



Irish Taxation Institute

6 February 2009

Tax and Duty Civil Penalty Regime - Frequently Asked Questions

Penalties Legislation

1. When did the new penalties legislation introduced in the Finance (no 2) Act 2008 take effect?
It is effective for any penalties unpaid from the date the Act was signed into law i.e. 24 December 2008.
2. Why was the penalty legislation introduced?
Revenue has stated that their legal advice indicated that the new legislative regime for civil penalties was necessary because the existing civil penalty regime may have contravened Article 6 of the European Convention on Human Rights. Article 6 provides citizens with the right to a fair and public hearing.
3. In what circumstances can Revenue issue a penalty notice of opinion?
A penalty notice of opinion can be issued in the absence of agreement between a person and a Revenue officer that the person is liable to a penalty under the legislation or following the failure by a person to pay a penalty they have agreed a liability to.
4. If a penalty notice of opinion is issued but I do not agree with the penalty notice, what happens next?
If the penalty is not agreed in writing and payment made within 30 days the case can be referred by Revenue to the District, Circuit or High Court (depending on the amount of the penalty).
5. Will the Court case be held “in camera” i.e. in private?
No, the case will be held in open Court.
6. If Revenue refer the case to Court and the tax penalty reflects mitigation for co-operation will I lose the benefit of co-operation?
The fact that a case is referred to Court under the new procedures will not result in the withdrawal by Revenue of the benefit of co-operation.
7. Will fixed penalties be applied in addition to tax-gearred penalties?
There has been no change in relation to the interaction of fixed and tax-gearred penalties i.e. the net tax-gearred penalty due after mitigation will be treated as including fixed penalties.



8. Will the changes impact on the rules for non publication?
It has been clarified that under the new penalty regime, publication will not arise where (i) the penalty determined by the Court does not exceed 15%, (ii) the aggregate of the liability and penalty do not exceed €30,000, or (iii) there has been a qualifying disclosure.
9. What is the position in relation to penalties arising in respect of deceased taxpayers?
As provided for in Revenue practice under ebrief no15/2008 and now in legislation penalties will only be recovered from a deceased taxpayer's estate where the person either agreed in writing to pay the penalties or a court has determined, before the person's death, that the person was liable to the penalties.

Qualifying Disclosure

10. The definition of "qualifying disclosure" initially set out in the Finance Bill has been subsequently amended, what does this change mean?
Following ITI representations on the broad scope of the "qualifying disclosure" definition in the Bill, this was amended at Committee Stage. Where there is no "deliberate behaviour" involved, the disclosure extends only to matters concerning the tax head and relevant period involved.
11. Can I make a second "qualifying disclosure" and if I do so will I be entitled to mitigated penalties?
A second qualifying disclosure can be made. The amount of mitigation depends on whether the qualifying disclosure is within 5 years of the first. Where it occurs within 5 years of the first reduced mitigation will be available. Where the qualifying disclosure is outside of the 5 year period, the same mitigation as may be available for a first disclosure applies.

Audit Code of Practice

12. What role will the Code of Practice for Revenue Auditors play given the new penalties legislation is in place?
Revenue have stated that they will continue to seek settlements in audit cases under the Code of Practice and that they would expect most audits to be unaffected by these changes, unless a stalemate arises on penalties. A new updated Code of Practice is being drafted. Transitional instructions are to be made available in the interim.



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13. What is the status of the current Audit Code of Practice before the new Code issues?

The current Code of Practice provisions, other than those superseded by the changes to legislation and the transitional instructions, will remain in place until the new Code has been issued. In particular the existing procedures in relation to self-correction, innocent error and no loss of revenue remain.

14. When will the new Code of Practice be available?

It is anticipated that this new Code will be published in April 2009.