

Mitigation and Application of Fines and Penalties

Part 47-00-01

This document should be read in conjunction with section 1065 of the
Taxes Consolidation Act 1997

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Introduction

- 1.1. The provisions of Section 1065 Taxes Consolidation Act 1997 (TCA) concerning the mitigation and application of fines and penalties and the discharge of persons from prison were amended by Section 78 Finance (No 2) Act 2013 (FA (No 2) 2013).
- 1.2. Certain powers of mitigation that the Revenue Commissioners and the Minister for Finance had under Section 1065 TCA were largely historic and were considered no longer appropriate in the light of developments in the law on the imposition of both fines and penalties. In future, the powers of the Revenue Commissioners to mitigate will be confined to penalties only, and the Minister for Finance's power to mitigate has been repealed.
- 1.3. Section 1065, as amended, applies to all the taxes and duties covered by the legislation listed in Section 1077A(1) TCA:
 - The Tax Acts – that is, all enactments relating to income tax and corporation tax in the TCA and any other enactment,
 - The Capital Gains Tax Acts – that is, all enactments relating to capital gains tax in the TCA and any other enactment,
 - Parts 18A, 18B, 18C and 18D TCA, which relate to the income levy, the parking levy, the domicile levy, and the universal social charge, respectively
 - The Value-Added Tax Consolidation Act 2010, and the enactments amending or extending that Act,
 - The Capital Acquisitions Tax Consolidation Act 2003, and the enactments amending or extending that Act,
 - The Stamp Duties Consolidation Act 1999, and the enactments amending or extending that Act,
 - The statutes relating to the duties of excise and to the management of those duties,
 - The Customs Acts,
 - The Finance (Local Property Tax) Act 2012,any instrument made under any of those Acts, and any instrument made under any other enactment relating to tax.

2. Extent of amendments

- 2.1. Section 1065 TCA contained the main provision governing mitigation of fines and penalties. Other legislation also contained provisions relating to the mitigation of fines and penalties for other taxes and duties that relied in some respects on Section 1065 (see section 3 below).
- 2.2. Section 78 F A (No. 2) 2013 consolidates the main mitigation provisions in Section 1065 and deletes or amends certain other provisions, where necessary, to achieve this. The retained mitigation provisions are accordingly contained in Section 1065 TCA, as amended, and are applied for the purposes of all taxes and duties.
- 2.3. The Revenue Commissioners may at their discretion –
 - mitigate any penalty imposed under the Acts,
 - mitigate or further mitigate, subject to a maximum mitigation of 50%, any penalty determined by a relevant Court to be due and payable by a person, and
 - stay or compound any proceedings for the recovery of any fine or penalty.

Section 1065 repeals the Revenue Commissioners' power to order a person to be discharged from prison before the term of imprisonment has expired and also the power to mitigate fines imposed by the Courts. The section also repeals the Minister for Finance's powers of mitigation of fines and penalties.

- 2.4. In relation to excise, Section 130 Finance Act 2001 is amended to retain a judge's power of mitigation of fines and penalties. The Revenue Commissioners' mitigation powers in relation to excise penalties are deleted from Section 130 FA 2001 because they are now contained in Section 1065 TCA.

3. Other provisions repealed or amended

- 3.1. The following provisions are repealed, as their relevant provisions on mitigation have been retained and consolidated in Section 1065 TCA:
 - (a) section 35 Inland Revenue Regulation Act 1890;
 - (b) section 209 Customs Consolidation Act 1876;
 - (c) section 118 Value-Added Tax Consolidation Act 2010.

- 3.2. Minor amendments were made to Sections 58 Capital Acquisitions Tax Consolidation Act 2003 and Section 133 Stamp Duties Consolidation Act 1999 to delete references in those sections to section 1065 TCA, as a result of the consolidation.
- 3.3. Section 1065 TCA retains the provision in subsection (2)(b) which provides that no mitigation is allowed in the case of an individual who failed to comply with the provisions of the Waiver of Certain Tax, Interest and Penalties Act 1993.
- 3.4. Also retained is subsection (3), which provides that all sums payable in relation to fines and penalties must be accounted for and paid to the Revenue Commissioners.

A more recent version of this manual is available.