

Revenue



Income Tax, Capital Gains Tax and Corporation Tax:
Eamonn Coates
Director, Taxation Services, Deloitte



Capital Acquisitions Tax:
Carol Hogan
William Fry



Stamp Duty:
Emmet Scully
Partner, LK Shields Solicitors



VAT:
Gabrielle Dillon
Director, Dermot O'Brien & Associates

Finance (No. 2) Act 2008 – New Fixed Penalties Regime

In the January edition of *Irish Tax Review*, Julie Burke and Claire McGuinness set out the background to the introduction of the new penalty legislation. They highlighted shortcomings in that legislation, such as the absence of safeguards for taxpayers and the failure to legislate for innocent error in the filing of tax returns. They also pointed to many of the practical and legal difficulties that practitioners and taxpayers may encounter as a result of the new regime.

The four authors in this article will concentrate on detailing the specific provisions in the new legislation insofar as they relate to income tax, capital gains tax and corporation tax; capital acquisitions tax; stamp duty; and value added tax.

Income Tax, Capital Gains Tax and Corporation Tax

Eamonn Coates *Director, Taxation Services, Deloitte*

Tax-Geared Penalties

Fundamentally, Finance (No. 2) Act 2008 provides that any person who, deliberately or carelessly, files an incorrect tax return or fails to file a tax return when required to do so shall be liable to a penalty. The level of tax-geared penalty to which such a person becomes liable is determined by a number of factors, as follows:

- › whether the tax underpayment arose as a result of deliberate behaviour, careless behaviour with significant consequences, or other careless behaviour,
- › whether the taxpayer co-operated with Revenue,
- › whether a prompted or unprompted qualifying disclosure was made by the taxpayer,
- › whether the tax default is a first or second default (subject to the five-year time limit – see more below).

Details of the various penalty levels are set out in the diagram below. The maximum penalty is 100% of the difference between the tax paid by the taxpayer and the tax that would have been paid had a correct return been filed. These penalties apply to returns specified in Column 1 of Schedule 29, TCA 1997, and for capital gains tax purposes those deemed by s1077 TCA 1997 to be included in Schedule 1. Essentially, the penalty levels in the 2002 Code of Practice for Revenue Auditors are now enshrined in law.

Perhaps the best way to illustrate how the new regime will work is by way of examples.

Example 1

Taxpayer makes an unprompted qualifying disclosure of tax underpayments amounting to €100,000 arising from deliberate behaviour. The interest is €60,000. The penalty will be €10,000 (i.e. 10%). Details of the settlement, totalling €170,000, will not be published as an unprompted qualifying disclosure was made and the penalty is less than 15% of the tax.

PENALTY TABLE		NO QUALIFYING DISCLOSURE		QUALIFYING DISCLOSURE	
Code of Practice Guidelines 2009	Category of Tax Default	Tax-Geared Base Penalty for a Default No Co-operation	Tax-Geared Reduced Penalty for a Default Co-operation Only	Prompted Qualifying Disclosure	Unprompted Qualifying Disclosure
First Default	Deliberate behaviour	100% of underpaid tax	75%	50%	10%
	Careless behaviour with significant consequences	40% of underpaid tax	30%	20%	5%
Second Default	Deliberate behaviour	100% of underpaid tax	75%	75%	55%
	Careless behaviour with significant consequences	40% of underpaid tax	30%	30%	20%
ALL DEFAULTS In the "Other Careless Behaviour" category exceeding €3,000	Other careless behaviour	20% of underpaid tax	15%	10%	3%

Example 2

Taxpayer has an underpayment of €40,000 made up of tax (€24,000) and interest (€16,000). No qualifying disclosure was made, but he co-operated with Revenue. This was his second default, three years after the first. Both defaults were in the category of careless behaviour with significant consequences. The penalty is €7,200 (i.e. 30%). Details of the settlement, totalling €47,200, will be published as no qualifying disclosure was made, the penalty exceeds 15% of the tax and the total settlement exceeds €30,000.

It should be noted that "reduced" penalties such as 75% of the tax-geared base penalty or 30% of the tax-geared base penalty are no longer "mitigated" penalties. They are now the statutory penalties.

There is a very important new provision in relation to incorrect returns, statements or declarations filed with the Revenue but that were not deliberately or carelessly so filed and it comes to the notice of the person who filed them that they were incorrect. Unless the returns etc. are corrected without unreasonable delay, they

will be treated as having been deliberately filed by that person, and the appropriate penalties for that category of offence will apply. The penalty levels in the table apply also to capital acquisitions tax, stamp duty and VAT.

Second and Subsequent Qualifying Disclosures

Where a person makes a second qualifying disclosure within five years of making a first qualifying disclosure, the level of penalty to be applied in relation to the second qualifying disclosure will be higher than that applying to the first (see diagram). Where there is a third qualifying disclosure within five years of the second disclosure, higher penalties again will apply.

There is a welcome provision to the effect that, where five years elapse between one qualifying disclosure and the next, the first disclosure is ignored for penalty purposes and the lowest appropriate rate of penalty applies. In effect, where five years elapse after a qualifying disclosure, the slate is wiped clean for penalty purposes.

Fixed Penalties

In addition to changes in relation to tax-geared penalties, as set out above, the Act also provides for an increase in a wide range of fixed penalties. The type of offence to which these penalties apply generally does not directly result in the underpayment of tax but rather occurs in areas such as filing of information, e.g. third-party returns under s889 TCA 1997, the keeping of records under s886 TCA 1997, and co-operating with Revenue under s902 TCA 1997.

The number of such changes is so great that it would not be possible to describe each in detail in this article. They are summarised in the attached Schedule I table. All section references are to the Taxes Consolidation Act 1997.

Where any person deliberately or carelessly makes an incorrect return in relation to any of the provisions specified in Column 2 or 3 of Schedule 29, that person shall be liable to a penalty.

Generally, these provisions require the filing of information with Revenue, e.g. s123(b) TCA 1997 requiring details of termination payments to be delivered to Revenue. The penalty is €5,000 where the person has acted deliberately and €3,000 where the person has acted carelessly.

In relation to a number of offences to which fixed penalties apply, there was a requirement that the person “knowingly” committed the offence. Finance (No.2) Act 2008 deletes the word “knowingly” from many of the relevant sections, e.g. s305(4) TCA 1997 and s789(5) TCA 1997. This change obviously makes it much easier

for Revenue to impose a penalty, as it will no longer be required to establish that the person “knowingly” committed the offence.

Publication – s1086 TCA 1997

Amendments to s1086 make it clear that, where agreement cannot be reached between Revenue and a taxpayer in relation to penalties and a court subsequently rules that a penalty is payable, then publication will not apply where:

- › the penalty does not exceed 15% of the tax, or
- › the aggregate settlement to include tax, interest and penalty does not exceed €30,000, or
- › a qualifying disclosure was made.

Table of Schedule I fixed penalties

Section	Matter	“Old” €	“New” €
152	Dividend warrant	10	200
305	Claiming repayment of tax	630	3,000
481	Film investments	630	4,000
486	Renewable energy investments	630	4,000
503	Business Expansion Scheme	630	4,000
783	Retirement annuities	630	3,000
886	Obligation to keep records	1,520	3,000
887	Electronic records	1,265	3,000
889	Third-party returns	1,520	3,000
895	Foreign accounts	2,530	4,000
896	Offshore products	1,900	4,000
898N	Savings Directive	1,265	3,000
898Q	Savings Directive	1,520	3,000
900	Production of books and records	1,900	4,000
902	Requests for information	1,900	4,000
903	PAYE inspections	1,265	4,000
904	RCT inspections	1,265	4,000
905	Inspection of documents	1,265	4,000
917B	Non-resident trustees	2,535	4,000
917C	Returns by trustees	2,535	4,000
939	Summoning of witnesses by Appeal Commissioners	950	3,000

Section	Matter	“Old” €	“New” €
987(1)	PAYE regulations	1,520	4,000
987(2)	PAYE regulations	950	3,000
1052	Request to make returns under Columns 1 and 2 of Schedule 29	950	3,000
1052	Request to make returns under Column 3 of Schedule 29	1,520	4,000
1055	Assisting in making incorrect returns	630	4,000
1058	Refusal to allow deduction of tax	60	3,000
1071	Corporation tax returns	630	2,000
	Corporation tax returns	125	1,000
	Corporation tax returns	1,265	4,000
	Corporation tax returns	250	2,000
1073	New companies	630	4,000
	New companies	125	3,000
1074	Corporation tax	630	4,000
	Corporation tax	125	3,000
1075	Corporation tax	125	3,000
	Corporation tax	315	3,000
	Corporation tax	630	4,000
	Corporation tax	125	3,000
1091	Interest warrants	10	200
	Interest warrants	125	2,000

Capital Acquisitions Tax

Carol Hogan *William Fry*

A number of amendments have been made to fixed penalties for non-compliance with the capital acquisitions tax legislation under Finance Act (No.2) 2008 (FA (No.2) 2008).

The primary section dealing with penalties under the capital acquisitions tax legislation is s58 of the Capital Acquisitions Tax Consolidation Act 2003 (CATCA 2003), and a brief summary of the amendments to this section follows.

The penalty of €2,535 provided for in s58(1) for failure to comply with the provisions of s46 CATCA 2003, which include delivery of returns and payment of tax due by the relevant date, as well as providing additional returns of information in response to written requests from the Revenue Commissioners, has been increased to €3,000.

The existing penalty of €2,535 plus a tax-geared penalty provided for in s58(1A) for failure to deliver a return or an additional return under s46 owing to fraud or neglect by the relevant accountable person has been substantially amended. The penalty has been increased to €3,000 plus a tax-geared penalty, and the text “by reason of fraud or neglect” of the relevant accountable person has been replaced with “deliberately or carelessly fails to comply with a requirement to deliver”, which would appear to be a significantly easier test for the accountable person to meet. This revised test for the application of penalties under s58 is applied throughout the remainder of the section.

Increased from €1,265 to €3,000 is the penalty that may be imposed in accordance with the provisions of s58(2) on a person who has custody or possession of property and who prevents inspection of that property by a person authorised to inspect it for the purposes of providing a valuation to the Revenue Commissioners.

As previously mentioned, FA (No.2) 2008 also amended the test in respect of the more onerous penalties that may be imposed under s58(3) for underpayment of tax as a result of fraud or negligence arising from certain actions including:

- › delivery of incorrect returns or additional returns and
- › making or furnishing of incorrect statements, declarations, evidence or valuations,
 - » in connection with any property comprised in a gift or inheritance,
 - » in connection with any claim for any allowance, deduction, exemption or relief, and
 - » in connection with any other matter.

The penalty is a fixed penalty of €6,345 (which has not been increased) plus the difference in tax involved as a result of the fraud or negligence. However, again the “fraudulently or negligently” test has been replaced with “deliberately or carelessly”.

Similarly, s58(4), until its recent amendment under FA (No.2) 2008, dealt with instances where the actions detailed above were not carried out fraudulently or negligently but it subsequently came to the attention of the person who filed the return or made the statement or declaration etc. that it was incorrect. In these circumstances, unless the error was remedied without unreasonable delay, the action was treated as having been negligently done by the person and the same penalties of €6,345 plus the difference in tax involved as a result of the negligence applied. As a result of the amendment, this sub-section will now deal with instances in which such actions are not carried out deliberately or carelessly (rather than fraudulently or negligently) but are incorrect and the resulting error is not remedied without unreasonable delay. In these cases the action will now be treated as having been carelessly (rather than negligently) done by the person, and the same penalties will arise.

Also increased from €1,265 to €3,000 as a result of an amendment to s58(7) is the penalty imposed on a person who assists in or induces the delivery, making or furnishing for the purposes of capital acquisitions tax any return, additional return, statement, declaration, evidence or valuation that the person knows to be incorrect.

Finally, s25 CATCA 2003 has been repealed. This section had imposed a penalty of €1,265 on the trustees of a discretionary trust who failed to deliver a self-assessed return in relation to discretionary trust tax, with tax-geared penalties also arising where the failure to deliver was by reason of fraud or neglect. Trustees of discretionary trusts will instead be penalised for non-compliance with the requirement to deliver discretionary trust tax returns in accordance with the general penalties for non-compliance, with the requirement to deliver a return set out in s58 CATCA 2003 (as amended by FA (No.2) 2008). The resulting penalties are likely to be significantly higher, with such trustees being liable for the new fixed penalty amounts detailed above and additional tax-geared penalties in instances of deliberately or carelessly failing to deliver relevant returns.

Deceased taxpayers

It is one of the duties of the personal representatives to file any outstanding income tax returns and obtain income tax clearance from the Revenue Commissioners in respect of the income tax affairs of the deceased up to his/her date of death. Section 1060 of TCA 1997 allows proceedings by Revenue against personal representatives for penalties. However, the European Court of Human Rights has held that fines imposed on beneficiaries for tax evasion by the deceased are contrary to the European Convention on Human Rights. Revenue published clarification on the issue of recovery of penalties from a deceased taxpayer’s estate in an e-Brief on 18 March 2008 with the main points as follows:

- › Where a settlement that includes a penalty element has been agreed between Revenue and a deceased taxpayer before his/her death (or where a penalty has been awarded in proceedings finalised before the taxpayer’s death), and that penalty remains unpaid or not fully paid as at the date of death, Revenue will continue to proceed against the personal representatives of the deceased for the recovery of that unpaid penalty. There is no change to existing Revenue practice in these particular circumstances.

- › Where the taxpayer dies before a settlement has been agreed with Revenue, Revenue will not seek recovery of any penalty element from the deceased's personal representatives (and will discontinue proceedings for recovery of such penalty if they have been initiated).
- › Revenue practice on a statutory footing so that penalties will be recovered from a deceased's estate only where before the deceased's death:
 - › the deceased had agreed in writing that he/she was liable to a penalty or with an opinion of a Revenue officer that he/she was liable to a penalty;
 - › Revenue had agreed to accept a specific sum of money in respect of the penalty from the deceased; or
 - › a court had determined that the deceased was liable to a penalty.

Any penalty due and payable will be a debt due and payable from the deceased's estate.

Following this, FA (No.2) 2008 inserted a new section, s1077D TCA 1997, placing the existing

Table of amended fixed penalties for CAT

CATCA 2003	Penalty before FA (No.2) 2008	Test before FA (No.2) 2008	Penalty after FA (No.2) 2008	Test after FA (No.2) 2008
s25	€1,265 (and tax-geared penalties also arising where the failure is by reason of fraud or neglect)	Failure of trustee of a discretionary trust to deliver a self-assessed return in relation to discretionary trust tax	N/A – section deleted	N/A – section deleted
s58(1)	€2,535	Failure to comply with any requirement or provision under s46 CATCA 2003	€3,000	Failure to comply with any requirement or provision under s46 CATCA 2003 (<i>No change</i>)
s58 (1A)	€2,535 plus tax-geared penalty	Failure to deliver a return or an additional return “by reason of fraud or neglect”	€3,000 plus tax-geared penalty	“Deliberately or carelessly fails to comply with a requirement to deliver” a return/additional return
s58(2)	€1,265	Failure to allow inspection for valuation	€3,000	Failure to allow inspection for valuation (<i>No change</i>)
s58(3)	€6,345 plus the difference in tax involved as a result of the fraud or negligence	Fraudulently or negligently carrying out certain actions (including delivery of incorrect return/additional return and making or furnishing incorrect statements, declarations, evidence or valuation)	€6,345 plus the difference in tax involved as a result of the deliberate or careless action	Deliberately or carelessly carries out certain actions (including delivery of incorrect return/additional return and making or furnishing incorrect statements, declarations, evidence or valuation)
s58(4)	€6,345 plus the difference in tax involved as a result of the action treated as negligently done	Carrying out certain actions (including delivery of incorrect return or additional return and making or furnishing incorrect statements, declarations, evidence or valuation) not fraudulently or negligently but subsequently discovered to be incorrect and not remedied without unreasonable delay to be treated as negligently done	€6,345 plus the difference in tax involved as a result of the action treated as carelessly done	Carrying out certain actions (including delivery of incorrect return or additional return and making or furnishing incorrect statements, declarations, evidence or valuation) not deliberately or carelessly but subsequently discovered to be incorrect and not remedied without unreasonable delay to be treated as carelessly done
s58(7)	€1,265	Assisting in or inducing the delivery, making or furnishing for the purposes of capital acquisitions tax any return, additional return, statement, declaration, evidence or valuation that the person knows to be incorrect	€3,000	Assisting in or inducing the delivery, making or furnishing for the purposes of capital acquisitions tax any return, additional return, statement, declaration, evidence or valuation that the person knows to be incorrect. (<i>No change</i>)

Stamp Duties

Emmet Scully Partner, LK Shields Solicitors

Late Stamping Penalties

An instrument that is chargeable with stamp duty must be presented for stamping within 30 days of its date of execution (s2(3)(a) SDCA 1999). If an instrument is submitted for adjudication, it must be stamped in accordance with the assessment of the Revenue Commissioners within 14 days of the date of issue of a notice of assessment (s2(3)(b) SDCA 1999). If an instrument is not stamped within the relevant time limits, then (where the unpaid duty exceeds €30) the accountable person will be liable to pay interest and penalties in accordance with the table set out below (s14(2) SDCA 1999).

Instrument stamped not later than 6 months after first execution	Instrument stamped more than 6 months and less than 12 months after first execution	Instrument stamped more than 12 months after first execution
Interest at 0.0273% per day (or part thereof) from date of first execution to date of payment	Interest at 0.0273% per day (or part thereof) from date of first execution to date of payment	Interest at 0.0273% per day (or part thereof) from date of first execution to date of payment
10% of unpaid duty	20% of unpaid duty	30% of unpaid duty

The €25 fixed penalty was abolished with effect from 24 December 2008. The Revenue Commissioners have indicated in their Guidance Notes that “in practice, the Revenue Commissioners allow 44 days to elapse for the date of first execution of the instrument before the penalties will be levied”.

Surcharges for Undervaluation in Voluntary Transactions

An *inter vivos* transfer or lease of property that is either gratuitous or at undervalue must be submitted for adjudication (s15 SDCA 1999). In such cases a statement of value must be furnished to the Revenue Commissioners. Where the submitted value is less than the value

of the property as ultimately agreed with or ascertained by the Revenue Commissioners, a penalty surcharge becomes payable in addition to the stamp duty payable on the instrument of transfer or lease. The surcharge is calculated in accordance with the table set out below.

Understatement of submitted value versus ascertained value	Surcharge (as % of total duty)
Greater than 15% but less than 30% (and must exceed €6,530)	25%
Greater than 30% but less than 50%	50%
50% or greater	100%

If no statement of value is furnished, the Revenue Commissioners will substitute the consideration stated in the instrument for the submitted value and proceed to determine the surcharge on that basis (s15(3) SDCA 1999).

Surcharges for Incorrect Apportionments

Where a conveyance or lease covers mixed residential and non-residential property, an apportionment of the purchase consideration or premium/rent must be submitted to the Revenue Commissioners when presenting the instrument for stamping. The vendor/lessor and the purchaser/lessee must each submit separate estimates of the value to be attributed to the residential element (s16(2) SDCA 1999).

Where the submitted value differs from the value as ultimately agreed with or ascertained by the Revenue Commissioners and where the amount of stamp duty based on the latter would be greater than the stamp duty based on the submitted value, a penalty surcharge becomes payable in addition to the duty payable on the instrument of transfer or lease (s16(3) SDCA 1999). The surcharge is calculated in accordance with the following table:

Understatement/overstatement of submitted value versus ascertained value	Surcharge
Where the difference between the submitted value and the ascertained value is 10% or less	Nil
Where the submitted value differs by more than 10% but not more than 30% of the ascertained value	50% of the difference between the duty chargeable by reference to the ascertained value and the duty chargeable by reference to the submitted value
Where the submitted value differs by more than 30% of the ascertained value	100% of the difference between the duty chargeable by reference to the ascertained value and the duty chargeable by reference to the submitted value

The purchaser/lessee is entitled to recover up to one-half of the surcharge from the vendor/lessor depending on the degree of underestimation/overestimation (if any) in the estimates provided by the vendor/lessor (s16(4) SDCA 1999).

Penalties for Non-disclosure

Any person who

- › fraudulently or negligently executes any instrument, or,
- › being employed or concerned in or about the preparation of any instrument, fraudulently or negligently prepares any such instrument in which all the facts and circumstances affecting the liability of such instrument to stamp duty, or the amount of duty with which such instrument is chargeable, are not fully and truly set forth in the instrument (or in an accompanying statement)

is liable to a penalty of €1,265 plus the amount of the unpaid or underpaid stamp duty. (s8(3) SDCA 1999)

Liability can also arise where there was no fraud or negligence at the time of execution

of the instrument but it subsequently comes to the notice of a party to the instrument (or would have if he/she had exercised reasonable care) that it should have been stamped or that the instrument is insufficiently stamped. If the matter is not brought to the attention of the Revenue Commissioners without undue delay, then the party is presumed to be negligent (s8(4) SDCA 1999).

In addition, where a person executes an instrument that attracts a surcharge for undervaluation or incorrect apportionments as described above, then the parties to such an instrument are rebuttably presumed to have acted negligently (s8(5) SDCA 1999).

Finance (No.2) Act 2008 introduces new provisions to deal with non-disclosure situations under the new e-stamping regime, which is due to come into operation in late 2009. Where a party to the instrument or the agent filing the return submits a return that does not contain the facts and circumstances of which that person is aware affecting the liability of such an instrument to stamp duty or the quantum of stamp duty, such a person is liable to a penalty of €3,000 (Section 8A SDCA 1999).

It should be noted that advisers can in certain circumstances be liable for penalties of non-disclosure.

Value-Added Tax

Gabrielle Dillon *Director, Dermot O'Brien & Associates*

Sections 26 and 27 of the VAT Act 1972 as amended deal with both the fixed penalties arising in relation to breaches of the VAT legislation and penalties arising in cases of fraud or negligence. Finance Act (No.2) 2008 amended both of these provisions and introduced a new section, 27A, into the VAT Act. A summary of the various fixed penalties now applicable is provided below, together with a table comparing the penalty applicable before and after the Finance Act (No.2) 2008 changes.

Section 26

The amendments to s26 mean that all fixed penalty amounts are increased to €4,000 from

€950, €1,265 and €1,520 with effect from the passing of Finance Act (No.2) 2008.

The following acts or omissions with effect from 24 December 2008 will attract a penalty of €4,000:

- › Failure to register for VAT within 30 days of being an accountable person or of becoming an accountable person (in accordance with s9(2)). An accountable person is defined in s8 and in broad terms is a taxable person who engages in the supply in the State of taxable goods or services.
- › Failure by a flat-rate farmer to issue an invoice for the supply of agricultural produce showing the flat-rate addition (in accordance with s12A). The flat-rate addition is currently 5.2% and is the VAT rate applied by unregistered farmers in respect of certain supplies.
- › Failure to keep full and true records that may affect a liability to tax or an entitlement to deductibility (in accordance with s16). Section 16 provides that every accountable person is required to keep full and true records of all transactions, and the period of retention is six years with the exception of certain property transactions, where the period of retention is longer.
- › Failure to issue invoices as required by s17. VAT invoices are critical documents as they evidence a supplier's liability to VAT and a purchaser's entitlement to deduction. Section 17, together with various VAT regulations, sets out the form, manner and timing of invoices and other documentation.
- › Issue of a VAT invoice by a non-registered person. Where a non-registered person issues a VAT invoice, they are deemed to be an accountable person and will be liable for the VAT arising on the invoice so issued.
- › Issue of an invoice showing a flat-rate addition when not entitled to do so (see above in relation to the flat-rate addition).
- › Wilfully obstructing or delaying an authorised officer in the exercise of powers in relation to inspection and removal of records. Section 18 requires a trader to produce records

(as defined in s18(1B)) for inspection if requested to do so. Section 18 sets out the extensive powers of Revenue in this regard, and a penalty can be imposed for wilfully obstructing or delaying an authorised officer.

- › Preventing or obstructing an authorised officer from carrying out a property valuation. Section 10(9)(c) permits an authorised person to ascertain the open-market value of an interest in property by inspecting said property. This power was introduced by Finance Act 2005.
- › Supplying of goods or services in contravention of the security requirement – the penalty applies to each such supply. Section 23A permits Revenue to require the payment of a security amount (for the payment of VAT that is or may become due) as a condition of supplying goods or services.
- › If a person improperly procures the importation of goods without paying VAT (where VAT is chargeable), by representing that he is a registered person or that the goods were so imported for the purposes of a business carried on by him. In addition, the person will be liable for the VAT amount that should have been paid on importation.
- › Acquisition of goods in another Member State by using an incorrect VAT number. One of the conditions of making an intra-Community acquisition (ICA) of goods at the zero rate of VAT is that the customer's VAT number is obtained and retained in the supplier's records. Notwithstanding the fact that responsibility for verifying the customer's VAT number rests with the supplier, the customer will be liable to a penalty for providing an incorrect VAT number and will also be required to pay the VAT amount that would have arisen.
- › Assisting in making incorrect returns. Section 28 imposes a penalty on any person who assists in/induces the making or delivery of any such return, invoice, credit note etc.

In certain circumstances, where a company is involved in a breach of its VAT obligations, a

separate penalty of €4,000 will be imposed on the company secretary.

A number of provisions in s26 were deleted. Section 26(4) was deleted in its entirety; this provision dealt with the recovery of penalties summarily, and such proceedings could be instituted within three years of incurring the penalty. Section 26(6) was also deleted, which dealt with the requirement for an officer of Revenue to sign a certificate stating that he/she had checked Revenue records and that the return/particulars had not been submitted by the defendant, that a stated document had or had not been sent to the defendant or that the defendant was or was not a registered person.

Section 27/27A

While s27 has been deleted, a new section, 27A, has been inserted in its stead. Section 27 had covered the penalty provisions applicable in the case of fraudulent returns or negligently submitted returns or incorrect documentation

etc. In line with the move to bring the 2002 Code of Practice for Revenue Auditors onto a statutory footing, s27A sets out the various penalties applicable depending on the category of tax default and the level of co-operation. Part 1 of this article deals with the new definitions that have been introduced, namely “carelessly”, prompted qualifying disclosure and unprompted qualifying disclosure. The same meanings and procedures apply to VAT as do to the other tax heads.

Under s27A some fixed penalties and penalty amounts are also provided for in the following circumstances:

- › Deliberately furnishing an incorrect return or carelessly (but not deliberately) furnishing an incorrect return/claim/declaration. The penalty amount will be the difference between the amount of VAT reclaimed/paid and that VAT amount that should have been reclaimed/paid. A separate penalty of €1,500

will apply to the company secretary, which will be increased to €3,000 for deliberate behaviour.

- › Deliberately failing to comply with an obligation to furnish a return or carelessly failing to comply with a requirement to furnish a return. The penalty amount will be the difference between the amount of VAT paid or claimed before the start of any Revenue audit/inquiry etc. and the VAT paid or claimed if the return had been correct. A separate penalty of €1,500 will apply to the company secretary, which will be increased to €3,000 for deliberate behaviour.
- › Under s27A(8), if a person carelessly or deliberately produces, furnishes, gives, sends or otherwise makes use of any incorrect invoice, registration number, credit note, debit note, receipt, account, voucher, bank statement etc., a fixed penalty amount of €3,000 and €5,000 will apply respectively.

Table of fixed penalties for VAT

Penalty amount before 24/12/2008	Penalty amount after 24/12/2008	Description	Legislative provision	Penalty amount before 24/12/2008	Penalty amount after 24/12/2008	Description	Legislative provision
€1,520	€4,000	Failure to register for VAT within 30 days of being or becoming an accountable person	s26(1), refers to s9(2)	€1,265	€4,000	Wilfully obstructing or delaying an authorised officer in the exercise of powers in relation to inspection and removal of records	s26(3A)
€1,520	€4,000	Failure by a flat-rate farmer to issue an invoice for supply of agricultural produce showing the flat-rate addition	s26(1), refers to s12A	€1,265	€4,000	Preventing or obstructing an authorised officer from carrying out a property valuation	s26(3AA)
€1,520	€4,000	Failure to keep full and true records that may affect liability to tax or entitlement to deductibility	s26(1), refers to s16	€1,520	€4,000	Supplying goods or services in contravention of security requirement – penalty applies to each supply	s26(3B), refers to s18(3)
€1,520	€4,000	Failure to issue invoices as required by s17	s26(1), refers to s17	N/A	€4,000	If a person imports goods without paying VAT by representing himself as a registered person or that the goods were so imported for the purposes of a business carried on by him	New s27A(18)
€950	€4,000	Issue of a VAT invoice by a non-registered person	s26(2)	N/A	€4,000 plus VAT arising on the ICA	Acquisition of goods in another Member State (ICA) by using incorrect VAT number	New s27A(19)
€950	€4,000	Issue of an invoice showing flat-rate addition when not entitled to do so	s26(2A), refers to s12A/17(4)(a)	€950	€4,000	Assisting in making incorrect returns etc.	s28
€950	€4,000	Imposed on company secretary where company is involved in any of the above breaches	s26(3)				