Guide to Revenue Compliance Interventions

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Introduction

This guide outlines how Revenue's Compliance Intervention Framework (audits and risk reviews) works in practice. It also contains a range of tips for dealing with Revenue interventions.

Revenue compliance interventions are an essential component of any self-assessment tax system. It is not possible for Revenue to review every return under every tax head for every taxpayer. For this reason, Revenue must try to review and audit returns and taxpayers where there is the greatest chance that an error may have occurred. Taxpayers are also encouraged to self-review their tax affairs and address any tax non-compliance issues voluntarily.

There are three intervention levels in the Compliance Intervention Framework; Level 1, Level 2 and Level 3.

The majority of Revenue audits and reviews are conducted due to the presence of a "risk indicator". Random audits are conducted to validate the integrity of the risk based approach. Advancements in IT, the better use of advanced analytics and data interrogation and the adoption of real time reporting have enabled this targeted approach. In other words, if you have been selected for a Revenue audit, there may well be a good reason.

Audits are conducted under the Revenue's Code of Practice for Revenue Compliance Interventions ("The Code").

	Level 1	Level 2	Level 3
Objective	Support compliance	Challenge non-compliance	Tackle high-risk cases/practices
Corrective options	Payment of liability self-correction Filing/amendment of relevant returns	Payment of liability Filing/amendment of relevant returns	Payment of liability Filing/amendment of relevant returns
Disclosure position	Unprompted disclosure available	Prompted disclosure available	No qualifying disclosure
Activity	Self-reviews Profile interviews Bulk issue non-filer reminders CCF engagements	Risk review Audit	Investigation

Source: Revenue Commissioners, www.revenue.ie, Code of Practice for Revenue Compliance Interventions

Types of Revenue Compliance Interventions

Level 1 Interventions

Level 1 Interventions are designed to assist taxpayers with voluntary compliance. For example, it is quite common for Revenue to query certain figures contained within a tax return. Revenue will frequently write to a taxpayer asking a particular query about the taxpayer's business. In other cases, Revenue initiates correspondence to discuss a particular matter or inform a cohort of taxpayers about a certain initiative.

None of the these scenarios necessarily mean the taxpayer is being (or will be) subject to a Level 2 intervention. Quite often, Level 1 interventions can be dealt with by simply providing the relevant information.

The most common Level 1 interventions are:

- reminders to file outstanding tax returns (by direct correspondence or indirectly through advertisements in the media);
- requests to self-review; and
- profile interviews.

Level 2 Interventions

A Level 2 Intervention comprises of a risk review or an audit.

Risk reviews are focused interventions to examine a risk or a small number of risks.

Revenue audits are a more detailed examination of a persons compliance with tax and duty legislation, and occur where there is a greater level of perceived risk.

Revenue will write to the taxpayer, and their agent, to confirm the intervention.

The letter will contain the wording "Notification of a Revenue Level 2 Compliance Intervention" and will contain the relevant details including:

- the type of intervention (i.e. risk review or audit);
- what period will be reviewed and by whom;
- what tax-heads will be reviewed; and
- in the case of an audit, where and when the audit is to take place.

Level 3 Interventions

At the other end of the scale, Revenue may commence an investigation. An enquiry letter from Revenue (or investigation letter) is generally a signal that a Revenue official has good reason to believe that a serious tax offence has been committed and that he/she is investigating with a view to criminal prosecution.

It is strongly recommended that advice is obtained in relation to all such matters - the procedure for dealing with such investigations is outside the scope of this publication.

What should I do if I receive a notification of a Revenue Compliance Intervention?

The first thing to decide is whether you have enough time to review your tax affairs before the audit is due to commence and if the date and time selected for the audit are suitable. There is generally no difficulty with changing the date of the audit by a week or two by contacting the person in Revenue who is dealing with the case as early as possible.

It is also possible to formally request a 60-day extension to prepare a "qualifying disclosure". This may be desirable where you have an extensive amount of work to do in order to prepare for the audit.

The Revenue audit process

Audit selection

A Revenue audit is the examination by Revenue of tax returns compared to tax records. Audits are rarely random and are generally based on information gathered from knowledge banks or computer-based profiling on Revenue's REAP (Risk Evaluation, Analysis and Profiling) software. Revenue also target particular business sectors and conducting streetscapes (i.e. auditing businesses in specific locations).

Notification

Notice is received in the form of a letter containing the phrase "Notification of a Revenue Audit". Generally 28 days notice is given and the letter is copied to the taxpayer's tax advisor. From the date of issue of the letter there is no longer the opportunity to make an "unprompted qualifying disclosure".

Unannounced visits

Unannounced visits from Revenue officers may occur should the officer be in the area. Upon arrival, the officer should offer to re-arrange the visit for a more convenient time. This option is not available for spot checks carried out relating to record-keeping or the correct operation of cash points. Such checks often take place on all businesses in the area during the same visit.

Location

The audit is generally carried out at the taxpayer's place of business. This is usually the principal place of business rather than the Registered Office (if the taxpayer is a company). Should the taxpayer have no premises the audit can take place at the private residence of an individual, but generally only with prior consent of the individual.

It is possible for the audit to take place at the relevant Revenue office or at the tax agents place of business or another suitable location. Irrespective of where the audit is carried out, the auditor usually visits the business premises at some stage during the process.

Conduct

The auditor shall show identification on arrival at the business premises and explain the general purpose for the audit. Before the audit begins, the auditor generally invites the taxpayer to make a qualifying disclosure (this is discussed in more detail later).
If any records are removed from the building by the auditor, the taxpayer should be provided with a receipt for these. Should the taxpayer require these for trading purposes, a copy should be provided. Information can also be requested in an electronic format.

Period

The auditor shall focus on the periods indicated in the audit notice but if issues arise and the auditor believes that significant tax defaults have taken place in previous or later periods, these periods can also be reviewed following approval from the relevant Revenue manager.

e-Audits and remote audits

The term e-Audits is used to describe audits consisting, exclusively or mainly, of an examination of records held electronically. When it comes to examination, there is no distinction between records kept manually and those kept on computer systems. The Code is still applicable with regard to the conduct of the audit and the procedures involved. Some small scale electronic checks may take place as part of an audit, but generally if an extensive e-Audit is required the taxpayer will be notified in writing.

Data Analysis Software (DAS)

Traditionally e-Audits took place for businesses involved in high volume transactions such as supermarkets as the e-Audit procedure allowed for quick analysis of large numbers of transactions. This method however, is expanding and its use is increasing across all business areas. The adoption by Revenue of Data Analysis Software (DAS) means that data can be analysed and inconsistencies easily identified due to the tailored nature of the search program.

Files

Files of a specific nature and format may be requested by Revenue. This information will then be handed over electronically by the taxpayer to the auditor for storage on encrypted Revenue systems. Revenue have a data security policy in place for the storage of data to ensure the safeguarding of sensitive information.

Remote audits

During the Covid-19 pandemic, compliance interventions were conducted remotely. While there is a gradual move back to in-person audits, where data can be provided electronically, audits may continue to be carried out remotely using video conferencing facilities such as Skype or Microsoft Teams. The concept of the audit is the same regardless of whether it is carried out in person on site, or remotely using video conferencing faculties.

Data protection

The purpose of the collection of data by Revenue is to ensure the correct operation of the taxation system. Any information provided to Revenue is strictly confidential and subject to the Revenue data protection policy and the Data Protection Act 2018.

IT involvement

Where the transfer of electronic data from a taxpayer's IT or EPOS system to Revenue is required the taxpayer or their IT support will be required to provide the necessary data downloads. These downloads can be uploaded securely through the Revenue File Transfer Service (RFTS) or via MyEnquiries. These are secure facilities that can be used to securely exchange data with Revenue and are the preferred methods for transferring data.

Revenue may seek a pre-audit meeting to identify and understand the accounting and EPOS systems in use in the business, and the format and extent of electronic records available. The taxpayer may want their IT personnel to attend this meeting.

The involvement of IT personnel should be guided by e-Audit specialists and their discussions with Revenue limited to IT related matters.

DAS can be programmed to search for data such as inconsistent numeric patterns, large transactions, weekend postings, gap detection and more detailed tailored inconsistencies In connection with "the norm" of the specific industry. The following areas can be examined through the use of DAS:

- invoicing errors – gaps can be detected in invoice numbers;
- non-deductible VAT/corporation tax items e.g. "food", "entertainment", DAS can search for key words;
- errors in VAT rates on products/services- calculation facilities can be formulated to identify incorrect rates;
- weekend postings/invoicing – DAS can detect postings made outside business hours;
- fabricated sales, i.e. customer numbers with no names – DAS can detect lines items with no description; and
- Grant Thornton uses DAS in the examination of business records.

Types of default

The level of penalty applied depends on the category of tax default:

01 Deliberate behavior

This is not defined in tax law. Generally, there will be an indication or indications of intention by the taxpayer to default, e.g. repeated omissions from books and records, concealment of bank accounts or other assets, failure to operate PAYE system.

02 Careless behaviour with significant consequences

This is generally a lack of due care by the taxpayer resulting in incorrect tax liabilities or claims. There is a test of reasonable care that asks “whether a taxpayer of ordinary skill and knowledge, properly advised, would have foreseen a reasonable probability or likelihood, the prospect that an act (or omission), would cause a tax underpayment, having regard to all of the circumstances.

03 Careless behaviour without significant consequences

The categories of careless bahaviour are distinguished by reference to the size of the tax underpayment relative to the correct tax liability. There is a 15% test provided for in tax law - “significant consequences” arises where the tax underpaid exceeds 15% of the correct tax payable.

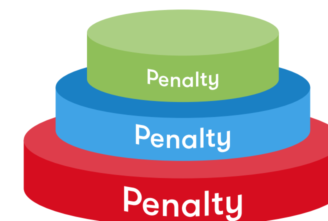
What is a “Qualifying Disclosure”?

A qualifying disclosure must contain certain information and it should be in writing and signed by the taxpayer. It should include details of tax owing as well as the interest due to Revenue. It should also be accompanied by payment for the tax plus interest. There is no requirement to calculate the level of penalty as this can be agreed (usually!) at the end of the audit.

A disclosure will still be accepted by Revenue as “qualifying” where all of the criteria are satisfied (see table below) with the exception of payment, as long as the taxpayer enters into an acceptable payment plan with Revenue.

A taxpayer may wish to make a qualifying disclosure for the following reasons:

- the level of penalty applied will generally be much lower;
- the settlement will not be published by Revenue; and
- Revenue will generally not initiate an investigation with a view to prosecution.



Disclosure Type	Details
“Qualifying Disclosure”	Disclosure of complete information in relation to, and in full particulars of, all matters occasioning a liability to tax that is made in writing, signed by or on behalf of the tax payer and is accompanied by: • a declaration, to the best of that person’s knowledge, information and belief, that all matters contained in the disclosure are correct and complete; and • a payment of the tax or duty and interest on late payment of that tax or duty.
“Prompted Qualifying Disclosure”	A qualifying disclosure that has been made to Revenue or to a Revenue officer in the period between: • the date on which the person is notified by a Revenue officer that a Level 2 compliance intervention will start; and • the commencement of that compliance intervention.
“Unprompted Qualifying Disclosure”	A qualifying disclosure that has been made to Revenue or to a Revenue officer before Revenue has issued any notification of intention to commence any Level 2 or Level 3 compliance interventions in relation to any matter included in the disclosure.

Audit settlement

"Tax, interest and penalties"

It is possible that no additional liabilities will be due to Revenue at the conclusion of the audit. In fact, it can happen that a taxpayer discovers they are due a refund from Revenue. Unfortunately, these situations are quite rare and in the vast majority of cases, some amount of tax is due to Revenue, mainly due to innocent error.

In addition to the tax, Revenue will generally insist on collecting interest. Interest is charged at a rate between 8% - 10% per annum (depending on the tax) which is generally considered to be quite a penal rate.

Finally, Revenue will seek to collect a penalty. The penalty is based on the amount of the tax underpaid and then allowance is made for a number of factors including:

- was the error disclosed by the tax payer?;
- was the error material and was it deliberate?;
- did the taxpayer co-operate with the auditor?; and
- has the taxpayer made previous disclosures?.

The following table outlines the appropriate penalties which apply to a first disclosure made by a taxpayer.

Penalty Table	Category of Default	Prompted Qualifying Disclosure and co-operation	Un-prompted Qualifying Disclosure and co-operation
All qualifying disclosures in this category	Careless behaviour without significant consequences	10%	3%
First Qualifying Disclosure in these categories	Careless behaviour with significant consequences	20%	5%
	Deliberate Behaviour	50%	10%

In contrast the following penalties apply where no qualifying disclosure has been made.

No Qualifying Disclosure	Category of Default	No Co-operation	Full Co-operation
All defaults where there is no qualifying disclosure	Careless behaviour without significant consequencess	20%	15%
First Qualifying Disclosure in these categories	Careless behaviour with significant consequences	40%	30%
	Deliberate Behaviour	100%	75%

As you can see from the above, the level of penalty is much greater where no qualifying disclosure is made.

Note: The terms "deliberate behaviour", "careless behaviour with significant consequences" and "careless behaviour without significant consequences" are explained in this document.

It is possible that the taxpayer will not agree with the level of penalty that the auditor is seeking to apply. Unfortunately, in such cases, the auditor has the power to have the matter dealt with in a public court. The vast majority of audits are concluded without recourse to this action and there are other means of seeking to agree on a final settlement.

What about situations where there is an inability to pay?

It is not always possible for a taxpayer to fund an immediate settlement with Revenue. In cases where there is a genuine inability to pay (and Revenue believe the business is a viable one), it may be possible to enter into a phased payment arrangement (known as a "PPA") with the Collector General. To avail of this process, a significant amount of information must be provided. Once agreed, it is very important that the taxpayer meets the payment requirements.

Are tax, interest and penalties always due?

No Loss of Revenue (no tax due)

There are occasions when failure to account for tax ultimately leads to the Exchequer being in a tax-neutral position. These are generally called "no loss of Revenue" situations. Where the taxpayer can demonstrate that this applies, Revenue will generally not seek to collect the tax. However, Revenue are still likely to seek a penalty and possibly some amount of interest, if the Exchequer was out of funds at any stage as a result of the error (even if only for a short period). "No loss of Revenue" claims will not be accepted when:

- deliberate default exists;
- there is a general failure to operate the tax system;
- "no loss of Revenue" is not proven to the satisfaction of Revenue;
- the "no loss of Revenue" penalty has not been agreed and paid; or
- careless behaviour exists and there is neither a qualifying disclosure nor co-operation.

Self Correction (no penalty due)

A taxpayer can 'self-correct' a return without paying a penalty if the error is identified within certain timeframes. This generally involves writing to Revenue to explain the error and to including payment for the underpaid tax along with statutory interest. Where the amounts involved are relatively minor, certain VAT errors can be rectified without paying interest or notifying Revenue.

Technical Adjustments (no penalty due)

These arise from differences in interpretation of tax law. For a Revenue auditor to accept such a position, they would need to be satisfied that due care has been taken by the taxpayer and that the interpretation taken by the taxpayer was reasonable.

This will all be influenced by the amount of published material and precedents on the topic (in particular if there has been Revenue guidance issued), the level of legal, accountancy and tax expertise available to the taxpayer, and the magnitude of the tax consequences. No penalty will be applied where an auditor accepts that a liability has arisen as a result of a technical adjustment, however, interest will be applied.

Innocent Error (no penalty due)

A penalty will generally not be sought where an underpayment of tax has resulted from an innocent error. A Revenue auditor will consider several factors when deciding if an error should fall into this category. A taxpayer would typically need to have a good compliance record and the error should not have arisen from the failure to keep proper books and records, etc. In addition, the amount of tax underpaid would also be a factor.

Publication and prosecution

Will the settlement be published?

If a taxpayer is discovered to have underpaid tax and this underpayment (excluding penalties and interest) totals €50,000 or more, the taxpayer will face having the result of the audit published in:

- Iris Oifigiúil, (Irish State Gazette);
- national newspapers; and
- Revenue website.

Publication can be avoided where:

- a qualifying disclosure is accepted;
- the penalty does not exceed 15% of the additional amount of tax due; or
- the total of underpaid tax, (excluding interest and penalties) is less than €50,000.

Will I be prosecuted?

The Director of Public Prosecutions makes decisions as to whether or not a case should be prosecuted. Should a taxpayer become aware that an investigation into their affairs has commenced or is about to commence, it is important to seek legal advice.

Tax offences that are most likely to be prosecuted include:

- deliberate omissions from tax returns;
- facilitating fraudulent evasion of tax;
- systematic schemes to evade tax;
- failure to produce business records when required;
- failure in remitting fiduciary taxes;
- false claims of repayment; and
- use of forged or falsified documents.

Tips relating to the audit process

Based on our experience, the following are points worth considering if you have been selected for a Revenue audit:

- Carefully review the period and tax-heads under review as this will impact on the approach you will take to the audit;
- It may be advisable to seek additional time before the audit commences (in the event that you believe it will take time to prepare the relevant calculations or carry out a thorough review);
- Consider if a comprehensive review needs to be carried out or if any particular transaction needs to be examined in more detail;
- Ensure any disclosure meets the requirements as outlined by Revenue;
- Be sure to know the appropriate level of penalty relating to any tax underpayments and in particular consider if there is scope to argue that a penalty should not be applied;
- While preparing for the audit, you may discover errors which resulted in tax being overpaid. Consider whether it is appropriate to include these amounts in the disclosure or whether they should be addressed during or after the audit has been concluded;
- Consider if any issue impacts on more than one tax head. For example, if it is discovered that VAT was incorrectly reclaimed on entertainment expenses, it should be established if the corporation tax treatment for that expenditure was also incorrect; and
- If additional VAT or PAYE is due to Revenue, consider if it is possible that the corporation tax or income tax due for the period in question may be overstated (which would reduce the net payment due to Revenue).

Did you know?

A fixed-penalty regime applies for a number of offences including:

Offence	Category of Default
Failing to keep proper books and records (including PAYE & VAT records)	€4,000
Failing to issue correct VAT invoices	€4,000
Failing to complete VIES returns (nil threshold)	€4,000
Submitting a VAT return after the due date	€4,000
Failing to comply with PAYE regulations	€4,000
Failing to notify Revenue that Section 56 authorisation no longer applies	€4,000 (every two months)

These penalties are in addition to the tax-geared penalties (max 100%) that apply to underpayments of tax. Substantial liabilities can arise even where relatively minor mistakes are made.

It is strongly recommended that taxpayers review their tax affairs regularly to provide the best protection against costly tax errors.

How can Grant Thornton help you?

Grant Thornton has a wealth of experience in identifying and resolving tax issues. We can assist you to prepare for the Revenue Intervention at all levels, to deal with Revenue and to negotiate any settlements on your behalf.

In addition we provide:

- VAT reviews to determine potential VAT exposures and savings;
- specialist VAT advice regarding property related transactions (e.g. sales and purchases, leasing, etc.);
- advice in relation to cross-border transactions;
- assistance with Revenue interventions and investigations and we can deal with the authorities on your behalf;
- VAT compliance services (VAT returns, Intrastat returns, VIES returns, etc.);
- transfer pricing reviews;
- corporation tax reviews;
- employment tax reviews for clients to determine potential exposures;
- VAT reviews for clients to determine potential exposures and savings;
- specialist payroll tax advice in relation to cross border issues, expatriate and non resident employer issues;
- payroll tax compliance services;
- systems reviews to identify weaknesses and risks in the way in which your returns are processed;
- data analytics and interrogation; and
- advisory services relating to all tax issues.

If you wish to discuss any of these issues contained in these guidelines, please contact your usual Grant Thornton adviser or any member of our expert team.

> "Tax Risk Management is key"

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