Irish Taxation Institute

Educating, Developing & Representing

FAQs on the Code of Practice for Revenue Audit

1. When does the 2010 Code of Practice for Revenue Audit take effect?

The 2010 Code came into effect on 1 October 2010 for audits notified from that day. Where an audit is open at 1 October, the taxpayer may choose whether the settlement is made under the terms of the 2010 Code or the 2002 Code.

2. How will I know whether the correspondence I receive from Revenue indicates an audit, investigation or another type of intervention?

Where an audit is being scheduled, the letter issued will include the wording "Notification of a Revenue Audit". Where an investigation is being notified, the letter issued will include the wording "Notification of a Revenue Investigation". If the letter does not clearly state that the intervention is an audit or an investigation, then it will not be treated as an audit or an investigation. In such circumstances, the taxpayer is free to make an unprompted qualifying disclosure (QD) if they so wish.

Where an audit has been notified, a prompted QD can be made by the taxpayer with the associated benefits of non-publication, non-prosecution and mitigation of penalties.

No QD can be made in the context of an investigation.

During the course of an audit, the Revenue auditor may come across "strong indicators suggesting that a serious tax offence has taken place". In such circumstances, the taxpayer will be advised that an investigation may be undertaken. If this situation arises, you may want to consider whether separate professional advice is required, depending on the circumstances of the case.

Appendix 2 of the Code summarises in a useful Table, the various types of intervention possible, the availability or otherwise of a QD and the type of QD that can be made in each scenario i.e. prompted or unprompted.

3. Can a verbal voluntary disclosure still be made under the new Code?

Finance (No. 2) Act 2008 abolished the facility to make a verbal disclosure to obtain the benefits of non-publication and non-prosecution. All QDs must now be made in writing and this is reflected in the new Code.

4. **Can you make a QD on the day of the audit?**

A QD, in writing, can be made on the day of the audit once it is made before the examination of the books and records begins. This would usually be at the initial interview with Revenue.

5. **I have just received my Audit Notification letter. How long do I have to make a QD?**

21 days notice of an audit is generally provided by Revenue. As noted above, a QD can be made on the day of the audit before the examination of the books and records begins. However, if the taxpayer wishes to make a prompted QD but requires more time to prepare it, a notice of intention to make a disclosure must be given to Revenue within 14 days of the issue of the audit letter. This will allow the taxpayer/practitioner 60 days from the day of providing the notice of intention to prepare the QD.

6. **Do penalties need to be paid over at the time of making a QD?**

Finance (No. 2) Act 2008 introduced Section 1077E TCA 1997 which defines "qualifying disclosure", "prompted qualifying disclosure" and "unprompted qualifying disclosure". A qualifying disclosure must include payment of the tax, duty and interest only.

As noted in paragraph 2.7.3 of the Code, a qualifying disclosure does not need to make any reference to penalties nor state the amount of the penalties due. However, penalties may form part of the final settlement due.

Following Finance (No. 2) Act 2008, in situations where agreement on penalties cannot be reached, then Revenue may issue a Notice of Opinion and seek to have the matter determined by the Courts. For more information on the penalty regime changes read our Special TaxFax of 20 November 2008. A number of ITR articles on the 2008 changes are available on our Revenue Audit webpage here.

7. **If the taxpayer cannot pay the tax and interest required for making a QD, can a valid disclosure still be made?**

The Code recognises that situations may arise where either a taxpayer needs time to pay the audit settlement i.e. through a phased payment arrangement, or indeed is unable to pay the full settlement.

Where the settlement is being paid by way of phased instalments, Revenue note in paragraph 2.7.4 of the 2010 Code that a real, genuine and accepted proposal to pay the agreed liability (involving payment or phased payments in accordance with Revenue's instalment arrangement procedures) will satisfy the payment criteria. Details of the information that can be sought by Revenue to justify consideration of a phased payment arrangement are set out in paragraph 4.8.

The Code also notes that if the taxpayer fails to honour the payment agreement and Revenue are satisfied that the disclosure and intention to pay were not bona fide, Revenue reserve the right to prosecute or investigate with a view to criminal prosecution.

Where the taxpayer is unable to pay the audit settlement in full (as opposed to simply needing more time to pay), the Code clarifies what evidence Revenue will seek, in order to substantiate a claim of "inability to pay". This includes a statement of affairs, calculations of anticipated income/expenditure and a formal settlement offer. Revenue reserves the right to consider prosecution where full payment is not made.

8. What is the "5 year rule" for making disclosures and how does it operate to mitigate penalties?

As noted in paragraph 2.12 of the Code, where a QD is made in respect of a tax head and no further disclosure is made in respect of that tax head within five years, the QD "life" for that tax head starts again. Therefore a further disclosure in relation to that tax head will be treated as a first disclosure (i.e. better penalty mitigation terms are available). For example, if a taxpayer made a QD in relation to VAT in April 2010 and is making a QD in relation to PAYE in October 2010, the PAYE disclosure will be the first QD under that tax head, assuming no other QD in relation to PAYE has been made since the five year clock started ticking.

Also worth noting is that qualifying disclosures in the *careless behaviour without significant consequences/insufficient care* category are not counted when calculating the number of qualifying disclosure made by a taxpayer.

9. When does the 5 year clock start to tick?

Sections 1077E (13) and (14) TCA 1997 as introduced by Finance (No2) Act 2008 provide that this five year rule applies in respect of qualifying disclosures defined under that Act. Therefore the 5 year rule applies in respect of QDs made from the passing of the Act, which was 24 December 2008.