

Failure to Cooperate Fully with a Revenue Compliance Intervention

1. Self Assessment

It is a fundamental principle of self assessment tax systems that returns filed by compliant taxpayers are accepted as the basis for computing their tax liabilities. Revenue promotes compliance with the tax system by vigorous pursuit of those who do not file returns, by auditing, investigating or making enquiries into selected returns and by taking appropriate action against tax evaders. Revenue challenges aggressive tax avoidance schemes and the unintended use of legislation that may threaten tax yields and the perceived fairness of the tax system.

Revenue's programme of compliance interventions aims to minimise the burden on the compliant taxpayer and tackle, in a thorough and effective way, the non-compliant taxpayer.

2. Cooperation versus Non-cooperation - Possible Penalty Consequences

The following are separate and distinct matters -

(a) **Reduction in penalties for cooperating fully with a Revenue investigation or inquiry**

Where a person is liable to a tax geared penalty, that penalty may be *reduced* where that person *cooperates fully* with a Revenue investigation or inquiry. Such tax geared penalties and reductions are provided for in Section 1077E TCA 1997; Section 116 VAT Consolidation Act 2010; Section 58 Capital Acquisitions Tax Consolidation Act 2003 and Section 134A Stamp Duties Consolidation Act 1999 (see Paragraphs 3 and 4 below);

(b) **Liability to a penalty for non-cooperation with a request by an authorised officer for certain books, records, information, etc.**

Various enactments enable authorised Revenue officers to request a person to produce various books, records, information, etc. and, where that person does not comply with such a request, that that person is liable to penalty [see, for example, the fixed penalty in Section 900 TCA 1997 (Power to call for production of books, information, etc.); Section 903 TCA 1997 (Power of Inspection: PAYE) and Section 904 TCA 1997 (Power of inspection re RCT) (see Paragraph 5 below)]. Such a penalty is 'stand alone' from the tax geared penalties referred to above.

(See Paragraph 5 below).

3. Failure to cooperate fully with a Revenue Compliance Intervention

Where a case is selected for a Revenue Compliance Intervention, it is expected that the taxpayer and his/her accountant and/or tax practitioner will **cooperate fully** with the compliance intervention so that the matter or matters under enquiry by Revenue can be resolved without delay. Whilst full cooperation by a taxpayer / agent / tax practitioner is a matter to be examined on a case-by-case basis, certain scenarios *may* be regarded as ‘failure to cooperate fully’ with a Revenue Compliance Intervention. Such scenarios include a failure to:-

- facilitate scheduled audits, compliance interventions or related meetings;
- have appropriate personnel available at the time of the audit / compliance intervention
- provide some or all of the books, records, linking papers or other documents of the business, on a timely basis;
- communicate with Revenue in a timely, responsible and reasonable manner;
- meet agreed deadlines for the submission of outstanding returns or replies to outstanding queries;
- reply fully to specific written queries raised by Revenue;
- supply the required clarification and/or technical support at a pre-audit preliminary meeting organised to identify and understand the accounting/electronic systems in use in the business;
- provide specific books, records, other documents of the business or access requested by Revenue;

which includes failure to:

- provide access to specified electronic records at all reasonable times
- facilitate the extraction of specified data files from electronic records
- provide data extracts in an accessible format
- provide details as to how and where data is stored on systems (e.g. location, file name, passwords, etc.)
- provide access to back-ups of data.

The frequency of occurrence of the above failures is a factor to be taken into account in considering whether ‘failure to cooperate fully’ arises.

However, where a person believes that reasonable grounds prevent him/her from cooperating fully with a Revenue Compliance Intervention, he/she should be requested to make a written submission on the matter.

4. Penalty Consequences of Failure to Cooperate Fully

The types of compliance interventions generally conducted by Revenue are outlined in detail at paragraph 2.2 of the Code of Practice for Revenue Audit and other Compliance Interventions. Revenue Compliance Interventions include Revenue Investigation, Revenue Audit, Aspect Query and Profile Interview.

The Tax Acts; the VAT Consolidation Act 2010; the Capital Acquisitions Tax Consolidation Act 2003 and the Stamp Duties Consolidation Act 1999 provide that, where a person has deliberately or carelessly made an incorrect return etc., that person shall be liable to a penalty. Where a person liable to the penalty **cooperated fully** with the Revenue Compliance Intervention, the amount of that penalty is reduced.

The reductions in penalties for cooperating fully are illustrated in the following tables:

Table A – where an Unprompted Qualifying Disclosure is made:

PENALTY TABLE A		UNPROMPTED QUALIFYING DISCLOSURE MADE	
DISCLOSURE	CATEGORY OF DEFAULT	PENALTY	FULL COOPERATION
			PENALTY REDUCED TO
All Unprompted Qualifying Disclosures in this category	Careless behaviour without significant consequences	20%	3% of tax/duty default
First Unprompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	5% of tax/duty default
	Deliberate behaviour	100%	10% of tax/duty default
Second Unprompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	20% of tax/duty default
	Deliberate behaviour	100%	55% of tax/duty default
Third or subsequent Unprompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	40% of tax/duty default (no reduction)
	Deliberate behaviour	100%	100% of tax/duty default (no reduction)
Where a 'qualifying disclosure' is made, the taxpayer gets the benefit of non publication and non prosecution in relation to the tax/duty default.			

Table B – where a Prompted Qualifying Disclosure is made:

PENALTY TABLE B	PROMPTED QUALIFYING DISCLOSURE MADE		
DISCLOSURE	CATEGORY OF DEFAULT	PENALTY	FULL COOPERATION
			PENALTY REDUCED TO
All Prompted Qualifying Disclosures in this category	Careless behaviour without significant consequences	20%	10% of tax/duty default
First Prompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	20% of tax/duty default
	Deliberate behaviour	100%	50% of tax/duty default
Second Prompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	30% of tax/duty default
	Deliberate behaviour	100%	75% of tax/duty default
Third or subsequent Prompted Qualifying Disclosure in this category	Careless behaviour with significant consequences	40%	40% of tax/duty default (no reduction)
	Deliberate behaviour	100%	100% of tax/duty default (no reduction)
Where a 'qualifying disclosure' is made, the taxpayer gets the benefit of non publication and non prosecution in relation to the tax/duty default.			

Table C – where no disclosure is made:

PENALTY TABLE C	NO QUALIFYING DISCLOSURE MADE	
CATEGORY OF DEFAULT	PENALTY	FULL COOPERATION
		PENALTY REDUCED TO
Careless behaviour without significant consequences	20%	15% of tax/duty default
Careless behaviour with significant consequences	40%	30% of tax/duty default
Deliberate behaviour	100%	75% of tax/duty default
See Code of Practice for Revenue Audit and other Compliance Interventions, paragraph 3.16.1		

5. Use of Revenue Powers

The vast majority of taxpayers appreciate that a self-assessment system of tax administration needs to be backed up by appropriate procedures to verify returns and liabilities, and they cooperate fully with Revenue requirements in this regard. This means that in everyday verification situations only basic powers are relied upon, for example, those allowing entry to a business premises to examine books and records. Most taxpayers cooperate voluntarily even without the formal use of these powers.

However, a small minority of taxpayers seek to evade their obligations and do not cooperate with Revenue. There are, therefore, situations where the formal use of

powers is necessary to obtain the books, records and other information required to determine a person's tax and duty liabilities. Revenue is conscious of its responsibility to use these powers with discretion and in a manner which is even-handed and ensures fairness of procedures, having due regard to the rights, as well as the obligations, of taxpayers who are the subject of these powers. These powers include:

- Power to call for production of books, information, etc. (Section 900 TCA 1997);
- Application to High Court: production of books, information, etc. (Section 901 TCA 1997); and
- Information to be furnished by third party: request of an authorised officer (Section 902 TCA 1997).

See [Statement of Practice](#) on the use of Revenue Powers and [Notes for Guidance, Chapter 4, Revenue Powers](#)

6. Action to be taken where there is failure to cooperate fully – agent cases

When there is a delay in initiating, progressing or finalising a Revenue Compliance Intervention, the case worker/manager should -

- (a) prepare a file note setting out the information requested, the nature and date of contacts and the responses (if any) received;
- (b) prepare a letter to the agent -
 - (i) outlining the information previously requested;
 - (ii) expressing dissatisfaction with the delays experienced in submitting the information requested; and
 - (iii) informing that if the required information is not received within 21 days, Revenue will consider the matter as one of non-cooperation with a Revenue investigation or inquiry for the purposes of the client's liabilities (if any) to penalties;
 - (iv) informing that a copy of the letter has issued to the client.

See Appendix A for a template letter to the agent and Appendix B for a template letter to the taxpayer. A copy of Appendix C – Penalty Matrix should also be issued to the taxpayer/agent.

In this context, all letters issued to the agent / tax practitioner and taxpayer should be signed by the Principal Officer and a copy retained on file.

7. Action to be taken where there is failure to cooperate fully - non-agent cases

Where there is no agent or tax practitioner involved in a case but there is a failure to cooperate fully by the taxpayer with the Revenue Compliance Intervention, the taxpayer should be advised by letter that:

- Where any person deliberately or carelessly fails to comply with a requirement to deliver a return or delivers an incorrect return, and a tax or duty default arises, that person shall be liable to a penalty
- Where that person does not cooperate fully with the Revenue Compliance Intervention, that person is not entitled to the benefit of a reduced penalty
- The person shall be liable to a penalty commensurate with this lack of full cooperation.

A copy of the letter issued to the taxpayer should be retained on file.

8. Revenue Compliance Interventions - Taxpayer's Responsibilities

Where an agent / tax practitioner has prepared a tax return or other information for submission to Revenue, the taxpayer is nevertheless responsible for the accuracy of the return filing or the provision of information, as if the taxpayer had prepared the return or information.

Ultimately, it is the taxpayer's responsibility to ensure that all Revenue queries are fully resolved to the satisfaction of the Revenue officer.

9. Letters to be issued to the Agent / Tax Practitioner / Taxpayer

See draft letters below:

- Appendix A. – Letter to Agent / Tax Practitioner
- Appendix B – Letter to Taxpayer
- Appendix C – Penalty Matrix

10. Appendix A – Letter to Agent / Tax Practitioner

See draft text of letter below. A copy of the Penalty Matrix - Appendix C should also be issued to the taxpayer/agent.

Dear Agent / Tax Practitioner

Re:

I refer to previous correspondence.

Despite requests, I have not received the following –

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-
-

If the above information is not received within 21 days, Revenue will consider the matter as one of non-cooperation by your client with a Revenue investigation or inquiry for the purposes of the client's liabilities (if any) to penalties (see penalties matrix attached). A copy of this letter has been sent directly to your client today, a copy of which is attached for your information.

Yours faithfully

Principal Officer

11. Appendix B – Letter to the Taxpayer

See draft text of letter below. A copy of the Penalty Matrix - Appendix C should also be issued to the taxpayer.

Dear Taxpayer,

I attach copies of recent correspondence issued to your Agent / Tax Practitioner.

You may be aware that Revenue has been corresponding with your agent seeking information relating to various aspects of your tax affairs. However, to date, such information has not been submitted. Notwithstanding that you may have an agent acting on your behalf as regards your obligations relating to tax and duty matters, nonetheless, compliance with such obligations is your responsibility as is the provision of information requested by Revenue.

It is appreciated if you would give the matter of providing the information requested by Revenue your immediate attention by providing, or arranging for your agent to provide, such information within the next 21 days.

I wish to bring to your attention that, if it is the case that you are liable to penalties, such penalties (see penalties matrix attached) **may be reduced** where you make a voluntary disclosure of undisclosed tax liabilities and / or cooperate fully with a Revenue compliance intervention.

Yours faithfully

Principal Officer

12. Appendix C – Penalties Matrix to be included with compliance letter issued

Where liability to a penalty arises, the penalty is calculated using the percentages outlined in the Penalty Matrix below:

PENALTY MATRIX	CATEGORY OF DEFAULT	PENALTY	QUALIFYING DISCLOSURE MADE – FULL COOPERATION	
			Prompted Qualifying Disclosure and full cooperation – penalty reduced to:	Unprompted Qualifying Disclosure and full cooperation – penalty reduced to:
All tax/duty defaults where there is a qualifying disclosure	Penalty table for tax/duty defaults that occurred on or after 24/12/2008	Where full cooperation not given by taxpayer		
All qualifying disclosures in this category	<i>Careless¹ behaviour without significant consequences</i>	20%	10%	3%
First qualifying disclosure in these categories	<i>Careless behaviour with significant consequences²</i>	40%	20%	5%
	<i>Deliberate³ behaviour</i>	100%	50%	10%
Second qualifying disclosure in these categories	<i>Careless behaviour with significant consequences</i>	40%	30%	20%
	<i>Deliberate behaviour</i>	100%	75%	55%
Third or subsequent qualifying disclosure in these categories	<i>Careless behaviour with significant consequences</i>	40%	40% (no reduction)	40% (no reduction)
	<i>Deliberate behaviour</i>	100%	100% (no reduction)	100% (no reduction)
NO DISCLOSURE MADE	CATEGORY OF DEFAULT	PENALTY	FULL COOPERATION PENALTY REDUCED TO:	
All defaults where there is no qualifying disclosure	<i>Careless behaviour without significant consequences</i>	20%	15% of tax/duty default	
	<i>Careless behaviour with significant consequences</i>	40%	30% of tax/duty default	
	<i>Deliberate behaviour</i>	100%	75% of tax/duty default	
Where a 'qualifying disclosure' is made, the taxpayer is not subject to prosecution or publication on the list of tax defaulters in relation to the matter that gave rise to the tax/duty default. For third or subsequent qualifying disclosures in the 'careless behaviour with significant consequences' or 'deliberate' behaviour categories, the percentage penalty is not reduced.				
Liability to a tax-geared percentage penalty arises on the "difference" (see paragraph 5.5.1 Code of Practice 2014) between the tax liability / tax claim on the incorrect and correct returns				

Revenue policy and procedures in relation to all Revenue Compliance Interventions are outlined in the [Code of Practice for Revenue Audit and other Compliance Interventions](#) which is available on www.revenue.ie

¹ In tax legislation, the term used is 'carelessly but not deliberately'. The penalty percentages shown are as outlined in legislation.

² 'Significant consequences' is explained in paragraph 5.6.1 (b) of the Code of Practice 2014

³ In tax legislation, the term used is 'deliberately'. The penalty percentages shown are as outlined in legislation.