

Publication in Quarterly Tax Defaulters Lists

Frequently Asked Questions

Note: This manual is currently subject to review and may not reflect up-to-date position.

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Publication of Defaulters Lists in accordance with Section 1086 TCA 1997

Introduction

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.

Penalty Determinations by a relevant Court –Section 1086 (2) (a) and (b) TCA 1997
Section 1086 TCA 1997 obliges Revenue to publish Penalty Determinations made by the courts under Section 1077B, where defined criteria are met.

Agreed Settlements Section 1086 (2) (c) and (d) TCA 1997

Publication in the List of Tax Defaulters is a consequence of reaching a settlement with Revenue, meeting defined criteria, and **is not negotiable**.

The provisions of Section 1086 Taxes Consolidation Act, 1997 oblige Revenue to publish the lists, within three months of the end of each quarter, in Iris Oifigiúil.

The following is a list of frequently asked questions in relation to the publication of accepted settlements and penalty determinations.

Publication of Accepted Settlements

1. When should an accepted settlement be published?

The Revenue Commissioners are obliged to publish a list of settlements, in Iris Oifigiúil, within three months of the end of the quarter in which relevant settlements are accepted. The date the taxpayer is notified that his offer has been accepted will determine the time of acceptance, and the quarter in which the settlement is to be published.

Revenue must publish details of all settlements accepted in a quarter, within three months of the end of that quarter, e.g. settlements accepted between 1 January and 31 March must be published by the following 30 June. If a settlement is not published within this period, the opportunity to publish the settlement is lost.

2. Should a taxpayer be advised in writing that his/her settlement offer has been accepted?

Yes. Although not required by tax law, the issue of a letter of acceptance of offer gives clarity to the nature and date of the agreement, which determines the time of publication.

3. Should a taxpayer be advised of the details to be published?

Yes. Although it is not a legal requirement to include the details to be published in a letter to the taxpayer in advance of publication, it gives the taxpayer and agent an

opportunity to examine the details to be published and correct any inaccuracies before publication. This could avoid embarrassment for either party at a later stage.

4. Can an agreed settlement be published in a List of Tax Defaulters if the settlement has not been paid?

Yes. Under Section 1086 (2B) TCA 1997 (introduced by Section 76 Finance Act 2011) a settlement made with a taxpayer in accordance with Section 1086 (2) (c) or (d) is publishable in the List of Tax Defaulters, whether paid in full, part paid or not paid at all.

5. Can a settlement be published if a taxpayer refuses to make a formal offer but has paid a settlement, meeting publication criteria, in full?

Yes, under Section 1086 (2A) (a) TCA 1997, where the Revenue Commissioners accepted or undertook to accept a sum, being the full amount of their claim (the specified amount), they shall be deemed to have done so pursuant to an agreement with the taxpayer. In such cases, the taxpayer should be advised in writing that the amount paid is accepted in settlement of the specified liability and that publication of the settlement will take place.

6. Are settlements made in the context of Aspect Queries and Profile Interviews publishable?

Yes, settlements made on foot of Aspect Queries and Profile Interviews, which meet relevant criteria, are publishable in the same manner as settlements entered into in the course of audit interventions.

7. Should disclosures on foot of Aspect Queries and Profile Interviews, which are non-qualifying due to non-payment, be considered for publication?

Yes, disclosures on foot of Aspect Queries or Profile Interviews which become non-qualifying due to non-payment, and which meet relevant criteria, should be considered for publication having considered any revised penalty due and having reached agreement with the taxpayer in relation to that revised penalty, where appropriate.

8. What details are published?

The taxpayer's name, address, occupation, the tax charged, penalties agreed, interest charged, the total settlement and additional particulars (matters giving rise to the liability).

9. What name should appear on the List of Tax Defaulters?

Individuals - the taxpayer's name as per her/his signature on the Form 11 submitted.

Companies - the name of the company as per CRO records at the time the settlement was made.

10. What details should be published where a company goes into liquidation after a settlement has been reached but before publication takes place?

In such circumstances the company name followed by “(Now in Liquidation)” should be published.

The name and address of a liquidator should never appear in publication details.

11. What details should be published where a company becomes dissolved after a settlement has been reached?

Where a settlement has been reached with a company which subsequently becomes dissolved, the words “(Now Dissolved)” should appear in brackets after the company name.

12. What name should be published when a change of name takes place after the compliance notification has issued?

If a change of the name, usually used by the taxpayer for tax purposes, takes place after the compliance notification has issued, this name may be published if it is a name by which the taxpayer is normally known, and it is clear that the name change was not made for the purposes of avoiding identification. Appropriate evidence should be sought, e.g. utility bill, etc.

13. Can a taxpayer choose to have his name and address published in the Irish language?

No, a taxpayer cannot simply choose to have his/her details published in the Irish language. A taxpayer’s name and address should be published in the Irish language if that is the version of his name and address that he normally uses when corresponding with Revenue (Irish Cases). If the case is not an Irish case and a request to publish details in Irish is made, a taxpayer must provide evidence that he/she uses the Irish version of his/her name in correspondence. (Birth Certificate, Driver’s Licence, Passport, Utility Bill will suffice). Care should be taken to ensure that the taxpayer is not using the Irish version of his/ her name in an attempt to avoid identification.

14. What name should be published in the case of a settlement relating to a married couple/civil partnership?

Where a trade or business is carried on by a married person or civil partner, the question of who is published is determined by whether the case is an aggregation case for Section 1017 TCA 1997 purposes or an election case where the married person/civil partner is assessed under Section 1016 TCATCA 1997 (separate treatment) or Section 1023 TCA 1997 (separate assessment).

Where a married couple/civil partnership are assessed under S.1017 TCA 1997 i.e. on an aggregation basis and an agreement is reached under S.1086 (2) (c) 1997 in respect of the non-assessable spouse’s income or the income of the civil partner who is not the nominated civil partner, the person whose liability it is under the provisions of the Income Tax Act and with whom the agreement is reached is the

assessable spouse/nominated civil partner and therefore that spouse/civil partner is the person publishable pursuant to the agreement.

15. Which spouse name should be published in the case of separated couples/civil partners?

Apart from the special election which can be made for joint assessment by certain separated spouses/civil partners (S.1026 TCA 1997), the rules for joint assessment under S.1017 T.C.A 1997 only apply for tax years during which the married couple/civil partners are living together. Should the married couple/civil partners separate in any tax year, they cease to be entitled to be assessed jointly from the date of separation onwards, and must be assessed as single persons for the rest of that year and for subsequent years as long the separation continues.

Where a spouse/civil partner is assessed under S.1016 TCA 1997(separate treatment) or S.1023 TCA 1997 (separate assessment), the person whose liability it is and with whom an agreement under S.1086 TCA 1997 is reached, is that spouse/civil partner and that spouse/civil partner is the person publishable pursuant to that agreement (provided there was no election for joint assessment in operation for these years).

16. What name should be published where a settlement relates to PAYE or VAT?

Where an individual who carries on a business is registered for PAYE and/or for VAT purposes and a settlement is reached which meets the conditions for publication, the agreement in respect of that settlement must be reached with that individual. That person is the person who is published, irrespective of whether the income is assessed under the basis of aggregation or otherwise.

17. What name should be published in the case of a partnership?

The profits of a partnership trade or profession are assessed to income tax on the partners individually and not on the partnership and accordingly, the limits for publication will apply to each partner separately. An agreement must be reached with each partner in respect of his/her liability. Where the conditions set out in Section 1086 TCA 1997 apply, each individual partner's name will be published.

18. Where the underdeclaration in the case of a partnership relates to PAYE, VAT or RCT what name should be published?

Where the partnership is the entity liable to **PAYE and /or VAT/RCT** and the conditions for publication apply, an agreement must be reached with the Precedent Acting Partner and the Partnership is the person publishable.

19. What name should be published where a settlement meeting publication criteria has been reached with a deceased person prior to death?

The name to be published, where a settlement in respect of pre-death liability has been agreed with a taxpayer prior to his/her death, is that of the deceased followed by (Now Deceased) e.g. Joe Brady (*Now Deceased*).

20. What address should be published?

Individuals – the taxpayer’s full business address. The trade name should not form part of the address e.g. T/A “The Tavern”. The trade name should be excluded from the address for publication purposes.

If the taxpayer trades from his home address, the full home address should be published.

Companies - the address published should be that of the registered office at the time of settlement, per CRO records.

21. What address should be published where a change of address takes place after the compliance notification has issued?

If a change of address, normally used for tax purposes, takes place after the compliance notification has issued, an explanation for the change should be sought. The new address may be used for publication purposes if there is a valid reason for the change of address or it is an address normally used by the taxpayer and it is clear the address change was not made in an effort to avoid identification. Appropriate evidence of the change of address may be sought, e.g. utility bill, etc.

22. What address should be published in the case of a deceased person?

In the case of a deceased person, the deceased’s address at the time of death should be published. “Late of” should not appear in the address.

23. What description/occupation of an individual/company should be used for publication purposes?

Section 1086 (2) TCA 1997 mandates Revenue to list the occupations or descriptions of individuals and companies in the List of Tax Defaulters, e.g. Butcher, Medical Consultant, Car Sales Agent, Car Repair Service Provider, Haulage Contractors etc.

Descriptions of the source of the income from which the tax default arose should not be used, e.g. Rental Income, Investment Income, where at all possible.

Where the person being published is in PAYE employment, the occupation “Employee” should be used.

In the case of “Retired Persons” or “Pensioners”- if the taxpayer is retired from PAYE employment, the term "Retired Employee" will suffice. If the person is retired from self-employment, an indication of the trade, profession, etc., is required e.g. retired butcher.

Descriptions used should be consistent in respect of trades. Different versions of trade descriptions should not be used (i.e. Hauliers or Haulage Contractors, not both).

24. Should any amount chargeable in respect of a Section 1084 TCA 1997 surcharge be included in the publishable figure?

No, any Section 1084 TCA 1997 “surcharge” amount due should not be included in the tax amount publishable, as the Section 1084 TCA 1997 “surcharge” amount cannot be considered for penalty purposes.

25. Should each taxhead included in a settlement be examined separately to ascertain if publication arises?

Yes, where a number of taxheads are included in a settlement, each taxhead must attract a penalty amount in excess of 15% of that taxhead to be included in the publishable amount.

26. Should any undercharges which do not attract a penalty >15% be included in the publishable figure?

No. Undercharges which do not attract a penalty >15% of the tax, should be excluded from the publishable figure.

27. What additional particulars should be published?

The additional particulars published should mention all taxes or duties included in the settlement that meet publication criteria, and should state whether there is an underdeclaration, non-declaration of the tax or duty or non-operation of the regulations. They should also state whether the underdeclaration etc., arose in the course of a Revenue Audit, Revenue Enquiry or Revenue Investigation.

Example:

Routine Audits

“Underdeclaration of Income Tax, Corporation Tax, Capital Gains Tax, VAT, PAYE, Relevant Contracts Tax,” etc. “Revenue Audit Case”.

“Non-Declaration of Income Tax, Corporation Tax, Capital Gains Tax, VAT, PAYE, Relevant Contracts Tax,” etc. “Revenue Audit Case”.

Investigation cases

“Underdeclaration of Income Tax, Corporation Tax, Capital Gains Tax, VAT, PAYE, Relevant Contracts Tax,” etc. “Revenue Investigation Case.”

“Non-declaration of Income Tax, Corporation Tax” etc., “Revenue Investigation Case.”

Non-Audit/Investigation Cases (Aspect Queries/Profile Interviews)

“Underdeclaration of Income Tax, Corporation Tax, Capital Gains Tax, VAT, PAYE, Relevant Contracts Tax,” etc. “Revenue Enquiry Case.”

28. Can a settlement which has not been approved internally by Senior Management, but has been accepted and a letter of acceptance has been issued to the taxpayer, be published?

A letter of acceptance of an offer should not be issued until a settlement is approved by Revenue Senior Management.

However, settlements which have been accepted and where a letter of acceptance of an offer has issued in any quarter, despite the fact that it has not been approved at Assistant Secretary/Commissioner level, must be published within three months of the end of the quarter *in which the letter of acceptance was issued*, regardless of when they are approved in Revenue's Case Management Systems.

29. Should a case be published if the taxpayer has applied for an Internal/External Review?

No. If a review has been sought in relation to a matter within the remit of the Review Secretariat, the settlement cannot be regarded as agreed and the taxpayer should be made aware that this is the position. If the settlement is conditional, in other words, if all issues surrounding the proposed settlement have not been agreed, the settlement should not be regarded as having been made until all elements are accepted. This is also the position where a taxpayer has applied to have his case heard by the Ombudsman.

Publication of Penalty Determinations by the Courts

30. What are the criteria for publication of a Penalty Determination by the Courts?

A penalty determination made by a relevant Court is publishable when the penalty amount determined exceeds 15% of the tax to which the penalty relates, where there is interest due on that tax, where the total amount of the tax, interest and the penalty exceeds €30,000 and where there has not been a qualifying disclosure of the tax default prior to the commencement of any enquiry by Revenue.

31. Why is the publication limit for settlements involving penalty determinations different to the publication limit for accepted settlements?

Section 1086 [(4A) (b) provides for an increase in the publication limit in accordance with the consumer price index number, every five years, for settlements referred to in Section 1086 (2) (c) TCA 1997, only.

32. In which of the Lists of Tax Defaulters are penalty determinations published?

Penalty determinations by the Courts are listed in Part 11 of the List of Tax Defaulters, together with the list of taxpayers who have made agreed settlements.

33. When is a Penalty Determination by the Courts publishable?

The date a penalty determination is made by a Court decides the time of publication. Penalty determinations must be published within 3 months of end of quarter in which the Court determination is made.

34. What relevance has the date of perfection of a Court Order, issued on foot of a penalty determination?

The date of perfection of a Court Order is not of relevance. All Court Orders arising from penalty determinations must be “perfected” before an Appeal can be made against the penalty determination. Orders are perfected within 2/3 weeks of a penalty determination.

A taxpayer can appeal the determination but must do so within 21 days of the Court Order being “perfected”.

If no appeal is received the determination may be published and publication must take place within 3 months of the end of the quarter in which the determination is made and *not* within 3 months of date on which it was “perfected”.

35. What details are published in respect of penalty determinations made by the Courts?

Section 1086 (5) TCA 1997 provides for publication of a penalty amount determined by a Court, together with details of the matters which occasioned liability to the penalty determined. It also provides for publication of the tax, determined under the Taxes Acts, by reference to which the penalty is determined by the Court.

36. What additional particulars are published in respect of penalty determinations?

Revenue policy is to publish the following additional particulars in relation to penalty determinations published in the List of Tax Defaulters:

“Penalty Determination by the Courts relating to an underdeclaration of ...Tax/Duty (state all taxes/duties) in the amount of €.....”

37. Can a taxpayer be published twice, under Section 1086 (2) (a) and Section 1086 (2)(c) TCA 1997 in the context of the same default?

A specified sum settlement cannot be published unless there is agreement with the taxpayer in relation to the penalty included in that settlement. Where such agreement is present, and the settlement meets publication criteria, it is published in accordance with Section 1086 (2) (c) TCA 1997.

Where a penalty included in an agreed (specified sum) settlement meeting publication criteria is not subsequently paid, and the taxpayer is deemed to have ability to pay, Revenue must seek to have the penalty determined by a relevant Court under Section 1077B TCA 1997. Where such a determination is made, despite the fact that the agreed settlement has already been published under Section 1086 (2) (c) TCA 1997, Section 1086 (2) (a) TCA 1997 provides that the taxpayer shall also be published in respect of the penalty determination. Where both are due to be published in respect of the same quarter, the accepted settlement should be

published in the usual manner and the additional particulars will also reference the fact that the penalty has been determined by a relevant Court.

38. Should a taxpayer be advised that a penalty determination will be published, and of the publication details?

Publication in the List of Tax Defaulters is a consequence of a penalty determination by a Court. Whilst the taxpayer will, generally, be present in Court and will be aware that a determination has been made, notification to him/her that the determination will be published is advised.

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