a “body of persons” – see **section 1054**.

The relevant tax years in relation to anything delivered, made or submitted in any year of assessment are the year in question, its preceding and its following year of assessment.

Where no return is made by reason of fraud or negligence a penalty of €125 is applied **(1A) & (5A)**

plus the difference between the amount of tax paid for the relevant years and the amount of tax which would have been payable if returns had been made for those years and those returns were correct.

A penalty of €125 applies to a person who negligently furnishes, gives, produces or makes any incorrect return, information, certificate, document, record, statement, particulars, account or declaration of the kind mentioned in any of the provisions listed in *Schedule 29, Column 2* or *3*. In the case of fraud, the penalty is €315. (2)

The penalties outlined in this subsection are subject to increase where the person concerned is a “body of persons” – see *section 1054*.

A return, statement, declaration or account is deemed to have been made negligently or submitted by a person where an acknowledged error in any such document is not rectified by the person within a reasonable period. (3)

The commencement of proceedings for the recovery of any penalty under this section is not affected by the expiration of the 6 year time limit outlined in *section 1063* but is subject to the provisions of *section 1060(2)* which state that proceedings may not be commenced against the personal representatives of a deceased person after the expiration of the time limits during which assessments (in respect of profits or gains which arose or accrued to the deceased person before death) may be made on the personal representatives by virtue of *section 1048(2)*. (4)

For the purposes of this section, any accounts submitted on behalf of a person are deemed to have been submitted by that person unless that person proves that those accounts were submitted without that person’s permission or knowledge. (7)

This section applies only in respect of contraventions occurring up to the passing of the Finance (No. 2) Act 2008 (i.e. up to 24 December 2008). (8)

## 1054 Penalties in the case of a secretary of a body of persons

### Summary

A body of persons is liable to increased levels of penalties for the offences detailed in *sections 1052, 1053* and *1077E*. The secretary of such a body is also liable to penalties.

### Details

The term “secretary” is defined to include — (1)

- in the case of a company, the secretary or other officer performing the duties of secretary, and
- in the case of an unincorporated body of persons, the treasurer, auditor or receiver of such body.

Where the person to whom *section 1052* (penalties for failure to make certain returns, etc) applies is a body of persons the secretary shall be liable to — (2)

- a penalty of €2,000 where a notice was given under or for the purposes of any of the provisions listed in *Schedule 29, column 1*, and the failure to comply with the notice continues after the end of the tax year following the tax year in which the notice was given, and (2)(a)
- a penalty of €1,000 applies in any other situation. (2)(b)

Where the person mentioned in *section 1053* (penalty for fraudulently or negligently making incorrect returns, etc) or *section 1077E* (penalty for deliberately or carelessly making incorrect returns, etc) is a body of persons the secretary shall be liable to a separate penalty of €1,500 or, in the case of deliberate behaviour, a penalty of €3,000. (3)

The increased penalties applying to a body of persons under this section — (4)

- are to be reduced so as not to exceed €5 for any one offence where the body of persons proceeded against for not complying with *section 877(5)* proves that it is not chargeable to income tax, and
- are not to be imposed on an employer who omits the name or place of residence of any employee who is not employed elsewhere from a return made under *section 897(5)* where that employee is exempt from income tax.

### 1055 Penalty for assisting in making incorrect returns, etc

This section imposes a penalty of €4,000 on any person who deliberately assists in or induces the making or delivery of any incorrect income or corporation tax return, account, statement or declaration.

### 1056 Penalty for false statement made to obtain allowance

#### Summary

This section gives details of the penalties applying to a person who knowingly makes a false statement, etc relative to the person’s own income tax or corporation tax affairs or who knowingly and wilfully assists another person to do the same in respect of that other person’s income tax or corporation tax affairs.

#### Details

The term “the specified difference” means the difference between — (1)

- a person’s income tax liability as disclosed for a tax year (or corporation tax liability as disclosed for an accounting period), and
- the amount which would have been payable had the statement or representation not been false, had the account, return, list, declaration or statement not been false or fraudulent, or had the full amount of income been disclosed.

The penalties under this section apply to —

- a person who knowingly makes a false statement or representation in relation to the person’s own income tax (or corporation tax) in a return, statement or declaration or for the purposes of obtaining an allowance, reduction, rebate or repayment of tax, (2)(a)
- a person who knowingly and wilfully aids, abets, assists, incites or induces another person in relation to that other person’s income tax (or corporation tax) — (2)(b)
  - to make or deliver a false or fraudulent account, return, list, declaration or statement in relation to property, profits or gains or tax, or
  - unlawfully to avoid liability to tax by failing to disclose the full amount of that other person’s income from all sources.

A person found guilty of an offence under this section is liable to the following sliding scale of fines, etc — (3)

Specified difference (SD)	<i>Summary Conviction</i>	
	Fine	Term of imprisonment (at discretion of Court)
(i) less than €1,520	a max. of 25% of SD	and/or max. of one year
(ii) equal to or greater than €1,520	a max. of €1,520	and/or max. of one year
	Conviction on indictment	

Specified difference (SD)	Fine	Term of imprisonment (at discretion of Court)
(i) less than €6,345	a max. of 25% of SD	and/or max. of 2 years
(ii) €6,345 to less than €12,695	a max. of 50% of SD	and/or max. of 3 years

By virtue of the application of *sections 1078(4) and (6) to (8)* (with any necessary modifications) for the purposes of this section — **(4)**

- the maximum fines and terms of imprisonment under this section are not affected by the lesser maximum fine and lower maximum prison terms allowed under section 14 of the Criminal Procedure Act, 1967 where a person pleads guilty in the District Court to an indictable offence,
- a return or statement delivered to an inspector or a Revenue official and purporting to be signed by a person is deemed to have been so delivered and to have been signed by that person unless the contrary is proved,
- proceedings may not be taken more than 10 years after the alleged offence was committed or the penalty incurred, and
- section 1 of the Probation of Offenders Act, 1907 which allows a court, in dealing with a proven offence, to dismiss the charge or conditionally discharge the offender will not apply to an offence under this section.

A prosecution may not be taken under this section in relation to a declaration to the Chief Special Collector under section 2 or 3 of the Waiver of Certain Tax, Interest and Penalties Act, 1993 (the amnesty legislation) solely because a false statement or representation has been made relative to income or chargeable gains in respect of which income tax or capital gains tax is due or to value added tax in arrears. **(5)**

### **1057 Fine for obstruction of officers in execution of duties**

This section imposes a penalty of €125 for every offence on any person who or whose employee obstructs, molests or hinders a Revenue official, or any person assisting such an official, in the execution by such official of his/her duty in relation to income tax or corporation tax or of the powers or authorities vested by law in him/her. **(1)**

A penalty imposed under this section may be enforced and collected in the same manner as excise penalties. **(2)**

This section applies only to contraventions occurring up to the passing of the Finance (No. 2) Act 2008 (i.e. up to 24 December 2008). **(3)**

### **1058 Refusal to allow deduction of tax**

This section provides that any person who refuses to allow a deduction of tax at source from any payment authorised by the Tax Acts to be made under deduction of tax is liable to a penalty of €3,000. **(1)**

All agreements allowing payment of interest, rent or other annual payment in full without any such deduction are void. **(2)**

### **1059 Power to add penalties to assessments**

This section caters for the situation where an increased rate of income tax or corporation tax is imposed as a penalty, as part of a penalty or in addition to a penalty, and secures that the penalty and increased rate of tax can be added to the assessment and collected in the same manner as any tax included in the assessment.

### **1060 Proceedings against executor or administrator**



Proceedings to recover penalties which have been or could have been commenced (1) against a person who incurred the penalty before he/she died may be continued or commenced against his/her personal representatives, and any penalty awarded as a result of such proceedings is to be a debt due out of the deceased person's estate.

Such proceedings may not be commenced against the personal representatives after the (2) expiration of the time-limits during which assessments (in respect of profits or gains which arose or accrued to the deceased person prior to death) may be made on the personal representatives by virtue of *section 1048(2)*.

This section only applies up to the passing of the Finance (No. 2) Act 2008 (24 (3) December 2008).

## 1061 Recovery of penalties

### Summary

This section, which applies up to the passing of the Finance (No. 2) Act 2008 (24 December 2008), outlines a method of recovery of penalties by way of institution of civil proceedings for a liquidated sum in a Court of competent jurisdiction. At present the monetary jurisdiction of the District and Circuit Courts are €6,348.69 (£5,000) and €38,092.14 (£30,000) respectively. While sections 13 and 14 of the Courts and Courts Officers Act 2002 provide for an increase in these limits, those sections have not yet been commenced.

### Details

Regardless of the modes of recovery for the penalties outlined in the following (1) provisions —

- penalties for failure to make certain returns, etc (*section 1052*),
- penalty for fraudulently or negligently making incorrect returns, etc (*section 1053*),
- increased penalties in the case of body of persons (*section 1054*),
- penalty for assisting in making incorrect returns, etc (*section 1055*),
- penalty for false statement made to obtain allowance (*section 1056*),
- fine for obstruction of officers in execution of duties (*section 1057*),
- refusal to allow deduction of tax (*section 1058*),
- power to add penalties to assessments (*section 1059*),
- proceedings against executor or administrator (*section 1060*),
- penalty for certain failures connected with Revenue's access to records, information and premises (*Chapter 4 of Part 38*),
- income tax allowances by means of discharge or repayment of tax (*section 305(4)*),
- retirement annuities (*section 783(6)*),
- purchased life annuities (*section 789(5)*), and
- obligation to keep certain records (*section 886(5)*),

an officer of the Revenue Commissioners may institute Court proceedings for recovery of the penalty as a liquidated amount provided that officer is so authorised by the Revenue Commissioners.

If the authorised officer, who has initiated the proceedings, or his/her authorised (2) replacement, who has continued such proceedings, dies or otherwise ceases to be so authorised —

- the Revenue Commissioners must nominate a replacement authorised officer if the proceedings are to be continued, and
- the nominated replacement is entitled to be substituted as a party to the proceedings and must serve notice of such substitution to the defendant in the proceedings.

In proceedings under this section a certificate signed by a Revenue Commissioner certifying that a person is an officer of the Revenue Commissioners and has been authorised to institute Court proceedings of the type allowed by this section is evidence of those facts until the contrary is proved. (3)

In proceedings under this section, in which the plaintiff has been replaced by another officer of the Revenue Commissioners under *subsection (2)*, a certificate to that effect signed by a Revenue Commissioner is evidence of that fact until the contrary has been proved. (4)

A certificate certifying the facts referred to in *subsection (3)* or *(4)* and purporting to be signed by a Revenue Commissioner may be tendered in evidence without proof and is deemed to have been so signed until the contrary is proved. (5)

The rules of court, applicable to civil proceedings, apply to proceedings initiated under this section. (6)

This section only applies up to the passing of the Finance (No. 2) Act 2008 (24 December 2008). (7)

### **1062 Proceedings where penalty recoverable cannot be definitely ascertained**

Proceedings for the recovery of a penalty may be instituted despite the fact that the amount of income tax or corporation tax by reference to which such penalty is to be calculated has not been finally ascertained. Where the Court is of the opinion that the penalty is recoverable, it may suspend the giving of a judgment or the making an order for payment of that penalty until such time as the amount of tax due is finally ascertained.

### **1063 Time limit for recovery of fines and penalties**

Proceedings may be instituted to recover an income tax or corporation tax fine or penalty up to 6 years after the date on which such fine or penalty was incurred. An exception to this rule is proceedings against personal representatives under *section 1060* or *section 1077D* which may not be instituted after the expiration of the time limits during which assessments (in respect of profits or gains which arose or accrued to the deceased person prior to death) may be made on the personal representatives by virtue of *section 1048(2)*.

### **1064 Time for certain summary proceedings**

Summary proceedings to recover an income tax or corporation tax penalty under —

- *section 889* (returns of fees, commissions, etc paid by certain persons),
- *section 987* (penalties for breach of PAYE regulations), or
- *section 1056* (penalty for false statement made to obtain allowance),

may be instituted up to 10 years after the date on which the offence was committed or the penalty was incurred.

### **1065 Mitigation and application of fines and penalties**

## Summary

The Revenue Commissioners have the power to mitigate certain penalties and to stay or compound proceedings for the recovery of any fine or penalty imposed under the Acts, subject to certain conditions.

## Details

The Revenue Commissioners have, for the purposes of the Acts, the power to- (1)

- (a) mitigate any penalty or
- (b) to stay, compound or settle by agreement any proceedings for the recovery of a fine or penalty imposed under the Acts.

In addition, they may further mitigate any penalty after judgment has been obtained.

No penalty may be mitigated or further mitigated by more than 50 per cent of the penalty. (2)(a)

No mitigation is allowed of penalties or fines applicable under the Waiver of Certain Tax, Interest and Penalties Act, 1993, (the amnesty legislation) where an individual — (2)(b)

- fails to give a declaration required by section 2(3)(a) of that Act, or
- gives such a declaration, or a declaration under section 3(6)(b) of that Act, which is false or does not comply with the specific requirements of that legislation in relation to that individual.

Moneys arising from fines, penalties and forfeitures and any costs, charges and expenses relating to them must be accounted for and paid to the Revenue Commissioners or as they direct. (3)

For the purposes of the section, “the Acts” has the same meaning as in *section 1077A(1)*, i.e. the legislation governing all taxes and duties administered by the Revenue Commissioners. (4)

Following the amendments introduced in Finance (No 2) Act 2013, *section 1065* is now the main provision governing mitigation of all penalties that may be imposed under the Acts.

Accordingly, the following provisions are repealed – being no longer necessary and effectively incorporated into *section 1065*:

- (a) section 35 of the Inland Revenue Regulation Act 1890;
- (b) section 209 of the Customs Consolidation Act 1876;
- (c) section 118 of the Value-Added Tax Consolidation Act 2010.

In addition, the following provisions are amended:

- Section 58 of the Capital Acquisitions Tax Consolidation Act 2003 and section 133(9)(a) of the Stamp Duties Consolidation Act 1999 are amended to delete the reference to *section 1065*, as it is unnecessary having regard to the fact that *section 1065* now applies to all of the Acts.
- Similarly, the Finance Act 2001 amends section 130 of the Finance Act 2001 (relating to Excise Duties) to retain a judge’s power of mitigation of fines and penalties, while deleting the Revenue Commissioners mitigation powers – which are now to be contained in *section 1065*.

## 1066 False evidence: punishment as for perjury

A person who on oath, or in an affidavit or deposition authorised by the Income Tax Acts or the Corporation Tax Acts, wilfully and corruptly gives false evidence or swears

an untruth is subject and liable to the same punishment as that applicable to persons convicted of perjury.

### **1067 Admissibility of statements and documents in criminal and tax proceedings**

Although a person was or may have been induced to make a statement to, or produce a document for, the Revenue Commissioners on the basis that the person was aware — (1)

- that in relation to income tax or corporation tax the Revenue Commissioners may accept a financial settlement rather than institute proceedings, and
- that, while no undertaking can be given as to whether the Revenue Commissioners will accept a settlement in any particular case, it is the practice of the Revenue Commissioners to be influenced by the fact that a person has made full disclosure of any fraud or default and has co-operated in any investigation,

any statement so made or any document so produced is admissible in proceedings covered by this section.

The proceedings covered by this section are criminal proceedings for fraud or wilful default in connection with income tax or corporation tax and any proceedings for the recovery of a sum due by means of tax, fine, forfeiture or penalty in relation to income tax or corporation tax. (2)

### **1068 Failure to act within required time**

For the purposes of this Chapter, *Chapter 3A* (determination of penalties and recovery of penalties) and *Chapter 3B* (penalties for false returns etc) of this Part, and *Chapter 4* of *Part 38* (Revenue information and audit powers), a person is absolved from being required to do something within a limited period provided it is done within any extension of that limited period as allowed by the Revenue Commissioners or their officers. In addition, where a person provides a reasonable excuse for not doing something that is required to be done, the person is not to be regarded as having failed to do the required task if it is completed without unreasonable delay after the reason for the excuse expires.

### **1069 Evidence of income**

In this section “assessment” includes an additional assessment and an assessment as amended under the Self Assessment provisions of *section 955*. (1)

For the purposes of this Chapter, *Chapter 3A* (determination of penalties and recovery of penalties) and *Chapter 3B* (penalties for false returns etc) of this Part an assessment, which has become final and conclusive because it cannot be varied by the Appeal Commissioners on appeal or by the order of any court, is sufficient proof that the income in respect of which income tax or corporation tax, or the gain in respect of which capital gains tax, charged in the assessment did arise to or was received by the person assessed. (2)

### **1070 Saving for criminal proceedings**

Any criminal proceedings for any felony or misdemeanour are not to be affected by any of the laws relating to income tax or corporation tax.

## CHAPTER 2

### *Other corporation tax penalties*

#### **Overview**

This Chapter deals with corporation tax penalties for failure to make certain returns, to furnish particulars required to be supplied by new companies, to give notice of liability

to corporation tax and to furnish certain information, and for the furnishing of incorrect information and for fraudulently or negligently making incorrect returns, etc.

### 1071 Penalties for failure to make certain returns

Where a company fails to deliver a return following receipt of a notice pursuant to **section 884** (returns of profits), the company is liable to a penalty of €2,000 and a further penalty of €60 for each day that the failure continues after a judgment has been obtained. In addition, the secretary of the company is liable to a separate penalty of €1,000. **(1)(a) & (b)**

The company's penalty of €2,000 and the secretary's penalty of €1,000 is increased to €4,000 and €2,000, respectively, where the failure continues after the expiration of one year commencing on the day the notice was served. **(2)**

Where a company fails to file a return and the penalty to which the company is liable for such failure has not been paid within 3 months after the return filing date, the company secretary will be liable to pay any amount of the company's penalty which has not been paid. This is in addition to any other penalty to which the secretary may be liable under this section in respect of the failure. The secretary will be entitled to recover from the company any amount paid by the secretary in respect of the penalty on the company. **(2A)**

The delivery of a return is, for the purposes of this section, deemed to include a requirement — **(3)**

- to furnish to the inspector/authorised officer copies of accounts sought by the notice within a specified period, including the auditor's certificate where accounts have been audited (**section 884(9)(b)(i)**), and
- to make all books, accounts, and documents in the possession of the company which contain information as to profits, assets or liabilities of the company and sought by the notice, available for inspection by an inspector/authorised officer within a specified period (**section 884(9)(b)(ii)**).

### 1072 Penalties for fraudulently or negligently making incorrect returns, etc

A penalty of €630, plus a sum amounting to the difference between the amount of corporation tax payable by the company for the accounting period or accounting periods comprising the period to which the return, statement, declaration or accounts relate and the amount which would have been the correct amount payable had the return, statement, declaration or accounts been correct, applies to a company which negligently — **(1) & (2)**

- delivers an incorrect return under **section 884** (return of profits),
- makes an incorrect return, statement or declaration for any allowance, deduction or relief in respect of corporation tax, or
- files incorrect accounts with the Revenue Commissioners, the Appeal Commissioners or an inspector in relation to ascertaining the company's liability to corporation tax.

In addition, the company secretary is liable to a separate penalty of €125.

In the case of fraud, the penalty on the company is €1,265 plus an amount which is twice the difference between the amounts referred to above while the penalty on the secretary is €250.

Where a company, due to fraud or neglect, *fails* to deliver a return required by **section 884**, it is liable to similar penalties. Thus, it is liable to a penalty of €630, plus (in the case of neglect) a sum amounting to the difference between the amount of corporation tax paid by the company for the accounting period or accounting periods comprising the period to which the return relates and the amount which would have been payable had the return been made and been correct. In the case of fraud, the penalty on the company **(2A) & (2B)**

is €1,265 plus an amount which is twice the difference between the amounts referred to above.

A return, statement, declaration or accounts will be deemed to have been negligently made or submitted by a company where the company becomes aware of an error in any such document and that error is not rectified by the company within a reasonable period. (3)

This section applies only to contraventions occurring up to the passing of the Finance (No. 2) Act 2008 (i.e. up to 24 December 2008). (4)

### **1073 Penalties for failure to furnish particulars required to be supplied by new companies**

Every company, within 30 days of beginning its trade, profession or business, must deliver a written statement to the Revenue Commissioners containing certain particulars specified in *section 882*. Where a company fails to deliver any such statement to the inspector, the company is liable to a penalty of €4,000 and a further penalty of €60 for each day that the failure continues after judgment has been obtained. In addition, the secretary of the company is liable to a separate penalty of €3,000. (1)

Where a statement required under *section 882* is outstanding for at least 3 months, the company secretary will also be liable to pay any penalty under this section on the company which remains unpaid. The secretary will be entitled to recover any such amount from the company. (2)

### **1074 Penalties for failure to give notice of liability to corporation tax**

Every company which is chargeable to corporation tax for any accounting period must, where a return of profits has not been made, notify the inspector within one year of the end of that accounting period that it is so chargeable (*section 883*). Where a company fails to so notify the inspector, the company is liable to a penalty of €4,000 and a further penalty of €60 for each day that the failure continues after judgment has been obtained. In addition, the secretary of the company is liable to a separate penalty of €3,000.

### **1075 Penalties for failure to furnish certain information and for incorrect information**

Where any person fails to comply with a notice issued under or for the purposes of any of the following provisions — (1)

- change in ownership of company: disallowance of trading losses (*section 401*),
- group relief: information as to arrangements for transferring relief, etc (*section 427*), and
- close companies (*Part 13*),

requiring the furnishing of information or particulars, that person is liable to a penalty of €3,000. Should the failure continue after judgment has been obtained, a further penalty of €10 arises for each day that the failure continues.

Where the person in *subsection (1)* is a company, the penalty is €4,000 with a further penalty of €60 for each day that the failure continues after judgment has been obtained. In addition, the company secretary is liable to a separate penalty of €3,000. (3)

A person who furnishes any incorrect information or particulars of the type referred to in any of the following provisions — (2)

- income tax on payments by resident companies (*section 239*),
- change in ownership of company: disallowance of trading losses (*section 401*),
- group relief: information as to arrangements for transferring relief, etc. (*section*



427), and

- close companies (*Part 13*),

is liable to a penalty of €3,000.

Where the person in *subsection (2)* is a company, the penalty is €4,000, and the company secretary is liable to a separate penalty of €3,000. (4)

The furnishing of the required information or particulars referred to in this section is deemed to have been negligently made (*section 1053(3)*) or deliberately or carelessly made (*section 1077E(9)*), or submitted by a person where the person becomes aware of an error in such information or particulars and the error is not rectified by that person within a reasonable period. (5)

### 1076 Supplementary provisions (*Chapter 2*)

For the purposes of this Chapter, “secretary” is defined to include — (1)

- in the case of a company, the secretary or other officer performing the duties of secretary and, where the company is non-resident in the State, the agent, manager factor or other representative of the company,
- in the case of an unincorporated body of persons, the treasurer, auditor or receiver of such body, and
- in the case of a company the secretary (under company law) of which is not resident in the State, an Irish resident director.

In proceedings to recover a penalty under the provisions of the Corporation Tax Acts, a certificate signed by an inspector — (2)

- certifying that from an examination of his/her records it appears that a particular notice was given to the defendant on a particular day,
- certifying that from an examination of his/her records it appears that a particular return was not received from the defendant within a particular period,

is evidence of those facts until the contrary is proved.

Any such certificate purporting to be signed by an inspector may be tendered in evidence without proof and is deemed to have been signed by such inspector until the contrary is proved.

## CHAPTER 3

### *Capital gains tax penalties*

#### Overview

This Chapter provides that the provisions of *Chapter 1* and *Chapter 3B* are to apply also to capital gains tax subject to appropriate modification.

#### 1077 Penalties for failure to make returns, etc. and for deliberately or carelessly making incorrect returns

The provisions of *Chapter 1* dealing with income tax and corporation tax penalties and *Chapter 3B* dealing with penalties for false returns etc are applied for the purposes of capital gains tax subject to any necessary modifications, and *sections 1052* (penalties for failure to make certain returns, etc), *1053* (penalties for fraudulently or negligently making incorrect returns, etc), *1054* (increased penalties in case of bodies of persons), and *1077E* (penalty for deliberately or carelessly making incorrect returns etc) as so applied, are to be construed for capital gains tax purposes as if references to the following sections were included in *Schedule 29* — (1)

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Returns by issuing houses, stockbrokers, auctioneers, etc: <b>section 914</b>	Appeals against assessments: <b>section 945</b>	Deduction from consideration on disposal of certain assets: <b>section 980</b>
Returns by nominee shareholders: <b>section 915</b>		
Returns by party to a settlement: <b>section 916</b>		
Returns relating to non-resident companies and trusts: <b>section 917</b>		

Where a person has been required by a notice or precept under — (2)

- **section 876** (notice of liability to tax),
- **section 877** (returns by persons chargeable),
- **section 878** (persons acting for incapacitated persons and non-residents),
- **section 879** (returns of chargeable gains),
- **section 880** (partnership returns),
- **section 888** (returns, etc by lessors, lessees and agents),
- **section 900** (power to require production of accounts and books), or
- **Schedule 1, paragraph 1** (holder of mineral licence),

as applied for capital gains tax purposes by **section 913** or under **sections 914 to 917** inclusive (see description under **column 1** above) or **section 980** (see description under **column 3** above) to do any act of a kind mentioned in any of those provisions, and that person fails to comply with that notice or precept, or deliberately or carelessly makes, delivers, furnishes or produces an incorrect return, statement declaration, list, account, particulars or other document, or makes any false statement or representation under any of those provisions, the penalties and fines applicable under **Chapter 1** and **Chapter 3B** applies to that person for the purposes of capital gains tax as they apply to such failure or act for the purposes of income tax.

[For further information see separate notes on the sections in **Chapter 1** and **Chapter 3B** with particular reference to **sections 1052, 1053, 1054** and **1077E**.]

## CHAPTER 3A

### *Determination of penalties and recovery of penalties*

#### **Overview**

**Chapter 3A** concerns the determination of penalties and the recovery of penalties. It sets out the definitions of certain terms used in the Chapter. It provides a mechanism by which a Revenue officer may form an opinion that a person is liable to a penalty and convey that opinion to the person. It also sets out how a Revenue officer may amend an opinion and how, in the absence of a timely response from a person, the Revenue officer may make an application to a relevant court for a determination. In addition, it provides for the recovery of penalties following a court determination including the procedures to be followed where a person has died.

#### **1077A Interpretation (Chapter 3A)**



## Summary

This section provides definitions of certain terms used in the Chapter.

## Details

“the Acts” means-

- (a) the Tax Acts,
- (b) the Capital Gains Tax Acts,
- (c) **Parts 18A, 18B, 18C and 18D,**
- (ca) **Part 22A,**
- (d) the Value-Added Tax Consolidation Act 2010, and the enactments amending or extending that Act,
- (e) the Capital Acquisitions Tax Consolidation Act 2003 and the enactments amending or extending that Act,
- (f) the Stamp Duties Consolidation Act 1999, and the enactments amending or extending that Act,
- (g) the statutes relating to the duties of excise and to the management of those duties,
- (h) the Customs Acts,
- (i) the Finance (Local Property Tax) Act 2012,

and any instrument made thereunder and any instrument made under any other enactment relating to tax.

“relevant court” means the District Court, the Circuit Court, or the High Court.

“Revenue officer” means an officer of the Revenue Commissioners.

“tax” means any tax, duty, levy, or charge under the care and management of the Revenue Commissioners.

## 1077B Penalty notifications and determinations

### Summary

This section provides that a Revenue officer may form an opinion that a person is liable to a penalty or penalties as provided for in the Acts, and will give notice of such opinion to the person. The officer may alter or add to that opinion at a later date. If the person who is the subject of that notice of opinion or notice of amended opinion does not agree in writing with the opinion within 30 days of its issue, a Revenue officer may apply to a “relevant court” – the court in question will depend on the size of the penalty and the jurisdictional limits as provided for in legislation – to determine that the person is liable to the penalty or penalties.

A copy of the application to court by the Revenue officer will be issued to the person named in the application. The court will determine whether or not the person is liable to a penalty specified in the court application. This section has effect from 24 December 2008, and applies to any act or omission giving rise to a liability to a penalty whether arising before, on or after that date, but will not apply to any penalty paid before that date.

### Details

In the absence of an agreement that the person is liable to a penalty or following the failure of a person to pay a penalty, a Revenue officer may form an opinion that the person is liable to a penalty. The Revenue officer will notify the person in writing (I)

outlining the sections of the Acts under which the penalty arises, the circumstances in which they are liable to a penalty, the amount of the penalty and any other details that the Revenue officer considers necessary.

A Revenue officer may alter or add to the opinion at a later date. (2)

Where a person to whom the notice issued does not within 30 days agree and pay the penalty, the Revenue officer may make an application to the relevant court to determine that the person is liable to a penalty. (3)

A copy of the application to the relevant court will be issued to the person to whom the application relates. (4)

This section has effect from 24 December 2008 and applies to any act or omission giving rise to a liability to a penalty whether arising before, on or after that date but will not apply to any penalty paid before that date. (5)

### 1077C Recovery of penalties

#### Summary

This section provides that where, following application by a Revenue officer, a court has determined that a person is liable to a penalty or penalties, the court may also make an order for recovery of those penalties, and the penalties shall be subject to the same collection mechanism as a tax under the Tax Acts. This section also sets the due date from which a penalty is due and specifies the timescale for acts or omissions giving rise to a liability to a penalty.

#### Details

Where a court has determined that a person is liable to a penalty, then the court shall also make an order as to the recovery of that penalty, and the penalty shall be subject to the same collection mechanism as a tax under the Tax Acts. (1)(a) & (b)

A penalty is due and payable from the date- (2)(a),(b) & (c)

- that a person or someone on behalf of a person agrees a liability to a penalty,
- Revenue had agreed to take a specified sum from the person in settlement of his liabilities, including liability to a penalty, as provided for in *section 1086(2)(c)* and *(2)(d)* (publication of names of tax defaulters), or
- a court has determined that the person is liable to that penalty.

This section applies to any tax liability arising before, on or after 24 December 2008. (3)

### 1077D Proceedings against executor, administrator or estate

#### Summary

This section concerns cases where a penalty has been agreed but the individual dies before the penalty has been paid.

#### Details

Before an individual dies, if he or she, or someone on his or her behalf- (1)(a) to (d)

- had agreed in writing with a Revenue officer that the person was liable to a penalty under the Tax Acts,
- Revenue had agreed to take a specified sum from the individual in settlement of his liabilities, including liability to a penalty, as provided for in *section 1086(2)(c)*

- and (2)(d) (publication of names of tax defaulters), or
- a relevant court had determined that the individual was liable to a penalty, any proceedings for recovery of the penalty which could have been brought before that individual's death may be brought against his or her executor or administrator, and shall be payable as a debt from the deceased's estate.

However, such proceedings may not be brought outside the time limits stated in **section 1048(2)** (no assessment can be made later than 3 years after the end of the year of assessment in which the deceased person died where the grant of probate or letters of administration were made in that year). (2)

In any other case, no assessment can be made later than 2 years after the end of the year of assessment in which such grant was made. However, where the executor or administrator delivers an additional affidavit under section 48 of the Capital Acquisitions Tax Consolidation Act 2003, or is liable to deliver such an additional affidavit, has been so notified by the Revenue Commissioners to do so and did not deliver the additional affidavit in the year of assessment in which the deceased person died, such assessment may be made at any time before the end of the 2 years after the end of the year of assessment in which the additional affidavit was or is delivered).

## CHAPTER 3B

*Income Tax, Corporation Tax and Capital Gains Tax: Penalties for false returns, etc.*

### Overview

This Chapter provides for penalties for deliberately or carelessly submitting an incorrect return, declaration, statement or accounts, or for deliberately or carelessly failing to submit a return or statement, as appropriate. It provides for a specific level of penalty to apply depending on the category into which the person's tax default falls.

### 1077E Penalty for deliberately or carelessly making incorrect returns, etc.

#### Summary

This section, which applies up to the passing of the Finance Act 2021, puts the practices as regards the level of tax-gear penalties sought in Revenue audits and investigations on a statutory footing. These practices are broadly along the same lines expressed in the Code of Practice for Revenue Auditors. The section also provides for the removal of the words "fraud" or "neglect" to be replaced with words such as "deliberate" and "careless".

#### Details

**Subsection (1)** defines various terms used in the section. (1)

"the Acts" means the Tax Acts, the Capital Gains Tax Acts, **Parts 18A, 18B, 18C and 18D** of this Act and the Finance (Local Property Tax) Act 2012;

"carelessly" means failure to take reasonable care;

"liability to tax" means a liability to the amount of the difference specified in **subsection (11)** or **(12)** arising from any matter referred to in subsection **(2), (3), (5)** or **(6)**;

"period" means a year of assessment, an accounting period, a return period as defined in **section 530** or an income tax month as defined in **section 983**, as the context requires;

"prompted qualifying disclosure" in relation to a person, means a qualifying disclosure that has been made to the Revenue Commissioners or to a Revenue officer in the period

between—

- (a) the date on which the person is notified by a Revenue officer of the date on which an investigation or inquiry into any matter occasioning a liability to tax of that person will start, and
- (b) the date that the investigation or inquiry starts;

“qualifying disclosure” is a disclosure of complete information in relation to, and full particulars of, all matters occasioning a liability to tax that gives rise to a penalty made in writing and accompanied by -

- (a) a declaration, to the best of that person’s knowledge, information and belief, made in writing that all matters contained in the disclosure are correct and complete; and
- (b) a payment of the tax and duty and interest on late payment of that tax and duty.

In addition –

- all qualifying disclosures (prompted and unprompted) in the ‘deliberate behaviour’ category of tax default 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, that were previously undisclosed; and
- in the case of a prompted qualifying disclosure in the ‘careless behaviour’ category of tax default, the disclosure must state the amounts of all liabilities to tax and interest within the scope of the proposed audit or audit inquiry.

“Revenue officer” means an officer of the Revenue Commissioners;

“tax” means income tax, corporation tax, capital gains tax, domicile levy, income levy, parking levy, universal social charge or local property tax;

“unprompted qualifying disclosure” in relation to a person, means a qualifying disclosure that the Revenue Commissioners are satisfied has been voluntarily furnished to them before any investigation or inquiry had been started by them or by a Revenue officer into any matter occasioning a liability to tax of that person.

**Subsection (2)** provides that where a person deliberately makes an incorrect return, declaration, claim, statement or accounts to Revenue, that person will be liable to a penalty. (2)

**Subsection (3)** provides that where a person deliberately fails to make a return or statement, when required to do so, that person shall be liable to a penalty. (3)

**Subsection (4)** outlines the penalties which apply to the circumstances outlined in **subsections (2) and (3)**. In both cases, the maximum penalty is equal to the amount of underpaid tax, and this applies where the person subject to the penalty has not co-operated with Revenue. For **subsection (2)**, that maximum is the difference between the tax the person should have paid if the return was correct, and the tax payable on the basis of the incorrect return. For **subsection (3)**, that maximum is the difference between the tax the person should have paid if that person had filed a return which was correct and paid the tax due per the correct return, and the tax, if any, the person paid in the absence of the return. (4)

For both **subsections (2) and (3)**, where the person co-operates fully with Revenue but does not make a qualifying disclosure, the penalty will be reduced to an amount equal to 75% of the tax underpaid; where the person co-operates fully with Revenue and makes a

prompted qualifying disclosure (for example, after receiving an audit letter from Revenue), the penalty is reduced to an amount equal to 50% of the tax underpaid; and where the person co-operates fully with Revenue and makes an unprompted qualifying disclosure (that is, before the person has been contacted by Revenue, in circumstances where the person has no reason to believe Revenue has commenced an inquiry or investigation into the person's tax affairs) the penalty is reduced to an amount equal to 10% of the tax underpaid.

**Subsection (5)** provides that where a person carelessly but not deliberately delivers an incorrect return, makes an incorrect statement, claim or declaration or submits incorrect accounts, that person will be liable to a penalty. (5)

**Subsection (6)** provides that where a person carelessly but not deliberately fails to make a return or statement when required to do so, that person will be liable to a penalty. (6)

**Subsection (7)** outlines the penalties that apply to the circumstances outlined in **subsections (5) and (6)**. (7)

In the case of **subsection (5)**, the penalty is the difference between the tax the person should have paid if the return was correct and the tax payable on the basis of the incorrect return, referred to as the tax underpaid. (7)(a)

In the case of **subsection (6)**, the penalty is the difference between the tax the person should have paid if that person had filed a return which was correct, and the tax, if any, paid in the absence of the return. This difference is also referred to as the tax underpaid.

Where the penalty due exceeds 15% of the total correct tax due, it is reduced to 40% and to 20% in other cases.

Where-

(7)(b)

- the penalty exceeds 15% of the underpayment and the person liable cooperated fully with any investigation, the penalty is reduced to 30% of the tax underpaid, to 20% of the tax underpaid where a prompted voluntary disclosure is made and to 5% of the tax underpaid where an unprompted voluntary disclosure is made, or
- the penalty due is less than 15% of the total correct tax due and the person cooperated fully with any investigation, the penalty is reduced to 15% of the tax underpaid, to 10% of the tax underpaid where a prompted qualifying disclosure is made and to 3% of the tax underpaid where an unprompted qualifying disclosure is made.

**Subsection (8)** provides for a penalty where a person deliberately or carelessly furnishes, gives, produces or makes any incorrect return, information, certificate, document, record, statement, particulars, account or declaration of a kind mentioned in **column 2 or 3 of Schedule 29**. The penalty in the case of carelessness is €3,000 and, in the case of deliberateness, is €5,000. (8)

**Subsection (9)** provides that where a person submits a return, statement, declaration or accounts, neither deliberately nor carelessly, and it subsequently comes to the person's notice that the submission was incorrect, then the person must remedy the error without unreasonable delay and, failing that, the incorrect return, statement, declaration or accounts will be treated as having been deliberately made. (9)

**Subsection (10)** provides that apart from **section 1077D(2)** (the time limit relating to deceased persons), proceedings or applications for recovery of any penalty may exceed the general time limit of six years. (10)

**Subsection (11)** provides for the amount on which the penalty is based for a person who has made a return. This is defined as the difference between the amount of tax payable on the basis of the incorrect return, statement, declaration or account and the amount so payable if the submission had been correct. (11)

**Subsection (12)** provides for the amount on which the penalty is payable for a person who has not made a return of income. This is defined as the difference between the amount of tax paid before the start of any enquiry or investigation by the Revenue Commissioners and the amount of tax that would have been payable on the basis of a correct return for the period. (12)

**Subsection (13)** provides that where a second qualifying disclosure is made by a person within five years of that person's first qualifying disclosure in the circumstances outlined in **subsection (2)** or **(3)** and where a person cooperates with Revenue and makes a prompted qualifying disclosure, the penalty is reduced to an amount equal to 75% of the tax underpaid; and where the person cooperates with Revenue and makes an unprompted qualifying disclosure, the penalty is reduced to 55% of the tax underpaid. (13), (13)(a)

Where, in the circumstances outlined in **subsection (5)** or **(6)** and the tax underpaid exceeds 15% of the total correct tax due and the person cooperated fully with any investigation and made a prompted qualifying disclosure, the penalty is reduced to 30% of the tax underpaid and to 20% where an unprompted voluntary disclosure is made. (13)(b)

**Subsection (14)** provides that where a third or subsequent qualifying disclosure is made within five years of that person's second disclosure, the full penalty as outlined in **subsections (11)** and **(12)**, as appropriate, will apply. (14)

**Subsection (15)** provides that matters referred to in the definition of a prompted or unprompted qualifying disclosure do not include matters occasioning a liability to tax relating to a person that, before the disclosure to Revenue is made, is one of a class of persons being investigated by Revenue or a statutory body, a person who is within the scope of an enquiry being carried out wholly or partly in public or a person who is linked, or about to be linked, publicly with such matters. (15)

**Subsection (15A)** provides that, with effect from 1 May 2017, a disclosure in relation to a person shall not be a qualifying disclosure in two situations and thus cannot avail of the penalty mitigation arrangements in respect of qualifying disclosures provided for in **subsections (4)** and **(7)**. (15A)

The first situation is where the disclosure relates directly or indirectly to "offshore matters" as defined in the subsection. The definition of "offshore matters" is linked to both the OECD Standard for Automatic Exchange of Financial Account Information in tax matters (i.e. the Common Reporting Standard) and to the EU Directives relating to administrative cooperation and mandatory exchange of information in the field of taxation, but essentially covers any income, gains, accounts or assets, accruing, arising, situated or located outside of the State.

The second situation is where the matters being disclosed relate solely to onshore tax defaults in circumstances where the person has, before the date of the disclosure, certain (undisclosed) offshore matters that are known or become known to Revenue at any time and which give rise to a penalty other than a specified penalty.

Specified penalty is defined in the subsection in terms of the lowest level of "careless default" penalty quantified in **subsection (7)(b)(II)(A)** and in the equivalent provisions of the Capital Acquisitions Tax Consolidation Act 2003, the Value-Added Tax Consolidation Act 2010 and the Stamp Duties Consolidation Act 1999. In essence, this means that if the penalty applying to the undisclosed offshore matters is in the category

of careless rather than deliberate default, does not have significant tax consequences (i.e. the underpayment did not exceed 15 per cent of the total tax due) and the person co-operates fully with any Revenue investigation, the disclosure in relation to the onshore tax defaults would be considered a qualifying disclosure and the penalty mitigation arrangements in respect of qualifying disclosures provided for in **subsections (4) and (7)** would apply.

**Subsection (16)** provides that the relevant period for calculating the amount on which the penalty is based shall be in relation to anything delivered, made or submitted in any period, that period, the next period and any preceding period, and that the amount of tax payable shall not, in relation to a partnership, include any tax not chargeable in the partnership name. **(16)**

Subsection (17) provides that any accounts submitted on behalf of a person shall be deemed to have been submitted by the person unless that person proves that they were submitted without that person's consent or knowledge. **(17)**

This section applies only in respect of any disclosure made, act done or omission made up to the passing of the Finance Act 2021. **(18)**

## **1077F Penalty for deliberately or carelessly making incorrect returns, etc.**

### **Summary**

Section 1077F provides for penalties for failure to file returns or for filing incorrect returns. For the most part, section 1077F reproduces provisions previously contained in section 1077E but these provisions have been reordered to simplify the calculation of the appropriate tax geared penalty and the application of the disclosure regime. The section also provides a legislative basis for not charging a penalty for technical adjustments, innocent errors and cases where total defaults are below €6,000. Section 1077F amends the calculation of a tax geared penalty in non-filer cases to ensure that a tax geared penalty applies. It also removes the prohibition on qualifying disclosures in offshore cases.

### **Details**

Subsection (1) defines various terms used in the section. These definitions are similar to those contained in the current section 1077E TCA. **(1)**

“the Acts” means the Tax Acts, the Capital Gains Tax Acts, **Parts 18A, 18B, 18C, 18D and 22A** of this Act and the Finance (Local Property Tax) Act 2012;

'carelessly' means failure to take reasonable care;

'liability to tax' means a liability to the amount of the difference specified in subsection (3) or (5) arising from any matter referred to in subsection (2) or (4);

'period' means a year of assessment, an accounting period, a return period as defined in section 530 or an income tax month as defined in section 983, as the context requires;

'prompted qualifying disclosure', in relation to a person, means a qualifying disclosure

that has been made to the Revenue Commissioners or to a Revenue officer in the period between the date on which the person is notified by a Revenue officer of the date on which an investigation or inquiry into any matter occasioning a liability to tax of that person will start, and the date that the investigation or inquiry starts;

'qualifying disclosure', in relation to a person, is a disclosure of complete information in relation to, and full particulars of, all matters occasioning a liability to tax that gives rise to a penalty made in writing and accompanied by –

- a declaration, to the best of that person's knowledge, information and belief, made in writing that all matters contained in the disclosure are correct and complete; and
- a payment of the tax and duty and interest on late payment of that tax and duty

'Revenue officer' means an officer of the Revenue Commissioners;

'tax' means any income tax, corporation tax, capital gains tax, domicile levy, income levy, parking levy, universal social charge or local property tax;

'unprompted qualifying disclosure', in relation to a person, means a qualifying disclosure that the Revenue Commissioners are satisfied has been voluntarily furnished to them -

- (a) before an investigation or inquiry had been started by them or by a Revenue officer into any matter occasioning a liability to tax of that person, or
- (b) where the person is notified by a Revenue officer of the date on which an investigation or inquiry into any matter occasioning a liability to tax of that person will start before that notification.

Subsection (2) provides that where a person deliberately or carelessly makes an incorrect return, declaration, statement or accounts to Revenue, that person will be liable to a penalty. (2)

Subsection (3) sets out the amount of the penalty for a person who has deliberately or carelessly made an incorrect return. This is defined as the difference between the amount of tax payable on the basis of the incorrect return, statement, declaration or account and the amount so payable if the submission had been correct. (3)

Subsection (4) provides that where a person deliberately or carelessly fails to make a return or statement, when required to do so, that person will be liable to a penalty. (4)

Subsection (5) outlines the amount of the penalty which applies to the circumstances outlined in subsection (4). It is defined as the difference between the amount of tax paid before the notification of any inquiry or investigation by the Revenue Commissioners and the amount of tax that would have been payable on the basis of a correct return for the period. (5)

Subsection (6) sets out the treatment, for penalty purposes, of deliberate behaviour defaults. Paragraph (a)(i) explains that where a person deliberately files an incorrect return or deliberately fails to file a return, that person will be liable to the penalty as set out in subsection (3) or (5), as appropriate; that is the amount of underpaid tax. (6)

Paragraph (a)(ii) provides for a reduction of this penalty amount where the person co-operates with Revenue. In these circumstances the penalty will be reduced to 75% of the



tax underpaid.

Where the person cooperates with Revenue and makes a prompted qualifying disclosure (for example, after receiving an audit letter from Revenue) paragraph (a)(iii) provides for a further reduction of this penalty to an amount equal to 50% of the tax underpaid; and paragraph (a)(iv) reduces the penalty to an amount equal to 10% of the tax underpaid, where the person co-operates with Revenue and makes an unprompted qualifying disclosure (that is, before the person has been contacted by Revenue, in circumstances where the person has no reason to believe Revenue has commenced an inquiry or investigation into the person’s tax affairs).

Paragraph (b) sets out the penalty reduction available in circumstances where a person makes a second qualifying disclosure within five years of their first qualifying disclosure. In these circumstances, the penalty amount is that provided for in subsection (3) or (5), as appropriate.

However, paragraph (b)(ii) provides that where a second qualifying disclosure is made by a person within five years of that person’s first qualifying disclosure and where a person cooperates with Revenue and makes a prompted qualifying disclosure, the penalty is reduced to an amount equal to 75% of the tax underpaid; and where the person cooperates with Revenue and makes an unprompted qualifying disclosure, the penalty is reduced to 55% of the tax underpaid.

Paragraph (c) explains that where a third or subsequent qualifying disclosure is made within five years of that person’s second disclosure, the full penalty as outlined in subsections (3) and (5), as appropriate, will apply.

Subsection (7) deals with careless defaults with “significant” consequences”. Paragraph (a) introduces a new definition of the phrase “significant consequences”. This phrase is used in Revenue’s Code of Practice for Revenue Audits and other Compliance Interventions but was not previously defined. A default will be considered to have “significant consequences” in circumstances where the tax underpaid exceeds 15% of the total correct tax due. (7)

Paragraph (b) sets out the penalty applicable where a person’s default is categorised as careless with significant consequences. In these circumstances, the penalty amount calculated in accordance with subsection (3) or (5), as appropriate will be reduced to 40%. Where that person cooperated fully with any inquiry or investigation, the penalty is reduced to 30% of the tax underpaid, to 20% of the tax underpaid where a prompted voluntary disclosure is made and to 5% of the tax underpaid where an unprompted voluntary disclosure is made.

Paragraph (c) sets out the penalty reduction available in circumstances where a person makes a second qualifying disclosure within five years of their first qualifying disclosure. In these circumstances, the penalty amount provided for in subsection (3) or (5), as appropriate is reduced to 40%. However, that where a second qualifying disclosure is made by a person within five years of that person’s first qualifying disclosure and that person cooperates with Revenue and makes a prompted qualifying disclosure, the penalty is reduced to an amount equal to 30% of the tax underpaid; and where the person cooperates with Revenue and makes an unprompted qualifying disclosure, the penalty is reduced to 20% of the tax underpaid.

Paragraph (d) explains that where a third or subsequent qualifying disclosure is made in

respect of a careless default with significant consequences, within five years of that person's second disclosure, the penalty will be the amount set out in subsections (3) and (5), as appropriate, reduced to 40%.

Subsection (8) outlines the penalty where a person's default is in the careless category without significant consequences. In these circumstances the penalty amount set out in subsections (3) or (5), as appropriate is reduced to 20%. Where the person cooperated fully with any inquiry or investigation, the penalty is reduced to 15% of the tax underpaid, to 10% of the tax underpaid where a prompted qualifying disclosure is made and to 3% of the tax underpaid where an unprompted qualifying disclosure is made. (8)

Subsection (9) puts the non- application of a penalty where the aggregate amount of a person's tax default is less than €6,000 and the default is not in the deliberate behaviour category on a legislative basis and mirrors the Code of Practice for Revenue Audits and other Interventions. (9)

Subsection (10) legislates for two further administrative practices currently provided for in the Code of Practice. These are innocent error and technical adjustment. Technical adjustment permits taxpayers to make amendments to their tax returns without incurring a penalty where the amendment arises from a difference in the interpretation or application of the legislation. Similarly, amendments may be made, without attracting a penalty where the taxpayer has made an innocent error in completing their return. Such errors are those which are not deliberate and not in any way attributable to a failure by the taxpayer to take reasonable care to comply with their tax obligations. (10)

Subsection (11) provides a penalty where a person deliberately or carelessly furnishes, gives, produces or makes any incorrect return, information, certificate, document, record, statement, particulars, account or declaration of a kind mentioned in Schedule 29. The penalty is €3,000 where the person has acted carelessly and €5,000 where the person has acted deliberately. This was previously provided for in section 1077E(8) TCA. (11)

Subsection (12) provides that where a person submits a return, statement, declaration or accounts, neither deliberately nor carelessly, and it subsequently comes to the person's notice that the submission was incorrect, then the person must remedy the error without unreasonable delay and failing that, the incorrect return, statement, declaration or accounts will be treated as having been deliberately made. This was previously provided for in section 1077E(9) TCA. (12)

Subsection (13) provides that apart from the time limit relating to deceased persons, proceedings or applications for recovery of any penalty may exceed the general time limit of six years. (13)

Subsection (14) provides that matters referred to in the definition of a prompted or unprompted qualifying disclosure do not include matters occasioning a liability to tax relating to a person that is one of a class of persons being investigated by Revenue or a statutory body, a person who is within the scope of an enquiry being carried out wholly or partly in public or a person who is linked, or about to be linked, publicly with such matters. (14)

Subsection (15)(a) provides that the relevant period for calculating the amount on which the penalty is based shall be, in relation to anything delivered, made or submitted in any period, that period, the next period and any preceding period. (15)

Subsection (15)(b) explains that, for the purposes of subsection (15), the references in subsections (3) and (5) to the amount of tax payable shall not, in relation to a partnership, include any tax not chargeable in the partnership name.

Subsection (16) provides that any accounts submitted on behalf of a person shall be deemed to have been submitted by the person unless that person proves that they were submitted without their consent or knowledge. (16)

## CHAPTER 4 *Revenue offences*

### Overview

This Chapter sets out what constitutes a revenue offence in respect of which there can be a criminal sanction. In addition, certain issues relating to the trial of such an offence are catered for *viz.* presumptions and information that can be given to the jury where the offender is being tried on indictment. Finally, obligations are placed on company auditors and advisors where they become aware that the company has committed certain offences.

### 1078 Revenue offences

#### Summary

This section criminalises (i.e. makes an offence) tax/duty evasion in general and specifically various actions or failures in the context of obligations imposed by all the statutes and instruments dealing with taxes and duties under the care and management of the Revenue Commissioners. The section also provides for the maximum liability of a person convicted of such an offence – the actual liability is a matter for the Court. The Probation Act does not apply in respect of these offences.

#### Details

#### *Definitions*

“the Acts” are defined in a list of statutes and instruments which cover the taxes and duties under the care and management of the Revenue Commissioners. The offences detailed in the section apply in relation to matters required to be done by the Acts or to actions undertaken in relation to tax. The Acts concerned are — (1)

- the Customs Acts,
- the statutes relating to excise duties and the management of those duties,
- the Tax Acts,
- ***Parts 18A, 18B, 18C and 18D,***
- ***Part 22A,***
- the Capital Gains Tax Acts,
- the Value-Added Tax Consolidation Act 2010 and any amendments or extensions to that Act,
- the Capital Acquisitions Tax Consolidation Act 2003 and any amendments or extensions to that Act,
- the statutes relating to stamp duty and the management of that duty,
- Part VI of the Finance Act, 1983 (residential property tax), and
- the Finance (Local Property Tax) Act 2012.

“authorised officer” is an officer of the Revenue Commissioners authorised in writing to exercise any of the powers conferred by the Acts.

“tax” is any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

### **General Revenue offences**

An offence is created where a person is— (1A)(c)

- knowingly concerned in the fraudulent evasion of tax by the person or any other person,
- knowingly concerned in, or is reckless as to whether or not the person is concerned in, facilitating the fraudulent evasion of tax by another person or the commission by another person of an offence under **subsection (2)**, or
- knowingly concerned in the fraudulent evasion or attempted fraudulent evasion of any prohibition or restriction on importation for the time being in force, or the removal of any goods from the State, in contravention of any provision of the Acts.

Explanations are provided for the concepts of “facilitating”, “fraudulent evasion of tax” and what it means for a person to be “reckless” in the context of facilitating tax evasion. (1A)(a), (b)

### **Specific Revenue offences**

A person is guilty of an offence under this section if that person —

- impersonates an officer of the Revenue Commissioners with the intention to deceive, (1B)
- knowingly or wilfully furnishes or delivers any incorrect return, statement, accounts or information in connection with any tax, (2)(a)
- knowingly aids, abets, assists, incites or induces another person to make or deliver, knowingly or wilfully, any incorrect return, statement or accounts in connection with any tax, (2)(b)
- knowingly or wilfully possess or uses an electronic device (a zapper), for the purpose of tax evasion that alters computer records without preserving the original data, (2)(ba)
- provides or makes available an electronic device (a zapper), for the purpose of tax evasion, that alters computer records without preserving the original data, (2)(bb)
- deliberately makes false claims for relief, or exemption from, or repayment of any tax covered by the section, (2)(c)
- knowingly or wilfully issues or produces incorrect invoices, receipts, instruments or other documents in connection with any tax, (2)(d)
- fails in relation to dividend withholding tax (DWT) to — (2)(dd)
  - make a deduction of DWT required under **section 172B(1)**,
  - pay the DWT deducted to the Collector-General within the time specified in **section 172K(2)**,
  - make a reduction under **section 172B(2)** in the amount of additional share capital to be issued in place of a cash distribution,
  - pay (having made such a reduction) the amount referred to in **section 172B(2)(d)** (which amount is treated as a deduction of DWT) to the Collector-General within the time specified in **section 172K(2)**, or
  - pay an amount referred to in **section 172B(3)(a)** (amount to be paid in case of non-cash distributions other than scrip dividends, and to be treated as a deduction of DWT) to the Collector-General within the time specified in **section 172K(2)**,

- fails in relation to deposit interest retention tax (DIRT) to — (2)(e)
  - make a deduction of DIRT under *section 257(1)*,
  - pay the DIRT deducted to the Collector-General within the time specified in *section 258(3)*, or
  - pay an amount on account of DIRT to the Collector-General within the time specified in *section 258(4)*,
- fails, as an investment undertaking, to pay to the Collector-General the appropriate tax required to be paid under *section 739E* within the time specified in *section 739F*, (2)(f)
- fails to comply with the requirement in *section 960S(4)* to provide security in respect of certain fiduciary taxes, (2)(fa)
- fails without reasonable excuse to comply with the provisions of the Acts which require — (2)(g)
  - the furnishing of a return of income, profits or gains or the sources of such income, profits or gains for tax purposes,
  - the furnishing of any other return, certificate, notification, particulars, statement or evidence for tax purposes,
  - the keeping and retention of books, records, accounts and other documents for tax purposes,
  - the production of books, records, accounts and other documents when requested to do so for tax purposes,
- knowingly or wilfully destroys, defaces or conceals from an authorised officer, within the time limits specified for their retention, any records or any written or printed material in any form (including mechanically or electronically stored, maintained or preserved, even if the material is not stored in legible form) which a person is obliged under the Acts to keep, issue or produce for inspection, (2)(h)
- knowingly or wilfully falsifies, conceals, destroys or otherwise disposes of (or causes or permits same to happen) books, records or other documents which the person has been required to deliver or, as the case may be, make available under *section 900(3)* or under a Revenue notice served under *section 900, 902, 906A* or *907* or by order of the High Court under *section 901, 902A, or 908*, (2)(hh)
- fails to remit PAYE or VAT within the statutory time limits, (2)(i)
- fails to deduct, or remit to the Collector-General, relevant contracts tax deducted under *Chapter 2 of Part 18*, (2)(ii)
- fails to deduct, or remit to the Collector-General, local property tax deducted under Part 10 of the Finance (Local Property Tax) Act 2012, (2)(iii)
- obstructs or interferes with an officer of the Revenue Commissioners or any other person in the exercise or performance of powers or duties under the Acts for tax purposes. (2)(j)

***Liability of a person convicted of a revenue offence***

The following liability applies to a person convicted of any offence under this section — (3)

- on summary conviction of an offence committed on or after 14 March 2008, a fine not exceeding €5,000 (€3,000 for offences committed before that date) – which may be mitigated to not less than one fourth part of such fine – or at the discretion of the court, a term of imprisonment not exceeding 12 months, or both, and
- on conviction on indictment, a fine not exceeding €126,970 or at the discretion of the court, a term of imprisonment not exceeding 5 years, or both.

Where a person has been convicted of an offence referred to in *subsection (2)(g)(i), (ii)* (3A)

or (iv) (failure to make returns, provide certain information or produce records), the court can order compliance with the requirements, non-compliance with which resulted in the conviction.

Where a person who has been ordered to comply with the requirements of *subsection (2)(g)(i), (ii) or (iv)* fails or refuses to do so, he/she will be guilty of an offence under this section. (3B)

Section 13 of the Criminal Procedure Act, 1967 will apply in relation to an offence under this section. However, where that procedure is followed in the case of an offence under this section, the maximum liability under this section of €5,000 and imprisonment for 12 months will apply, rather than the amount and period set out in section 13 of the Criminal Procedure Act, 1967. (4)

### ***Directors, etc of bodies corporate***

Where an offence under this section is committed by a body corporate, any person who was a director, manager, secretary or other officer, or a member of the committee of management or other controlling authority of the body at the time of the offence can in certain circumstances be deemed to be personally guilty of the offence and proceeded against accordingly. This can happen where the offence was committed with the consent or connivance of the person concerned, or where the offence is attributable to any recklessness on the part of the person. (5)

### ***Returns and statements under this section***

In proceedings under this section, a return or statement delivered to an inspector or a Revenue official under any provision of the Acts and purporting to be signed by a person is deemed to have been so delivered and to have been signed by that person unless the contrary is proved. (6)

### ***Time limit***

Summary proceedings in respect of an offence under this section must be instituted before the expiration of 10 years from the commission of the offence or the incurring of the penalty, as may be appropriate. (7)

### ***Probation Act***

Section 1 of the Probation of Offenders Act, 1907 which allows a court, in dealing with a proven offence, to dismiss the charge or conditionally discharge the offender does not apply to an offence under this section. (8)

### ***Application of provisions***

The provisions of certain sections of this Act and of the Value-Added Tax Consolidation Act 2010 apply for the purposes of this section as they apply for the purposes of the provisions themselves, including in the case of such of those sections as are applied by the Capital Gains Tax Acts, the Corporation Tax Acts or Part VI of the Finance Act 1983 (Residential Property Tax) for the purposes of those sections as so applied. These provisions are designed to facilitate the administration of the tax system and are described below: (9)

- ***Sections 530U, 987(4) and 1052(4)*** (this includes these provisions as applied for capital gains tax purposes) provide that a certificate signed by an officer of the Revenue Commissioners certifying matters of fact as regards the issue of certain documents and the non-receipt of returns, etc is to be prima facie evidence in proceedings for the recovery of penalties in connection with income tax, corporation tax and capital gains tax matters.

- **Section 1053(3)** provides that where any incorrect return, statement, declaration or accounts had been made or submitted inadvertently and this later comes to the notice of the person who submitted it, then unless the error is remedied without unreasonable delay, the incorrect item is to be treated as having been negligently made or submitted by the person. This section applies up to the passing of the Finance (No. 2) Act 2008 (24 December 2008).
- **Section 1053(7)** provides that any accounts submitted on behalf of a person (for example, by an accountant) are deemed to have been submitted by that person unless the person proves that they were submitted without his/her consent or knowledge. This section applies up to the passing of the Finance (No. 2) Act 2008 (24 December 2008).
- **Section 1077E(9)** provides that where a person submits a return, statement, declaration or accounts, neither deliberately nor carelessly, and it subsequently comes to the persons notice that the submission was incorrect, then the person must remedy the error without unreasonable delay and failing that, the incorrect return, statement, declaration or accounts will be treated as having been deliberately made. This section applies after the passing of the Finance (No. 2) Act 2008 (24 December 2008).
- **Section 1077E(17)** provides that any accounts submitted on behalf of a person shall be deemed to have been submitted by the person unless that person proves that they were submitted without their consent or knowledge. This section applies after the passing of the Finance (No. 2) Act 2008 (24 December 2008).
- **Section 1068** provides that a person is deemed not to have failed to act within required time limits if —
  - within any further extension of such limits granted by the Revenue Commissioners that person does comply with the relevant requirements, or
  - that person had a reasonable excuse for non-compliance in the first instance and fulfilled the requirements without unreasonable delay after the excuse had ceased.
- **Section 1069** provides that, for the purposes of penalty proceedings, the fact that an assessment can no longer be varied on appeal is sufficient proof that the income on which the assessment is based actually arose to the taxpayer.
- Section 115(9) of the Value-Added Tax Consolidation Act 2010 provides that certificates signed by officers of the Revenue Commissioners of matters of fact shall be prima facie evidence in proceedings in respect of value-added tax matters.
- Section 116(16) of the Value-Added Tax Consolidation Act 2010 provides that any return, invoice, credit note, debit note, receipt, account, voucher, bank statement, estimate, statement, information book, document, record or declaration submitted on behalf of a person shall be deemed to have been submitted by that person unless the person proves that it was submitted without his/her consent or knowledge.

Any summons, notice, order or other document relating to proceedings or appeals against a judgement under this section may be served by an officer of the Revenue Commissioners. (10)

### **1078A Concealing facts disclosed by documents**

This section makes it an offence for a person to falsify, conceal, destroy or otherwise dispose of material that the person knows or suspects is or would be relevant to the investigation of a revenue offence. A person guilty of such offence is liable—

- on summary conviction, to a fine of up to €5,000 for an offence committed on or after 14 March 2008, (€3,000 for offences committed before that date) or imprisonment of up to 6 months or to both the fine and imprisonment; and

- on conviction on indictment, to a fine of up to €127,000 or imprisonment of up to 5 years or to both the fine and imprisonment.

### **1078B Presumptions**

This section creates certain presumptions as to the origin of certain documents and their contents in a civil or criminal prosecution by Revenue. These presumptions, which are rebuttable, are similar to the presumptions contained in the Competition Act 2002.

### **1078C Provision of information to juries**

This section allows the judge, in a trial of an indictable offence, to supply copies of certain documents to members of the jury to assist them in their understanding of the case being heard. Such documents can include, not only documents submitted in evidence and transcripts of the proceedings, but also an affidavit of an expert summarising transactions undertaken by the accused or others. However, any such expert must also be summonsed by the prosecution to attend the trial and may be required by the trial judge to give evidence.

### **1079 Duties of relevant person in relation to certain revenue offences**

#### **Summary**

This section provides that all auditors and tax advisers who become aware in the course of their normal work of material tax evasion or non-compliance committed by a client company must report this to the company and request that the matter be rectified or that the company should report the offence to Revenue. It further provides that if, at the end of 6 months, it is not established to the satisfaction of the auditor or adviser that the matter has been so rectified or reported, the auditor or adviser must cease to act as auditor, or cease to assist or advise the company in tax matters, for a period of either 3 years from the date of the (auditor/adviser's) report to the company or until the auditor or adviser is satisfied that the matter had been rectified or reported, whichever is the earlier. Any resignation under this section must also be reported to Revenue. Nothing in the section is to prevent a person assisting or advising a company in preparing for or conducting legal proceedings, either civil or criminal, which are extant or pending at the end of the 6 month period in question. The list of reportable offences all relate to serious tax evasion. The question of whether there is *material tax evasion* is a matter for the auditor or adviser in any particular case to assess taking account of his/her own professional standards and the requirements of the section.

#### **Details**

##### ***Definitions***

“the Acts” are defined in a list of statutes and instruments which cover the taxes and duties under the care and management of the Revenue Commissioners. The offences detailed in the section apply in relation to matters required to be done by the Acts or to actions undertaken in relation to tax. The Acts concerned are —

- the Customs Acts,
- the statutes relating to excise duties and the management of those duties,
- the Tax Acts,
- ***Parts 18A, 18B, 18C and 18D,***
- ***Part 22A,***
- the Capital Gains Tax Acts,



- the Value-Added Tax Consolidation Act 2010 and any amendments or extensions to that Act,
- the Capital Acquisitions Tax Consolidation Act 2003 and any amendments or extensions to that Act,
- the statutes relating to stamp duty and the management of that duty, and
- the Finance (Local Property Tax) Act 2012.

“appropriate officer” is an officer of the Revenue Commissioners nominated by them to whom notification of tax offences and resignations is to be delivered. The name of such officer and the address to which copies of notices under the section are to be delivered must be published in Iris Oifigiúil. (1) & (12)

“company” is any body corporate. The provision applies to companies whether public or private, limited or unlimited, and to co-operatives and friendly societies, but not to individuals (that is, sole traders or partners in a partnership who are taxed on an *individual* basis).

“relevant person” is —

- an auditor to a company appointed under the Companies Acts,
- a “public” auditor to an industrial or provident society or a friendly society, and
- any person who with a view to reward, assists or advises a company in the preparation or delivery of any information, declaration, return, records, accounts or other document which he/she knows will be, or is likely to be, used for any purpose of tax.

A person who assists or advises the company solely in the capacity as an employee of the company is not a “relevant person” for the purposes of the section provided the income for so assisting or advising is comprised *solely* of income taxed under the PAYE system. (1) & (2)

“relevant offence” defines the tax offences covered by the section. These are offences which consist of a company —

- knowingly or wilfully delivering, furnishing or causing to be furnished any incorrect return, statement, accounts or information in connection with any tax covered by this section (for example, an incorrect return of income for corporation tax purposes or false accounts of a business or any supporting statement or information which is incorrect),
- knowingly or wilfully claiming or obtaining relief or exemption from, or repayment of, any tax, being a relief, exemption or repayment to which there is no entitlement (an example would be the deliberate making of false claims),
- knowingly or wilfully issuing or producing any incorrect invoice, receipt, instrument or document in connection with any tax,
- knowingly or wilfully failing to comply with any provision of the Acts requiring the furnishing of a return of income, profits or gains, or of sources of income, profits or gains for the purpose of any tax (in this instance an offence is not to be regarded as committed by a company if it has made a return of income, profits or gains to Revenue in respect of an accounting period which falls wholly or partly into the period of 3 years immediately preceding the accounting period in respect of which the offence was committed).

“tax” is any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

### ***Duties of relevant persons***

A relevant person is obliged to take certain steps where he/she becomes aware in the course of examining the accounts of a company or assisting or advising the company in (3)

the preparation or delivery of any information, declaration, return, records, accounts or other document for the purposes of tax that the company has committed (or is in the course of committing) a relevant offence and the offence is of a material nature. The steps required to be taken by a relevant person are —

- he/she must communicate particulars of the offence in writing to the company without delay and request that, within 6 months of communicating with the company, the matter be rectified or that the company should notify an appropriate officer (of the Revenue Commissioners) of the offence, and
- he/she must cease to act, assist or advise as a relevant person unless it can be established that such rectification or notification has taken place.

Where a relevant person ceases to act, assist or advise the company under the section he/she must not so act, assist or advise for a period of 3 years from when particulars of the offence or offences were communicated to the company, or until rectification or notification has taken place, whichever is the earlier.

An exception to the latter obligation to cease to act, assist or advise as a relevant person (4) arises where a relevant person is advising or assisting a company in preparing for, or conducting, legal proceedings which are extant or pending 6 months after the time of communication to the company.

Where an auditor ceases to act for the company he/she must deliver a notice in writing to the company stating that he/she is ceasing to act and, within 14 days after that delivery, deliver a copy of the notice to an appropriate officer. (5)

#### ***Offences under this section***

A person is guilty of an offence under this section if he/she fails to comply with the requirements of **subsection (3)** or **(5)** or knowingly or wilfully makes an incorrect communication under **subsection (3)**. (6)

#### ***Penalties***

The penalties to which a relevant person is subject if convicted of an offence under this section are — (7)

- on summary conviction, a fine of €1,265 which may be mitigated to not less than one-fourth part of such fine, or
- on conviction on indictment, a fine not exceeding €6,345 or, at the discretion of the court, imprisonment for a term not exceeding 2 years, or to both the fine and imprisonment.

Under section 13 of the Criminal Procedure Act, 1967, which is adopted and adapted for the purposes of this section, there is a procedure whereby a person who pleads guilty in the District Court to an indictable offence will only be penalised to the extent of a maximum fine and prison sentence of €125 and 12 months respectively. However, where that procedure is followed in the case of an offence under this section, the maximum penalty will be €1,265 rather than the amount set out in section 13 of the Criminal Procedure Act, 1967. (8)

A time limit of 6 years from the date on which a relevant person is required under this section to communicate particulars of an offence in writing to a company applies to proceedings for offences under this section. This time limit overrules any provision to the contrary. (9)

#### ***Legal/professional privilege***

A relevant person who is accused of an offence under **subsection (6)(a)** has a good defence if it can be shown that he/she only became aware that a reportable offence had been committed by a company **after** they had been engaged by the company to assist in (10)

the preparation for litigation. The effect of this provision is to remove from the requirements of the section all legal advisers, barristers, solicitors or other professional advisers who have been engaged solely to assist in the preparation for litigation, thus preserving the established principle in Irish law of legal/professional privilege.

### ***Protection for relevant persons***

Where a relevant person has obligations under **subsections (3) and (5)** and complies with those obligations in the course of that person’s professional duty then, no liability or action can be taken against them in any court for so doing. **(11)**

### ***Commencement***

The section applies as respects a relevant offence committed by a company in respect of tax which is — **(13)**

- assessable by reference to accounting periods, for any accounting period beginning after the 30th June, 1995,
- assessable by reference to years of assessment, for the year of assessment 1995–96 and subsequent years,
- payable by reference to a taxable period, for a taxable period beginning after the 30th June, 1995,
- chargeable on gifts or inheritance taken on or after the 30th June, 1995,
- chargeable on instruments executed on or after the 30th June, 1995, or
- payable in any other case, on or after the 30th June, 1995.

## CHAPTER 5 *Interest on overdue tax*

### **Overview**

This Chapter charges interest in respect of overdue income tax, corporation tax and capital gains tax in normal circumstances and in cases where there is fraud or neglect. Provision is also made for the adjustment of interest paid where tax is revised by discharge or repayment due to the application of a tax relief.

### **1080 Interest on overdue income tax, corporation tax and capital gains tax**

#### **Summary**

This section provides the mechanism for the calculation of the interest payable on outstanding income tax, corporation tax and capital gains tax in respect of a given period of default.

#### **Details**

A number of terms used in the section, including “chargeable period”, “chargeable person”, “period of delay” and “relevant period”, are defined. **(1)**

The mechanism for the calculation of the interest payable on outstanding income tax, corporation tax and capital gains tax in respect of a given period of default is set out. **(2)(a) & (c)**

Interest is charged for each day or part of a day the tax remains unpaid from the date when the tax became due and payable until payment. The interest charge is calculated in different ways depending on whether the period during which the tax remains unpaid falls wholly within one of the time periods set out in the Table (see below) or whether it falls into two or more of such periods.

Where the period during which the tax remains unpaid falls into one such period the interest charge is calculated on the basis of multiplying the tax due by the appropriate percentage set out in the Table opposite the corresponding period during which the tax remains unpaid and then multiplying the answer by the number of days or parts of days the tax remains unpaid.

Where the tax remains unpaid for a period of time which falls into more than one of the periods set out in *column (1)* of the Table, then the interest is calculated separately (as per the preceding paragraph) for each such period. The resultant amounts are then aggregated to give the total amount of interest payable for the full period of delay.

TABLE	
(Period)	(Percentage)
(1)	(2)
From 6 April 1963 to 31 July 1971	0.0164%
From 1 August 1971 to 30 April 1975	0.0246%
From 1 May 1975 to 31 July 1978	0.0492%
From 1 August 1978 to 31 March 1998	0.0410%
From 1 April 1998 to 31 March 2005	0.0322%
From 1 April 2005 to 30 June 2009	0.0273%
From 1 July 2009 to the date of payment	0.0219%

For 1 January 2011 and subsequent years interest shall be charged on any underpayment arising on foot of the issue of a notice of assessment, statement of liability or a PAYE Balancing Statement. The interest rate to apply is calculated in accordance with the formula set out in *section 1080(2)(c)*. (2)(b)

The due date for collection of the undercharge is in accordance with *section 960*.

The interest is paid gross (that is, it is not subject to deduction of tax on payment) and is not allowed as a deduction in computing for tax purposes any income, profits or gains. The interest is deemed to be a debt due to the Minister for Finance for the benefit of the Central Fund and is payable to the Revenue Commissioners. (3)

The machinery for the recovery of tax charged and the rules of court relating to the recovery of tax apply to the recovery of unpaid interest as if such interest were part of the tax. PAYE regulations allow Revenue, in determining the appropriate tax credits and standard rate cut-off point for an employee for a year, to have regard to “*any tax remaining unpaid for any previous year which has not otherwise been recovered from the employee*”. This method of recovery of tax charged may also be used to collect any amount of interest payable. (4)

In addition, unpaid interest ranks equally with unpaid tax in relation to priority of debts in bankruptcy or liquidation proceedings.

In any proceedings for the recovery of interest, a certificate signed by an officer of the Revenue Commissioners stating that the amount of interest is due is evidence that such amount is due until the contrary is proven. Any certificate that purports to be so signed may be submitted in evidence without proof and is deemed to have been so signed until the contrary is proved. (5)

### **1080A Interest on overdue tax – supplementary provisions**

## Summary

This section provides for a reduced interest rate of approximately 3% per annum to apply from 01 August 2020 to taxes declared and owing to Revenue which are the subject of a payment agreement between the taxpayer and the Collector-General. The section applies to agreements currently in existence and where application to make such an agreement is made before 30 September 2020.

## Details

A number of terms used in the section, including “the Acts”, “declared liabilities”, “period of delay” and “tax”, are defined. (1)

Where a taxpayer has reached an agreement with the Collector-General to pay outstanding liabilities under the “care and management” provisions of the TCA or enters such an agreement before 30 September 2020, they may avail of a reduced interest rate of 3%. (2)(a) & (b)

Normal interest rates that apply to overdue taxes and duties are disapplied where an agreement in respect of payment of such declared taxes is made or applied for on or before 30 September 2020. (3)

Where an agreement has been reached on or before 30 September 2020, interest calculated in accordance with the formula set out in subsection (5) is charged from the 01 August 2020 (for existing phased payment arrangements) or where an agreement is not reached until after 01 August, then the date that agreement is made. (4)

Subsection (5) sets out the formula for the calculation of the reduced interest. It is calculated by reference to the number of days for which the tax remains unpaid beginning on 01 August 2020 or the date the agreement is made with the Collector General, at a rate of 0.0082% per day or part of a day. (5)

Where a person, who has entered into an agreement with the Collector General under subsection 2, fails to comply with the terms of that agreement, one of the interest provisions disapplied in subsection (3) will reapply with effect from the date of the breach of the terms of the agreement. (6)

The interest is paid gross (that is, it is not subject to deduction of tax on payment) and is not allowed as a deduction in computing for tax purposes any income, profits or gains. The interest is deemed to be a debt due to the Minister for Finance for the benefit of the Central Fund and is payable to the Revenue Commissioners. (7)

The machinery for the recovery of tax charged and the rules of court relating to the recovery of tax apply to the recovery of unpaid interest as if such interest were part of the tax. In addition, unpaid interest ranks equally with unpaid tax in relation to priority of debts in bankruptcy or liquidation proceedings. (8)

In any proceedings for the recovery of interest, a certificate signed by an officer of the Revenue Commissioners stating that the amount of interest is due is evidence that such amount is due until the contrary is proven. Any certificate that purports to be so signed may be submitted in evidence without proof and is deemed to have been so signed until the contrary is proved. (9)

In certain circumstances, the reduced interest rate provided for in subsection (2) shall not apply to unpaid taxes where certain proceedings for the recovery of that tax have been initiated. These proceedings are those initiated under section 960I (civil proceedings taken by the Collector-General in any court to recover outstanding tax), section 960L (issue of a certificate to the sheriff or county registrar by the Collector-General in relation to the collection of outstanding tax) and section 960M (bankruptcy proceedings (10)

taken by the Collector-General), and cases where a court judgment has issued, together with a court order determining how the liabilities are to be paid.

## **1080B Covid-19: special warehousing and interest provisions (income tax)**

### **Summary**

This section permits self-assessed income taxpayers, whose income has fallen by more than 25% due to the impact of Covid-19 trading restrictions, to warehouse the balance of self-assessed income tax, PRSI and USC for 2019 and preliminary income tax, PRSI and USC for 2020 (“Covid-19 income tax”) due to be paid on or before 31 October 2020 or 10 December 2020, as appropriate. Where an individual’s income for 2021 turns out to be more than 25% less than that for 2019, s/he can warehouse the balance of 2020 income tax, PRSI and USC and preliminary income tax, PRSI and USC for 2021, and get an additional 12 months at zero interest on the previous year’s liabilities.

In certain circumstances, self-assessed income taxpayers who have a material interest in their employer company which is warehousing its PAYE (Employer) liabilities, but who do not meet the relevant reduction in turnover criteria for income tax warehousing, may avail of warehousing in respect of liabilities on their Schedule E income from that employer company only.

### **Details**

A number of terms used in the section, including “the Acts”, “Covid-19”, “Covid-19 (I) income tax”, “Period 1”, “Period 2”, “Period 3” and “relevant person” are defined.

“the Acts” has the same meaning as it has in section 1080A;

“Covid-19 income tax” means income tax liabilities due to be paid during Period 1. This includes the balance of income tax payable for 2019 and preliminary tax for 2021. Where Period 1 is extended, this may also cover balance of income tax for 2020 and preliminary tax 2021.

“Period 1” – will be 31 October 2020 or the extended date of 10 December 2020, the due date for payment of IT 2019 and PT 2020. Period 1 may be extended in circumstances where a relevant person forms the view that, due to trading restrictions imposed as part of the Government’s response to Covid-19, their total income for 2021 will be at least 25% less than their total income for 2019. To avail of this extension, the relevant person must apply to Revenue;

“Period 2” (the zero interest phase) will run from the end of Period 1 for 12 months;

“Period 3” (the reduced interest phase) will run from the end of Period 2 until IT 2019 and PT 2020 are paid in full;

“relevant person” is a person who is required to file a return by virtue of Chapter 1 of Part 38 and chargeable persons for income tax for the purposes of Part 41A.

Income tax warehousing will apply to ‘relevant persons’ who are unable to pay their Covid-19 income tax as a result of the effect of Covid-19 on her/his income and who comply with the requirement to file returns under Chapter 1 of Part 38 or Chapter 3 of **(2)(a) & (b)**

Part 41A, as appropriate.

A relevant person will be deemed unable to pay all or part of her/his Covid-19 income tax where they make a declaration to the Collector-General stating that s/he estimates that her/his total income from all sources for 2020 will be less than 75% of her/his total income for 2019 and that this decrease has resulted from the trading restrictions imposed under the Government’s roadmap for reopening society and business. **(3(a) & (b))**

Where a relevant person was not a relevant person for 2019 the relevant person will be deemed unable to pay her/his Covid-19 income tax where s/he believes that as a result of the impact of Covid-19 trading restrictions s/he is unable to pay and s/he makes a declaration to this effect to the Collector-General. **(4)**

A declaration under subsection (3) or (4), as appropriate, should be made at the time of filing the 2019 income tax return and no later than 31 October 2020 or such later date as may be provided for in the case of electronically filed returns. (the pay and file date for 2019 income tax returns has been extended to 10 December 2020 for returns filed electronically). **(5)**

Where a relevant person: **(6)**

- estimates that her/his total income for 2021 will, as a result of Covid-19 trading restrictions, be less than 75% of her/his total income for 2019 and as a consequence of this impact, will be unable to pay the balance of 2020 income tax and preliminary tax for 2021, or
- was not a relevant person for 2019 and has formed the opinion that because of the impact of Covid-19 trading restrictions on her/his income, s/he will be unable to pay the balance of 2020 income tax and preliminary tax for 2021

s/he can make a declaration to this effect to the Collector-General and by doing so can have Period 1 extended to the due date for payment of the balance of 2020 income tax and preliminary tax 2021.

A declaration under subsection (6) should be made at the time of filing the income tax return for 2020 and no later than 31 October 2021 or such later date as may be provided for in the case of electronically filed returns. **(7)**

A Revenue officer can make any necessary enquiries to satisfy herself/himself as to the relevant reduction in the relevant person’s total income for 2020 and/or 2021, as appropriate or where the relevant person was not a relevant person for 2019, that s/he is unable to pay her/his Covid-19 income tax in 2020 or 2021. **(8)**

Interest under section 1080 Taxes Consolidation Act 1997 is disapplied to the relevant person’s Covid-19 income tax in circumstances where this section applies. **(9)**

Where this section applies to a relevant person and the relevant person complies with the obligations imposed under the Acts (for example, timely filing of returns and payment of liabilities) then the normal interest rate (c. 8% per annum as of June 2020) as provided for in section 1080 TCA will not apply during the Period 1 and Period 2. **(10)**

Where in addition to complying with her/his obligations under the Acts, a relevant person, before the end of Period 2, enters into an agreement with the Collector-General to pay her/his Covid-19 income tax and interest on that tax and complies with the terms of this agreement, with effect from the first day of Period 3 interest at a rate of 0.0082% per day or approximately 3% per annum will apply on the balance of Covid-19 income tax outstanding. (11)

A number of circumstances can result in the interest rates provided for in section 1080 TCA reapplying to late payment of the Covid-19 income tax. These are: (12)

- where a relevant person fails to comply with obligations under the Acts or fails to comply with the terms of an agreement entered into in respect of repayment of the Covid-19 income tax. In these cases, interest under section 1080 TCA will apply with effect from the date of the happening of the event which gave rise to non-compliance.
- where a relevant person fails to enter into an agreement in respect of repayment of the Covid-19 income tax. In this case, interest under section 1080 TCA will apply with effect from day 1 of Period 3.

Where a declaration is made under: (13)

- subsection (3) and it is subsequently found that the relevant person's total income for 2020 is greater than or equal to 75% of the relevant person's total income for 2019; or
- subsection (4) and it is subsequently found that the relevant person's total income for 2020 has not been impacted by Covid-19 trading restrictions

income tax payable by that person for 2020 will be deemed to be due and payable on 31 October 2020. Statutory interest will be payable by the relevant person on the amount of Covid-19 income tax remaining unpaid, calculated from that date until paid in full at a rate of 0.0219% per day (c. 8% per annum).

Similarly, where a declaration made under subsection (6) is found to be false insofar as the relevant person's total income for 2021 is greater than or equal to 75% of the relevant person's total income for 2019 or where a relevant person, who was not a relevant person for 2019, declares that s/he is unable to pay their Covid-19 income tax and it is subsequently found that her/his income for 2021 has not been impacted by Covid-19 trading restrictions then income tax payable by that person for 2021 will be deemed due and payable on 31 October 2021 and interest will be due and payable on any Covid-19 income tax remaining unpaid from 31 October 2021, calculated on the amount outstanding from that date until payment in full has been made at a rate of 0.0219% per day (c. 8% per annum). (14)

Where insufficient preliminary tax has been paid for 2019, the total income tax liability for 2019 is due on 31 October 2019. These liabilities cannot be treated as Covid-19 income tax and therefore cannot be warehoused. (15)

Where this section applies to a relevant person, section 959AO(3) TCA will not apply. Warehousing of PT 2020 will not result in 2020 income tax liabilities being due and payable on 31 October 2020. (16)



Warehousing of Covid-19 income tax will not prevent a relevant person from obtaining tax clearance under section 1094 or 1095 TCA, as appropriate. (17)

The Collector-General will not issue demands in respect of Covid-19 income tax provided the relevant person complies with her/his obligations to file returns required under Chapter 1 of Part 38 and / or Chapter 3 of Part 41A TCA. (18)

A relevant person who has a material interest (within the meaning of section 997A) in their employer company and who is not entitled to credit for taxes deducted from their emoluments under section 997A TCA because their employer has availed of warehousing for its PAYE (Employer) liabilities may avail of income tax warehousing, even where they do not meet the 25% income reduction criteria. In these circumstances, warehousing is only available in respect of the Schedule E liabilities relating to their salary from the employer company which has warehoused its PAYE (Employer) liabilities. (19)

Where a self-assessed income taxpayer attempts to warehouse more than the income tax liabilities relating to their Schedule E income from the employer company in which they have a material interest (and which has warehoused PAYE (Employer) liabilities), they will be removed from the warehouse and the payment date for the balance of income tax for 2020 will revert to the preliminary tax due date (31 October 2020). Interest at the normal rate of c. 8% per annum will apply with effect from the preliminary tax due date. (20)

### **1080C Interest charge on relevant person under section 1080B**

#### **Summary**

This new section removes the interest charge under section 1080B(11) TCA on a person who has a material interest in their employer company (as provided for in section 997A TCA) where both the person and their employer company are availing of debt warehousing, and both are liable for the tax due on the person's salary. In these circumstances interest on the tax due on the person's salary will be collected from the employer only. However, if an employer fails to pay the liabilities and interest on those liabilities, the employee will be liable for the interest on any amount of Schedule E liabilities remaining unpaid.

#### **Details**

**Subsection (1)** defines various terms used in the section (1)

“Covid-19 income tax” has the same meaning as it has in section 1080B;

“Covid-19 liabilities” has the same meaning as it has in section 991B;

“material interest” shall be construed in accordance with section 997A(1)(b);

“relevant emoluments” means emoluments paid by a relevant employer to a relevant person;

“relevant employer” means a company—

- (a) in which a relevant person has a material interest, and
- (b) of which the relevant person is an employee;

“relevant person” has the same meaning as it has in section 1080B.

The section applies where a relevant person with a material interest in her/his employer company (as provided for in section 997A TCA) has warehoused income tax liabilities under section 1080B TCA including Schedule E liabilities from a relevant employer and the relevant employer has also warehoused PAYE(Employer) liabilities including tax deducted from emoluments paid to the aforementioned relevant person. (2)

Where this section applies, no interest will be payable by the relevant person on that part of the relevant person's income tax liabilities relating to her/his schedule E income from a relevant employer who has also warehoused liabilities under section 991B TCA. (3)

Where an employer fails to pay Covid-19 liabilities, i.e. liabilities warehoused under section 991B TCA, and interest on those liabilities, then notwithstanding subsection (3), interest will be payable by the relevant person on the amount of warehoused liabilities relating to his/her schedule E income remaining unpaid. (4)

### **1081 Effect on interest of reliefs given by discharge or repayment**

#### **Summary**

This section provides for adjustment of interest where tax is discharged or repaid.

#### **Details**

Where an income tax, corporation tax or capital gains tax assessment is partly discharged consequent on the allowance of some relief, any interest already paid is likewise to be adjusted (and repaid if necessary) so as to correspond with the interest which should have been paid had the discharged tax not been charged. (1)(a)

Where income tax, corporation tax or capital gains tax is paid and relief from that income tax, corporation tax or capital gains is given by way of repayment then the consequences are to be broadly analogous to those which apply under *subsection (1)(a)* in cases where relief is given by way of discharge. Where, however, some tax has been paid promptly and some late and interest is payable for the late tax, then the taxpayer may require that any repayment due because of the allowance of a relief should instead be treated as a reduction of the tax on which interest is to be paid. The effect of this is that the tax due to be repaid is treated as the discharge of other tax on which interest is payable thereby allowing for the reduction of the interest payable in accordance with paragraph (a). (1)(b)

Relief from one tax (whether given by discharge or repayment) cannot be related back for interest purposes against another tax. (2)

### **1082 Interest on overdue income tax and corporation tax in cases of fraud or neglect**

#### **Summary**

Where an undercharge to income tax or corporation tax has occurred as a result of fraud or neglect, interest on the tax undercharged is charged, at the rate of 2 per cent per month or part of a month, from the date or dates on which the tax ought to have been paid. This section ceased to have effect for chargeable periods beginning on or after 1 January 2005. However, the section remains active for liabilities arising before that date even where they are paid after that date.

#### **Details**

“neglect” has the meaning as set out in *section 924(2)(a)* for income tax and in *section (1)*

**919(5)(a)** for corporation tax.

Where an assessment is made to collect an income tax undercharge attributable to fraud or neglect, the tax undercharged carries interest at the rate of 2 per cent for each month or part of a month from the 1st October in the tax year to which the assessment relates, until payment. (2)

A corporation tax assessment raised in the same circumstances carries the same rate of interest on an undercharge for a month or part of a month as and from the expiration of 6 months from the end of the accounting period in respect of which the assessment was raised until payment.

**Section 1080(1)** does not apply to tax subject to interest charged at the higher rate under this section. (3)

The provisions of **section 1080(2) to (4)** apply to the interest chargeable under this section in the same manner as they apply to interest which is charged under **section 1080**. In addition, in the case of income tax, **section 1081** applies to the interest chargeable under this section in the same manner as it applies to interest chargeable under **section 1080**. (4)

In relation to an assessment made to recover an undercharge due to fraud or neglect — (5)

- the inspector must notify the person assessed that the 2 per cent rate of interest is applicable to the tax charged by the assessment,
- the person assessed may use the normal appeal procedures for tax assessments to appeal the assessment on the ground that interest should not be charged under this section, and
- the rate chargeable under **section 1080** (instead of the 2 per cent rate under this section) will apply to the underpaid tax where the appeal is decided in favour of the person assessed.

This section does not apply to tax due and payable for any year of assessment or accounting period that begins on or after 1 January 2005. The section remains fully in force as respects the recovery of unpaid liabilities for earlier years of assessment and accounting periods. (6)

### **1083 Application of sections 1080 to 1082 for capital gains tax purposes**

The provisions of **sections 1080 to 1082** which deal with the rates of interest applicable on overdue income tax and corporation tax in normal circumstances and in cases where there is fraud or neglect and adjustments to interest paid where tax is revised by discharge or repayment are to apply, with any necessary modifications, for capital gains tax purposes.

## CHAPTER 6 *Other sanctions*

### **Overview**

**Chapter 6** contains a number of provisions designed to improve tax compliance and deter tax evasion. **Section 1084** provides for a surcharge to tax where returns are filed late. **Section 1085** restricts certain corporation tax relief where returns are filed late. **Section 1086** provides for the publication of certain tax defaulters' names.

### **1084 Surcharge for late returns**

## Summary

This section imposes a surcharge on any taxpayer, individual or corporate, for the late filing of a tax return.

The surcharge is based on a percentage increase in the total tax payable for the year for which the return is late and is subject to a grading of the surcharge by reference to the length of the delay in filing as well as being subject to an overall cap on the level of the surcharge.

With effect from the date of the passing of the Finance Act 2014, a taxpayer will not be liable to a surcharge where a penalty is applied under section 1077E for the deliberate or careless making of an incorrect return provided the return was made in a timely manner in the first instance.

## Details

### Definitions

“chargeable person” is a person who is a chargeable person for the purposes of **Part 41A (1)(a)** (that is, a person within the Self Assessment system).

“return of income” is a return, statement, declaration or list which a person is required to file with the inspector on foot of a notice under one or more of the specified provisions. It specifically includes a return which a chargeable person is required to file under **Chapter 3 of Part 41A** (that is, a Self Assessment return).

“specified return date for the chargeable period” has the meaning set out in **section 959A**.

The “specified provisions” are —

- **Section 877**: Returns by persons chargeable
- **Section 878**: Persons acting for incapacitated persons and non-residents
- **Section 879**: Returns of income
- **Section 880**: Partnership returns
- **Section 881**: Returns by married persons
- **Section 884**: Returns of profits
- **Section 888(2)(a) and (d)**: Returns, etc by lessors, lessees and agents
- **Section 1023**: Application for separate assessments.

“tax” is income tax, corporation tax or capital gains tax, as the case may be.

### Failure to make a return

The following different sets of circumstances explain what is regarded as a failure to make a timely return of income where a return of income is purported to have been made — **(1)(b)**

- in a case where a person deliberately or carelessly delivers an incorrect return on or before the specified return date, such a person is regarded as having failed to deliver the return on or before that date unless the error contained in it is rectified before that date, **(1)(b)(i)**

- in a case where a person who is in accordance with regulations made under **section 917EA** required to make a return electronically and who before the specified return date for the chargeable period makes that return in a form other than an electronic one, the person is regarded as having made an incorrect return unless the person before the specified return date for that chargeable period actually submits the return electronically, (1)(b)(ia)
- in a case where a person delivers a return of income and fails to include on the return details which are required to be included in relation to certain specified exemptions, allowances, and reliefs which the return indicates are to be included on the form, such person is regarded as having failed to deliver the return on or before the specified return date, unless it can be shown that after the filing of the return it had been brought to the taxpayer's attention that the details required had not been included on the form and the person rectifies matters within a reasonable time. The surcharge, if applicable, will be without prejudice to any other event which might give rise to a surcharge under this section (e.g. a fraudulent return) and will always be the 5% one which applies where a return is filed late but within a period of two months of the filing date, (1)(b)(ib)
- in a case where a person delivers an incorrect return on or before the specified return date but does so neither deliberately nor carelessly and it comes to the person's notice (or to his/her personal representative's notice if he/she has died) that the return is incorrect, such a person is deemed to have failed to deliver the return on or before that date unless the error in the return is remedied without unreasonable delay, (1)(b)(ii)
- in a case where a person delivers a return on or before the specified return date but the inspector being dissatisfied with it requires the person by written notice served on that person under **section 900** to do anything (for example, furnish further information, documentation, etc), such a person is deemed not to have delivered the return on or before the specified date unless the inspector's requirements are met within the time specified in the notice. (1)(b)(iii)

#### ***Application for capital gains tax purposes***

The application of the section to capital gains tax is ensured by providing that references to such of the specified provisions as are applied, subject to any necessary modification, in relation to capital gains tax by **section 913**, are regarded as including references to those sections as so applied. (1)(b)(iv)

#### ***The surcharge***

Where a person is required to deliver a return of income to an inspector and fails to do so on or before the specified date, the amount of tax for that year of assessment or accounting period which is or would be contained in an assessment to tax made or to be made on the person concerned is to be increased by a surcharge amount equal to — (2)(a)

- 5 per cent of that amount of tax, subject to a maximum of €12,695 extra tax for delays in filing of less than 2 months, and
- 10 per cent of that amount of tax, subject to a maximum of €63,485 extra tax for delays in filing of 2 months or more.

Where the tax contained in the assessment to tax is not the amount of tax as increased by the surcharge, the provisions of the Tax Acts and the Capital Gains Tax Acts, including in particular those relating to the collection and recovery of tax and the payment of interest on unpaid tax, apply as if the tax contained in the assessment were the amount of tax as increased by the surcharge. However, these collection and enforcement mechanisms will not apply in a case where the surcharge arises for the non-completion of the specified details in relation to exemptions, allowances, etc. on the tax return form. This means that such a surcharge will be included in an assessment and will as a

consequence be capable of being appealed to the Appeal Commissioners.

In determining the amount of the surcharge the tax contained in the assessment is deemed to be reduced by the aggregate of — (2)(b)

- any tax deducted by virtue of any of the provisions of the Tax Acts or the Capital Gains Tax Acts from any income, profits or chargeable gains, charged in the assessments to tax in so far as that tax has not been repaid or is not repayable to the chargeable person and in so far as the tax so deducted may be set off against the tax contained in the assessment to tax, and
- any other amounts which are set off in the assessment to tax against the tax contained in the assessment.

In effect, in applying the surcharge any tax which is or has been paid by deduction (for example, PAYE tax) or any amounts which are set off against the tax in an assessment reduces the amount to which the surcharge is to be applied.

### **Directors**

A director within the meaning of *section 116* or a person who is jointly assessed to tax under *section 1017 or 1031C* whose spouse or civil partner is a director within the meaning of *section 116* is not entitled to have a credit for tax deducted at source under PAYE (as allowed by *subsection (2)(b)(i)*) taken into account to reduce the amount of tax to be surcharged. The effect of this provision means that a surcharge is imposed even where the director pays tax under PAYE. (3)

### **New businesses**

In the case of a new business the surcharge provisions of this section only apply to delays in filing from the *second filing date* of the business. This concession does not apply to new businesses where the promoter or owner has an existing business or where that person's spouse or civil partner has an existing business in respect of which both spouses or civil partners are jointly assessed to tax. (4)

### **Application of surcharge to preliminary tax**

These “surcharge” provisions for late filing of returns apply to an amount of preliminary tax paid under *Chapter 7 of Part 41A* in the same manner as they apply to an amount specified in an assessment. (5)

## **1085 Corporation tax – late returns: restriction of certain claims for relief**

### **Summary**

This section is designed to act as a deterrent against the late submission of tax returns by companies. It provides for effective restrictions on the use of a number of reliefs (that is, certain trading losses, excess capital allowances, group relief and advance corporation tax offset) where a company fails to file its tax return on time (that is, within 9 months of the end of the company's accounting period). The restrictions are graded by reference to the length of the delay in filing and there is a cap on the level of each restriction. In the majority of cases this measure will not amount to a complete denial of reliefs. The only adverse affect on most companies which fail to submit their tax return on time will be a cash flow one. The scheme prevents the companies concerned from using the particular reliefs to their best advantage. However, the losses or offsets in question can be transferred to a later accounting period.

## Details

### Definitions

“chargeable period” is an accounting period of a company. (1)(a)

“group relief” has the meaning set out in *section 411*.

“return of income” is a return which a company is required to deliver under *Chapter 3 of Part 41A*.

“specified return date for the chargeable period” has the meaning set out in *section 959A*.

### Failure to make a return

*Section 1084(1)(b)(i), (ia), (ib), (ii) and (iii)* are to apply for the purposes of this section (1)(b) as they apply for the purposes of that section. This ensures that in the circumstances outlined in those provisions (namely, the fraudulent or negligent delivery of an incorrect return, the failure of a person to make a return in the prescribed manner, the failure to supply details in relation to certain specified reliefs which are required to be included on a return, the failure to rectify a known error in a return which has been delivered to the inspector and the failure to respond to an inspector’s enquiry in relation to a return which has been delivered to the inspector) a company is regarded as not having made a return of income for a chargeable period before the specified return date for that chargeable period.

### Restriction

The section provides that if a company fails to submit its return of income for a chargeable period on or before the specified return date for the chargeable period — (2)

- any claim for the chargeable period under *section 308(4)* (for the set-off of certain excess capital allowances against other profits), *396(2)* (for the set-off against other profits of trading losses), *section 396A(3)* (for the backwards or sideways set-off against relevant trading income) or *399(2)* (the carry-back of excess “Case V” losses) is to be restricted so that the amount by which the company’s profits of the chargeable period or any other chargeable period are to be reduced by virtue of the claim is to be 50 per cent of the amount it would have been but for this section, (2)(a)
- the amount of group relief that the company may claim for the chargeable period is not to exceed 50 per cent of the company’s profits for that period as reduced by any other relief from tax other than group relief, (2)(b)
- the total amount of the relevant trading loss which be reclaimed under *section 396B* is treated as reduced by 50 per cent, (2)(ba)
- the total amount of a trading loss for the chargeable period which the company may surrender (to another member of the same group of companies) under *section 420* is treated as reduced by 50 per cent, and the total amount of excess Case V capital allowances, excess management expenses and excess charges for the chargeable period which a company may surrender under the same section are to be reduced by 50 per cent, (2)(c)
- the total amount of the loss or excess that can be reclaimed under *section 420A* is treated as reduced by 50 per cent, and (2)(ca)
- the total amount of the relevant trading loss that can be reclaimed under *section 420B* shall be treated as reduced by 50 per cent. (2)(cb)

Subject to *subsection (4)*, the 50 per cent restriction or reduction referred to above is subject to a maximum amount in any particular case. There is a maximum of €158,715 in each case for those restrictions or reductions. (3)



In cases where the delay in filing a return *is less than two months* the amount of the restriction is effectively reduced from 50 per cent to 25 per cent subject to a maximum amount restricted of €31,740. (4)

## 1086 Publication of names of tax defaulters

### Summary

This section requires the Revenue Commissioners to compile and publish lists of certain tax defaulters. Such lists are to be compiled on a quarterly basis and published in *Iris Oifigiúil* within 3 months of the end of each particular quarter. Thereafter, lists of defaulters may also be publicised or reproduced by the Revenue Commissioners in any manner they consider appropriate. This section ceases to apply from 31<sup>st</sup> December 2021 and is replaced by section 1086A.

### Details

#### Definitions

The section defines “the Acts” as covering the statutes listed in *paragraphs (a) to (i)* of the definition, and includes any instruments made under those particular statutes (for example, the PAYE and VAT Regulations). (1)

“tax” is any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

#### Compilation of lists of defaulters

For the 6-month (transitional) period ending on 30 June, 1997 and for each subsequent period of 3 months commencing with the 3 months ending on 30 September, 1997, the Revenue Commissioners are obliged to compile a list of names and addresses, and the occupations or descriptions, of every defaulter who falls within any of the following types of cases — (2)

- all cases where a fine or penalty is imposed by a court under any of “the Acts” during the particular period to which the list under compilation refers; (2)(a)
- all cases where a fine or penalty in respect of a tax offence is imposed by a court otherwise than under “the Acts” during that period; (2)(b)
- all cases where, instead of initiating proceedings for the recovery of any fine or penalty of the kind mentioned above, the Revenue Commissioners have accepted or undertaken to accept an offer in settlement of all “back-duty” liabilities involving tax, interest (except in the case of customs and excise settlements) and penalties in respect of the taxes covered by the section; (2)(c)
- all cases where a settlement has been agreed between a taxpayer and the Revenue Commissioners in respect of a payment of tax, interest (except in customs and excise settlements) and penalties even after court proceedings have been initiated and whether or not a fine or penalty has been imposed by the court. (2)(d)

The reference to “a fine or other monetary penalty in respect of that tax” is to any form of penalty under the Acts irrespective of whether it is a “tax geared” penalty (that is, a penalty related to the tax undercharge) for fraud or neglect or a fixed penalty for failure to file returns, etc.

A payment of the full amount of the claim to the Revenue Commissioners is regarded as a settlement (and therefore publishable). (2A)

Where the Revenue Commissioners accepted or undertook to accept a specified sum in settlement under *subsection (2)(c)* or *(2)(d)* and a payment is not made, the settlement is to be included in the list to be published under *subsection (2)*. This includes situations (2B)



where the settlement sum comprises an amount relating to a qualifying disclosure made by the taxpayer and an amount relating to “relevant matters” i.e. other tax defaults not subject to a qualifying disclosure (see *subsections (2C) and (2D)* following). The portion of the settlement sum relating to the other tax defaults i.e. the adjusted specified sum, will be included in the list to be published under *subsection (2)* notwithstanding that a payment is not made in respect of that sum.

### ***Publication where partial disclosure made***

Where Revenue-

(2C)&(2D)

- enters into a settlement agreement with a taxpayer, or
- accepts a sum from a taxpayer which is the full amount of their claim i.e. the full amount of the taxpayer’s liability for tax, interest and penalties, without entering into a settlement agreement

in circumstances where the settlement sum or the full amount of the claim, as the case may be, comprises of a liability to which a qualifying disclosure relates and a liability in respect of “relevant matters” (i.e. matters giving rise to a tax default not included in the qualifying disclosure), then notwithstanding that *subsection (4)(a)* would (in the absence of this subsection) exclude that person from inclusion in the defaulters list on foot of the making of a qualifying disclosure, the taxpayer will nonetheless be included in the list in respect of the relevant matters assuming the publication criteria (see *paragraphs (c) and (d) of subsection (4)*) are met in respect of those matters.

### ***Making the lists public***

Any obligation to secrecy imposed on the Revenue Commissioners by “the Acts” or the Official Secrets Act, 1963, is to be ignored for the purposes of this section and the Revenue Commissioners are authorised to arrange for publication of these lists in Iris Oifigiúil within 3 months of the end of the period for which they are compiled. In addition, following publication in Iris Oifigiúil, the Commissioners may publicise and/or reproduce the lists (in whole or in part) in any other manner, form or format they consider to be appropriate (for example, reproducing the list on the Revenue website). (3)

### ***Exceptions***

The following cases are *not* required to be included in the lists (and therefore not made public) despite the fact that settlements have been made — (4)

- a case in which the defaulter had voluntarily made a complete and full disclosure to the satisfaction of the Revenue Commissioners before the commencement of any investigation or inquiry by them (but see *subsections (2C) and (2D)* foregoing),
- a case where the total amount of tax, interest and penalties comprised in the settlement sum (or comprised in that part of the settlement sum relating to “relevant matters” i.e. matters giving rise to a tax default not included in a qualifying disclosure), does not exceed the relevant amount referred to in *subsection (4A)(a)* (currently €35,000) and
- a case where the fine or penalty involved does not exceed 15 per cent of the tax included, as the case may be, in the specified sum or adjusted specified sum (see *subsections (2C) and (2D)* foregoing) that accepted in settlement.

### ***Indexation of publication limit***

The Minister for Finance may, from time to time, by order provide a new publication limit to take effect from 1 January of the year in which the order is made. Each new limit is to be arrived at by indexing the previous limit (current limit is €35,000) in (4A)

accordance with the consumer price index and rounding up to the nearest €1,000. Each new limit is required to take effect in respect of settlements that include only liabilities which arise on or after the said 1 January and periods that commence on or after that date.

### ***Exceptions to publication in cases of Court imposed penalties***

Cases where a fine or penalty is imposed by a court under any of “the Acts” or otherwise during the particular period to which the publication list under compilation refers, are not to be included in the list (and therefore not made public) where: **(4B)**

- in the case of a person who had made a return, the amount of the penalty determined by the court does not exceed 15% of the difference between the amount of tax payable on the basis of the incorrect return, statement, declaration or account and the amount so payable if the return, statement etc. had been correct (see **section 1077E(11)**),
- in the case of a person who had failed to make a return, the amount of the penalty determined by the court does not exceed 15% of the difference between the amount of tax paid before the start of any Revenue enquiry or investigation and the amount that would have been payable on the basis of a correct return etc. for the period (see **section 1077E(12)**).

(Similar rules apply in relation to Court imposed penalties in respect of VAT and Stamp Duty defaults).

- the total amount of tax, interest and penalties does not exceed the relevant amount referred to in **subsection (4A)(a)** (currently €35,000), or
- the defaulter has made a qualifying disclosure.

### ***Additional particulars for inclusion in list***

The Revenue Commissioners may, at their discretion, include certain additional particulars in relation to a defaulter in any list to be published. These are — **(5)**

- particulars of the matter giving rise to the fine or penalty or to the settlement, **(5)(a)**
- particulars of any interest, fine, penalty or sanction involved in a case, whether imposed by a court or included as a constituent amount in a settlement, and **(5)(b)**
- particulars of any amount of tax that has been determined, whether or not paid, by reference to which a court had determined a penalty under **section 1077B**. **(5)(c)**

The published particulars may also include: **(5A)**

- in a case where a court fine has been imposed, a summary description of the act, omission or offence concerned and this description may also include details of the circumstances surrounding it,
- in a settlement case, a summary description of the matter giving rise to the liability and this description may also include details of the circumstances surrounding it,

In a settlement case to which **subsection (2B)** applies (i.e. where the defaulter fails to pay the specified sum or adjusted specified sum, as the case may be) the published particulars shall include the fact that the defaulter failed to pay the sum. **(5B)**

This section is replaced by section 1086A from 1<sup>st</sup> January 2022

## **1086A Publication of names and details of tax defaulters**

## Summary

This section requires the Revenue Commissioners to compile and publish lists of certain tax defaulters. Such lists are to be compiled on a quarterly basis and published in Iris Oifigiúil within 3 months of the end of each particular quarter. Thereafter, lists of defaulters may also be publicised or reproduced by the Revenue Commissioners in any manner they consider appropriate. The new publication provisions amend the criteria for publication and clarify what details are to be published.

Section 1086A provides for the publication of settlements where refunds have been incorrectly claimed, removes from publication all settlements where the tax underpayment or refund incorrectly claimed is less than €50,000, permits the inclusion of a late filing surcharge in details to be published, removes the requirement for a settlement to contain interest to be publishable, and removes from publication any part of a settlement that does not attract a penalty.

## Details

Section 1086A TCA provides for the publication of the names and details of certain tax defaulters.

Subsection (1) defines terms for the section, including “qualifying disclosure”, “the Acts” and “tax”. (1)

Subsection (2) imposes an obligation on the Revenue Commissioners to prepare a list of certain people in certain circumstances. It also defines “settlement amount”. The term “settlement amount” means the total amount of a claim accepted by the Revenue Commissioners for all tax liabilities, including in cases involving a repayment of tax refunded or the restriction of a refund claimed, the amount of the repayment or the restriction, any interest or late filing surcharge on those liabilities, if applicable, and any type of a fine or penalty under the Acts in relation to the tax. The settlement amount includes all elements of the outcome of an intervention. The phrase “settlement amount” replaces what was previously referred to in section 1086 as the “specified sum”. (2)

Subsection (2)(a) requires cases where a fine or penalty is imposed by a court under any of “the Acts” during the period to which the list under compilation refers to be included. (2)(a)

Subsection (2)(b) refers to cases where a fine or penalty in respect of a tax offence is imposed by a court otherwise than under “the Acts” during that period. (2)(b)

Subsection (2)(c) refers to all cases where, instead of initiating proceedings for the recovery of any fine or penalty of the kind mentioned above, the Revenue Commissioners have accepted or undertaken to accept the settlement amount, in settlement of all liabilities involving tax, interest and late filing surcharge, if applicable, and any penalties under the Acts in respect of the taxes covered by the section. Interest is not a required element in a settlement amount but if it arises, it is included in the settlement amount. The settlement amount also includes the late filing surcharge, where applicable. Both fixed and tax geared penalties also form part of the settlement amount. (2)(c)

Subsection (2)(d) refers to cases where a settlement has been agreed between a taxpayer and the Revenue Commissioners for a settlement amount even after court proceedings have been initiated and whether or not a fine or penalty has been imposed by the court. This was previously provided for in section 1086(2)(d) but, as above, has been amended to include in the settlement amount any amounts relating to the restriction of a repayment, and to clarify that where interest or a late filing surcharge apply to the (2)(d)

settlement, although not a requirement, they form part of the settlement amount. Likewise, any fixed or tax geared penalties relating to the tax are also included in the settlement amount.

Subsection (3) provides that any obligation to secrecy imposed on the Revenue Commissioners by “the Acts” or the Official Secrets Act, 1963, is to be ignored for the purposes of this section and the Revenue Commissioners are authorised to arrange for publication of these lists in *Iris Oifigiúil* within three months of the end of the period for which they are compiled. In addition, following publication in *Iris Oifigiúil*, the Commissioners may publicise and/or reproduce the lists (in whole or in part) in any other manner, form or format they consider to be appropriate (for example, reproducing the list on the Revenue website). (3)

Subsection (4) explains that where the Revenue Commissioners accept or agree to accept a settlement amount as the full amount of their claim then it will be deemed that there has been an agreement as referred to in subsection (2)(c) or (d). This deemed agreement will be treated as having been made in the relevant period in which the settlement amount is accepted or in which Revenue agrees to accept that amount. (4)

Subsection (5) provides that where the Revenue Commissioners accepted or undertook to accept a settlement amount under subsection (2)(c) or (2)(d) and a payment is not made, the settlement is to be included in the list to be published. This includes situations where the settlement sum comprises an amount relating to a qualifying disclosure made by the taxpayer. The portion of the settlement amount that does not relate to a qualifying disclosure will be included in the list under subsection (2). (5)

Subsection (6)(a) introduces the term “publication amount”, which denotes the amount of a settlement that may be published (subject to the exceptions provided for in the section). It is the “settlement amount” less any amount in respect of which the Revenue Commissioners are satisfied that, before any investigation or inquiry had been started, the person had voluntarily furnished a qualifying disclosure, and any amount of tax that does not attract a fine or other monetary penalty. This includes amounts previously categorised as a technical adjustment or innocent error under Revenue’s Code of Practice for Revenue Audits and other Compliance Interventions. (6)(a)

Subsection (6)(b) sets out the details that are to be included on the list to be published. (6)(b)

It provides that the list should set out the name (including trading name or previous name by which the defaulter is known), address and occupation or description of every defaulter, the amount of tax, surcharge, interest and fine or other monetary penalty included in the publication amount, and at the discretion of the Revenue Commissioners, certain additional particulars including particulars of the matter giving rise to the fine or penalty or to the settlement, such as in a case where a court fine has been imposed, a summary description of the act, omission or offence concerned and this description may also include details of the circumstances surrounding it. In a settlement case, a summary description of the matter giving rise to the liability and this description may also include details of the circumstances surrounding it. Particulars of any interest, fine, penalty or sanction involved in a case, whether imposed by a court or included as a constituent amount in a settlement. Particulars of any amount of tax that has been determined, whether or not paid, by reference to which a court had determined a penalty under section 1077B.

Subsection (7) explains that in a settlement case to which subsection (5) applies (that is, where the defaulter fails to pay the settlement amount or adjusted settlement amount, as (7)

the case may be) the published particulars shall include the fact that the defaulter failed to pay the sum.

Subsection (8) sets out exceptions to publication in cases of Court-determined penalties. Such cases are excluded from publication where in the case of a person who had made a return, the amount of the penalty determined by the court does not exceed 15% of the difference between the amount of tax payable on the basis of the incorrect return, statement, declaration or account and the amount so payable if the return, statement etc. had been correct (see section 1077E(11) or section 1077F(3)), and in the case of a person who had failed to make a return, the amount of the penalty determined by the court does not exceed 15% of the difference between the amount of tax paid before the start of any Revenue enquiry or investigation and the amount that would have been payable on the basis of a correct return etc. for the period (see section 1077E(12) or section 1077F(5)). (Similar rules apply in relation to Court-determined penalties in respect of VAT, Stamp Duty and excise defaults). The total amount of tax in respect of which the penalty is determined does not exceed the relevant amount referred to in subsection (10)(a) (€50,000), or the defaulter has made a qualifying disclosure. (8)

Subsection (9) sets out the exceptions to publication in cases where the Revenue Commissioners have accepted or undertaken to accept a settlement amount under section 1086A(2)(c) or (d). These are cases where the amount of tax included in the publication amount, as defined, does not exceed the relevant amount referred to in subsection (10)(a) (€50,000), or the fine or penalty involved does not exceed 15 per cent of the tax included in the publication amount. (9)

Subsection (10) provides for the indexation of the publication threshold. It provides that the Minister may, from time to time, by order provide a new publication limit to take effect from 1 January of the year in which the order is made. Each new limit is to be arrived at by indexing the previous limit in accordance with the consumer price index and rounding up to the nearest €1,000. Each new limit is required to take effect in respect of settlements that include only liabilities which arise on or after the said 1 January and periods that commence on or after that date. (10)

Subsection (11) provides that any list compiled in accordance with subsection (2) will be kept on the Revenue website for no longer than two years from the publication of the list in Iris Oifigiúil. (11)