

Publication of Tax Defaulters Pursuant to Section  
1086 TCA '97

List of Tax Defaulters Part 11

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# 1. Obligation to Publish

Under section 1086 TCA 1997, Revenue is obliged to publish every 3 months, subject to certain exceptions, a list of the names and addresses, and the occupations or descriptions, of every tax defaulter who falls within defined criteria.

Publication in the List of Tax Defaulters is a **consequence** of reaching a settlement with Revenue meeting such defined criteria, and is not negotiable. Likewise, legislation obliges Revenue to publish Penalty Determinations by the courts, where defined criteria are met.

The provisions of Section 1086 Taxes Consolidation Act, 1997 oblige Revenue to publish Lists of Tax Defaulters, within three months of the end of each quarter in which agreed settlements are reached or Penalty Determinations are made by the Courts, in Iris Oifigiúil. Such settlements or penalty determinations are published in Part 11 of the List.

Details of relevant settlements reached with Revenue and details of relevant Penalty Determinations by the courts are publishable in Lists of Tax Defaulters, *whether paid or not*.

## Publishable Cases

Cases are publishable under Section 1086 TCA'97, subject to the exceptions listed at paragraph 2, as follows:

### 1.1 Court Determinations

Section 1086(2) (a) TCA'97 provides for publication of all cases where a fine or penalty is imposed [or determined] by a court under any of the various Acts under the care and management of the Revenue Commissioners. Where a taxpayer is publishable under this category, the tax amount on which the court has determined the penalty will also be published.

Section 1086(2) (b) TCA'97 provides for publication of all cases where a fine or penalty, in respect of a tax or duty offence, is imposed [or determined] by a court, otherwise than under the said Acts.

### 1.2 Accepted Settlements

Section 1086(2) (c) TCA'97 provides for publication of all cases where, instead of initiating proceedings for the recovery of any fine or penalty of the kind mentioned above, Revenue accept an offer in settlement of all liability to tax or duty, interest and penalties (a specified sum).

Section 1086(2) (d) TCA'97 provides for publication of all cases where a settlement has been agreed between a taxpayer and Revenue in respect of a payment of tax or duty, interest and penalties (a specified sum), even after court proceedings have been initiated, and whether or not a fine or penalty has been imposed [or determined] by the court.

*A letter of agreement to the terms of accepted settlements should be obtained from the taxpayer.*

### 1.3 Settlements deemed to be agreed due to full payment

Where a written offer is not provided by the taxpayer, but the taxpayer has paid the full settlement and the criteria set out in Section 1086 TCA 1997 are met, Section 1086 (2A) (b) provides that there is deemed agreement. Such cases are publishable. The taxpayer should be informed in writing that the payment made is being accepted by the Revenue Commissioners in settlement of liabilities due, that publication of the settlement will take place and of the details to be published.

### 1.4 Non-Qualifying Disclosures – Assurance Checks/Aspect Queries/Profile Interviews Section 1086 (2B) TCA'97

Disclosures made by taxpayers in the course of Assurance Checks, Aspect Queries and Profile Interviews, are regarded as unprompted disclosures.

Where, however, settlements or agreements reached on foot of such disclosures are not paid, they are deemed to be non-qualifying disclosures and, consequently, are publishable under Section 1086 (2B) TCA 1997 where the criteria for publication are met.

In summary:

- Where there is agreement with a person in relation to a settlement, and there are no excluding factors, the settlement is publishable, whether paid or not.
- Where there is no agreement with a person in relation to penalties, and there is a Court determination, and there are no excluding factors, the case is publishable whether or not amounts due have been paid. The tax position should be finalised before any process can be commenced in relation to a penalty determination.
- Unprompted Disclosures received in the course of non-audit compliance interventions, which become non-qualifying due to non-payment, are publishable in the List of Tax Defaulters where there are no excluding factors.

## 2. Cases not publishable

Cases falling into the following categories are *not* published:

### 2.1 Qualifying Disclosures

Where a taxpayer has made a qualifying disclosure of tax defaults to the satisfaction of Revenue before the commencement of any audit or inquiry by them, the settlement will not be published.

### 2.2 Cases where penalty charged <15% of the tax

Where the penalty agreed as part of an accepted settlement does not exceed 15% of the tax included in the settlement, the settlement will not be published. Likewise where a penalty determined does not exceed 15% of the tax to which that penalty relates, the determination will not be published.

## 2.3 Qualifying Avoidance Disclosures - No Publication

A taxpayer who incurs a 'tax avoidance surcharge' and/or makes a 'qualifying avoidance disclosure' will not have the details of his or her tax settlement published in the list of tax defaulters in accordance with Section 1086 TCA 1997.

## 2.4 Thresholds under which cases are not publishable

In the case of Penalty Determinations made by the Courts under (2) (a) or (b) of Section 1086 TCA 1997 - where the total liability does not exceed €30,000

In the case of accepted settlements reached with a taxpayer under subsection (2) (c) or (d) of Section 1086 TCA 1997 - where the total amount of tax, interest and penalties comprised in that settlement does not exceed:

- €12,700 where the total tax included in a settlement is tax, the liability in respect of which arose prior to 1 January 2005
- €30,000 where the total tax included in a settlement is tax, the liability in respect of which arose on or after 1 January 2005
- €33,000 where the total tax included in a settlement is tax, the liability in respect of which arose on or after 1 January 2010.

The publication limit of €33,000 only applies where all the tax included in a settlement is tax the liability in respect of which arose on or after 1 January 2010, or relates to periods, which commenced on or after 1 January 2010.

Where a settlement includes tax the liability in respect of which arose before 1 January 2010 or relates to a period, which commenced before 1 January 2010, the publication limit remains at €30,000.

Where a settlement includes tax the liability in respect of which arose before 1 January 2005 or relates to a period, which commenced before 1 January 2005, the publication limit remains at €12,700.

Where a settlement is reached for an overall period, including periods up to 31 December 2009 and post 31 December 2009, the amount to be published is the aggregate amount for all taxes and for all years/periods covered by the audit/investigation.

Examples are included in **Appendix 1**.

Section 1086 (4A) TCA 1997 (inserted by section 143 of the Finance Act, 2005) provides for an increase in the publication limit, in accordance with the increase in the Consumer Price Index, every 5 years. Any changes to the publication limit require a Ministerial Order. Where such an order is made, this operational instruction will be amended.

### **3. Details to be published**

#### **3.1 Penalty Determinations - Section 1086 (2) (a) and (b) TCA'97**

Publication in the List of Tax Defaulters is a consequence of a Penalty Determination by the Courts where relevant criteria are met.

The following details will be published as a consequence of a Penalty Determination by the Courts:

- The name, address and occupation of the taxpayer.
- The amount of the penalty determined by the Court.
- The amount of tax or duty on which the penalty amount was determined (the amount of underdeclared or non-declared tax or duty) will be referenced in the additional particulars.

#### **3.2 Agreed Settlements – Section 1086 (2)(c),(d) & Section 1086 (2B) TCA'97**

The taxpayer should be advised that the following details, in relation to both relevant accepted settlements and disclosures, meeting publication criteria, which become non-qualifying due to non-payment, will be published:

- name, address and occupation of the taxpayer
- settlement details:
  - Tax
  - Interest
  - Penalties
  - Total Settlement
  - Additional Particulars (relating to the underdeclaration of the tax/duty)

### **4. Settlement Offers – Approval, Acceptance and Publication**

#### **4.1 Approval**

All settlement offers, both audit settlement offers and non-audit intervention settlement offers (Aspect Query and Profile Interviews) are subject to approval, and the Board of the Revenue Commissioners has delegated the authority to Regional and District staff to approve certain offers.

Taxpayers should not be advised that an offer has been accepted unless approval at the appropriate level has been obtained.

#### **4.2 Letter of Offer and Acceptance**

Where cases are publishable under Section 1086 (2)(c), Section 1086 (2)(d) and Section 1086 (2B) TCA'97, agreement in writing must have been reached with the taxpayer in relation to the specified sum. A letter of offer in relation to the specified sum must be signed by the taxpayer for acceptance by Revenue.

## **5. Time limit for publication**

Where cases are not published within the timeframe set out in legislation, the opportunity to publish is lost and cases that have missed the publication deadline cannot be published subsequently. Consequently Regions/Divisions should ensure that they track their publication cases to ensure that the opportunity to publish is not lost.

### **5.1 Accepted settlements**

Publication of all settlement offers must take place within three months of the end of the quarter in which the taxpayer is notified that his/her offer has been accepted by Revenue. The date the taxpayer is notified of Revenue's acceptance of the offer is the date that determines the time of publication, and not the date the intervention is closed in the case management system, or any other date.

### **5.2 Penalty Determinations by the Courts**

The date on which a penalty determination is made by a relevant Court determines the time of publication of such cases. Determinations must be published within 3 months of the end of the quarter in which a Determination is made. Although Court Orders must be perfected following a determination by a relevant Court, and the taxpayer has 21 days from the date of perfection to appeal the determination, the date of determination, and not the date of perfection, determines the time of publication in the absence of an appeal.

## **6. Preparation of Tax Defaulters Lists in Regions/Divisions**

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

[...]