

Collection Manual

Non-Filing of Returns - Prosecution and Penalty Programmes Collector General's Division

A more recent version of this manual is available.

May 2016

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Prosecution & Penalty Programmes

Introduction

The Dedicated Enforcement Unit/Penalties and VAT Prosecutions Unit in the Collector-General's Division, Limerick, pursues Prosecution and Penalty programmes to deal with the non filing of VAT 3 and P35 (incl LPT) returns. The relevant units and legislation are as follows:

C-G's DEU/Penalties and VAT Prosecutions Unit - VAT Prosecution: Criminal Prosecutions - S.1078 TCA 1997

C-G's DEU/ Penalties and VAT Prosecutions Unit - P35 (incl LPT)/VAT Compliance:

- Civil Penalties – S. 987 TCA 1997
- S 115 Value-Added Tax Consolidation Act 2010
- S 987(1A) TCA 1997
- S 145 (2) Finance (Local Property Tax) Act 2012

Instructions and guidelines for referral of cases are set out below as follows:

Part 1 - Criminal Prosecution Proceedings

Part 2 - Civil Penalty Proceedings

Part 1 – Collector-General’s Prosecution Programme

1. VAT - Criminal Prosecution Programme

- 1.1 Prosecution is contingent on evidence that there is serious non-compliance and/or a definite expectation that a substantial liability will be quantified on receipt of the relevant return(s).

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

2. Referral of Cases to DEU/Penalties and VAT Prosecutions Unit

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

3. Subsequent to Referral

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

Part 2 – Collector-General’s Penalty Programme

1. Referral of Non-Compliant Cases to DEU/Penalties and VAT Prosecutions Unit - P35/VAT Compliance

1.1 DEU/Penalties and VAT Prosecutions Unit also manages the civil penalty process for late or non-filing of P35 or VAT3 returns. A civil penalty can also be imposed on an Employer who fails to make a return as provided for in Section 79 of the Finance (Local Property Tax) Act 2012 where a direction under Section 65 of the Finance (Local Property Tax) Act 2012 had been received.

Cases suitable for the imposition of such penalties can be referred to DEU/Penalties and VAT Prosecutions Unit. When a penalty is imposed on a customer, the Prosecutions Unit issues a **Penalty Notice** initially, i.e. a final request for payment of the penalty. Copies of the Penalty Notices for PAYE/PRSI, VAT and LPT are at **Appendices 5, 6 and 7**

In the absence of any agreement that the taxpayer is liable to the penalty or following failure by a taxpayer to pay an ‘agreed’ penalty, DEU/Penalties and VAT Prosecutions Unit, if still of the opinion that the taxpayer is liable to a penalty, will issue a written notice of that opinion to the taxpayer in the form of a Notice of Opinion.

The Notice of Opinion will include details of;

- (a) the provisions under which the penalty arises**
- (b) the circumstances in which that person is liable to the penalty**
- (c) the amount of the penalty to which that person is liable**
- (d) any other details DEU/Penalties and VAT Prosecutions Unit considers necessary**

There is an agreement phase for both notices, 21 days for the Penalty Notice and a statutory 30 days for the Notice of Opinion, to allow for agreement and payment of the penalty or an appeal against the penalty.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

2. ITP Records

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

3. Contacts for DEU/Penalties and VAT Prosecutions Unit

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

Appendix 1 - Integrated Case Management (ICM) Version 3.0

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

Appendix 2 - Viewing VAT/PREM Non-filer Work-Items in Activity History

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

Appendix 3 - Non-filer Referral Form

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

Appendix 4 – Direct Debit / Letter to Taxpayer re Non-Filing of Returns

Lo-Call 1890 20 30 70

Demand Date:

Our Ref: «Registration_Number»

«Offenders_Name»

«Address1»

«Address2»

«Address3»

«Address4»

Annual VAT return

Dear Sir/Madam,

According to my records you have failed to submit your annual VAT return for the year ended xxxxxxxx

It is a condition of your participation in the Direct Debit Scheme that returns, together with any balancing payment which may be due, are received by the due date, i.e. the 19th of the month following the end of your accounting period.

Unless your returns and balancing payment, if applicable, are forwarded directly to me within fourteen days, your authorisation to participate in the Direct Debit Scheme will be reviewed and may be terminated. An estimate of the tax due may be raised by the Revenue Commissioners in accordance with Section 110 of the Value Added Tax Act 2010 as amended.

I wish to advise you that, if you fail to file the outstanding VAT3 returns within the timeframe allowed, you may be prosecuted for non-submission of these returns. On conviction, you will be liable to a fine up to a maximum of €5,000 on each summons, to a term of imprisonment, or both the fine and imprisonment at the discretion of the Judge.

Therefore I strongly recommend that you give this matter your urgent attention.

Yours faithfully,

Michael Gladney
Collector-General

Appendix 5 – Penalty Notice for PAYE/PRSI

Lo-Call 1890 20 30 70

Demand Date:

Our Ref: «Registration_Number»

«Offenders_Name»

«Address1»

«Address2»

«Address3»

«Address4»

Penalty Notice for PAYE/PRSI

Dear Sir/Madam,

It appears from my records that you have failed in your statutory duty as an employer to file a P35 return on or before 15th February 20xx, in accordance with Regulation 31 of the Income Tax (Employments)(Consolidated) Regulations, 2001. The return in question refers to the tax year 01/01/20xx – 31/12/20xx.

As a consequence of this failure, you are liable to a penalty of «Penalty_Amount_Demanded»

If you agree that this penalty is due, you should make a payment of this amount to the Revenue Commissioners by sending the payment with a copy of this letter within **21 days** of the date of this letter to Penalty Payments, Office of the Collector-General, Sarsfield House, Francis Street, Limerick.

If you fail to agree that the penalty is due and pay the penalty amount, then 21 days after the date of this letter, a Notice of Opinion will be issued to you pursuant to Section 1077B - Taxes Consolidation Act, 1997 with a view to an application being made to the Court for that Court to determine whether a liability to a penalty arises.

This means that Revenue will ask the Courts to decide if you are liable for a penalty. If you contest Revenue's view, you will need to attend the Court hearing and explain to the Court why you think you are not liable to a penalty.

Yours faithfully,

Michael Gladney
Collector-General

Appendix 6 - Penalty Notice for VAT

Lo-Call 1890 20 30 70

Demand Date:

Our Ref: «Registration_Number»

«Offenders_Name»

«Address1»

«Address2»

«Address3»

«Address4»

Penalty Notice for VAT

Dear Sir/Madam,

It appears from my records that you have failed in your statutory duty as an accountable person to file a VAT 3 Return Form **on or before the 19th day of the month immediately following the accounting period**, in accordance with Part 9 Chapter 3 of the Value-Added Tax Consolidation Act, 2010 and Regulation 24 of the Value-Added Tax Regulations, 2010. The return in question refers to the accounting period «Taxable Period».

As a consequence of this failure, you are liable to a penalty of «Penalty_Amount_Demanded» pursuant to Section 115 of the Value Added Tax Consolidation Act, 2010.

If you agree that this penalty is due, you should make a payment of this amount to the Revenue Commissioners by sending the payment with a copy of this letter within **21 days** of the date of this letter to Penalty Payments, Office of the Collector-General, Sarsfield House, Francis Street, Limerick.

If you fail to agree that the penalty is due and pay the penalty amount, then 21 days after the date of this letter, a Notice of Opinion will be issued to you pursuant to Section 1077B of the Taxes Consolidation Act, 1997 with a view to an application being made to the Court for that Court to determine whether a liability to a penalty arises.

This means that Revenue will ask the Courts to decide if you are liable to a penalty. If you do not agree with Revenue's view, you will need to attend the Court hearing and explain to the Court why you think you are not liable to a penalty.

Yours faithfully,

Michael Gladney
Collector-General

Appendix 7 - Penalty Notice for LPT

Lo-Call 1890 20 30 70

«Demand_Date»

Our Ref: «Registration_Number»

«Offenders_Name»

«Address1»

«Address2»

«Address3»

«Address4»

Penalty Notice for failure of employer to make a return to the Collector General as provided for in Section 79 Finance (Local Property Tax) Act 2012

Dear Sir/Madam,

It appears from my records that you have failed in your statutory duty as an employer to deduct and pay over LPT having been instructed to do so under Section 65 of the Finance (Local Property Tax) Act 2012. As provided for in Section 79 of the Finance (Local Property Tax) Act 2012 an Employer is obliged to make a return showing details of LPT deducted from an employee where a direction under Section 65 of the Finance (Local Property Tax) Act 2012 has been received. The return in question refers to the tax year <01/01/20xx to 31/12/20xx>.

As per Section 145 (2) of the Finance (Local Property Tax) Act 2012, you are liable to a penalty of €500 for each month or part of a month during which the said statement remains outstanding, subject to a maximum penalty of €3,000.

«Penalty_Amount_Demanded»

If you agree that this penalty is due, you should make a payment of this amount to the Revenue Commissioners by sending the payment with a copy of this letter within **21** days of the date of this letter to: Penalty Payments, Office of the Collector-General, Sarsfield House, Francis Street, Limerick.

If you fail to agree that the penalty is due and pay the penalty amount, then 21 days after the date of this letter, a Notice of Opinion will be issued to you pursuant to Section 1077B of the Taxes Consolidation Act, 1997 with a view to an application being made to the Court for that Court to determine whether a liability to a penalty arises.

This means that Revenue will ask the Courts to decide if you are liable for a penalty. If you contest Revenue's view you will need to attend the Court hearing and explain to the Court why you think you are not liable to a penalty.

Yours faithfully,

Michael Gladney
Collector-General

Appendix 8 – Notice of Opinion for PAYE/PRSI

Demand Date:

Lo-Call 1890 20 30 70

Our Ref: Registration Number

«Offenders_Name»

«Address1»

«Address2»

«Address3»

«Address4»

Notice of Opinion for PAYE/PRSI

I, xxxxx, of the Office of the Collector-General, Bishop Street, Newcastlewest, Co. Limerick, hereby give notice in writing that I am of the opinion that «Offenders_Name» is liable to a penalty pursuant to Section 987(1A), Taxes Consolidation Act, 1997.

The reason that you are liable to the penalty is because you have failed in your statutory duty as an employer to file a P35 return **on or before 15th February 20xx** in accordance with Regulation 31 of the Income Tax (Employments)(Consolidated) Regulations, 2001. The return in question refers to the tax year **1st January 20xx – 31st December 20xx**.

I am of the opinion that the amount of the penalty to which you are liable is «Penalty_Amount_Demanded»

You may within **30 days** of the date of this notice:

- (a) agree in writing with the opinion in this notice, **and**
- (b) make a payment to the Revenue Commissioners of the amount of the penalty specified in this notice.

The agreement in writing and the payment of the amount of the penalty should be sent within 30 days of the date of this notice to:

xxxxx, Penalty Payments, Office of the Collector-General, Sarsfield House, Francis Street, Limerick.

If you do not agree in writing with the opinion and make a payment of the amount of the penalty within 30 days of the date of this notice, an application to a relevant Court may be made for that Court to determine whether a liability to a penalty arises. A copy of any such application to a relevant Court for a determination shall be issued to you.

Dated: «Demand_Date»

Signed: _____
XXXXX
Revenue Officer

Appendix 9 - Notice of Opinion for VAT

Lo-Call 1890 20 30 70

Demand Date:

Our Ref: «Registration_Number»

«Offenders_Name»

«Address1»

«Address2»

«Address3»

«Address4»

Notice of Opinion for VAT

I, xxxxx, of the Office of the Collector-General, Bishop Street, Newcastlewest, Co. Limerick. hereby give notice in writing that I am of the opinion that **«Offenders_Name»** is liable to a penalty pursuant to Section 115 of the Value-Added Tax Consolidation Act, 2010.

The reason that you are liable to the penalty is because you have failed in your statutory duty as an accountable person to file a VAT 3 Return Form **on or before the 19th day of the month immediately following the accounting period** in accordance with Part 9 Chapter 3 of the Value-Added Tax Consolidation Act, 2010 and Regulation 24 of the Value-Added Tax Regulations, 2010. The return in question refers to the accounting period **«Taxable Period»**.

I am of the opinion that the amount of the penalty to which you are liable is **«insert Penalty Amount Demanded»**.

You may within **30 days** of the date of this notice:

- (a) agree in writing with the opinion in this notice, **and**
- (b) make a payment to the Revenue Commissioners of the amount of the penalty specified in this notice.

The agreement in writing and the payment of the amount of the penalty should be sent within 30 days of the date of this notice to: xxxxx, Penalty Payments, Office of the Collector-General, Sarsfield House, Francis Street, Limerick.

If you do not agree in writing with the opinion and make a payment of the amount of the penalty within 30 days of the date of this notice, an application to a relevant Court may be made for that Court to determine whether a liability to a penalty arises. A copy of any such application to a relevant Court for a determination shall be issued to you.

Dated: «Demand_Date»

Signed: _____
XXXXX
Revenue Officer

Appendix 10 - Notice of Opinion for LPT

Lo-Call 1890 20 30 70

Demand Date:

Our Ref: «Registration_Number»

«Offenders_Name»

«Address1»

«Address2»

«Address3»

«Address4»

Notice of Opinion for LPT

I, *HEO of P35 Compliance Unit* of Office of the Collector General, Bishop Street, Newcastlewest, Limerick hereby give notice in writing, pursuant to Section 145 of the Finance (Local Property Tax) Act 2012, that I am of the opinion that *Name of Employer* is liable to a penalty pursuant to Section 145(2) of the Finance (Local Property Tax) Act 2012.

The circumstances in which *Name of Employer* is liable to the penalty are that, according to my records, you/the company have failed in your statutory duty as an employer to make a return as provided for in Section 79 of the Finance (Local Property Tax) Act 2012 which shows details of LPT deducted from an Employee where a direction under Section 65 of the Finance (Local Property Tax) Act 2012 had been received.

I am of the opinion that the amount of the penalty to which *Name of Employer* is liable is €3,000.

You may within **30 days** of the date of this notice:

(a) agree in writing with the opinion in this notice, **and**

(b) make a payment to the Revenue Commissioners of the amount of the penalty specified in this notice.

The agreement in writing and the payment of the amount of the penalty should be sent within 30 days of the date of this notice to:

P35 Compliance Unit

Office of the Collector General
Sarsfield House
Francis Street
Limerick

If you do not agree in writing with the opinion AND make a payment of the amount of the penalty within 30 days of the date of this notice an application to a relevant Court under Section 987(4) of the Taxes Consolidation Act 1997 may be made by the Revenue Officer for that Court to determine whether a liability to a penalty arises. A copy of any such application to a relevant Court for a determination shall be issued to you.

Dated: «Demand_Date»

Signed: _____

XXXXX

Revenue Officer