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REVENUE DEBT ENFORCEMENT IN THE REPUBLIC OF IRELAND

In the event that an individual or a company cannot pay their tax liabilities on time to the Collector General, what enforcement procedures can the Collector General put into action? This is a very complex area of law. A very brief summary of the enforcement methods which can be used by Revenue is laid out below.

Levy interest on overdue payments

Interest is charged on the amount of tax due from the relevant due date. Indirect taxes (VAT, PAYE, etc) are charged at a rate of 0.0274% per day (10% per annum) and direct taxes (Income Tax, Corporation Tax, etc) are charged at 0.0219% per day (8% per annum). Although these rates were reduced in July 2009 they are still much higher than the equivalent UK rate of 3%. The rate of 8% is the same as the court interest rate on an unpaid court judgement which also seems penal compared to market rates. Interest is statutory and will be charged on the overdue amounts.

Issue demands for payment

The type of demand letter that is issued depends on whether returns have been submitted or not. If no return has been submitted then Revenue can raise an estimate based on previous periods and the return must be submitted to remove this estimate. Demands for payment will be issued based on the estimates. If returns were submitted but the tax either is unpaid or only partly paid then demand notices will issue for the balance due.

If a taxpayer can not meet these demands then Revenue will move to enforce the collection of the debts.

The procedures of debt collection can be summarised under two headings:

Issue a Section 962 TCA97 certificate with follow up enforcement:

This allows the Collector General to avoid having to take legal proceedings in order to use anyone of the enforcement methods.

The Collector General has the power to issue a certificate to instruct the Revenue Sheriff to seize goods.

Secure a court judgement against the taxpayer with follow up enforcement:

This is where the Collector General exercises their rights in the same way as any creditor can in pursuing monies due to them through the courts.

Under each of these headings there are different methods of enforcement. The main methods are:

Seizure of goods by a Sheriff

This is the most frequently used method of enforcement by the Collector General. There are 16 Revenue Sheriffs which carry out work for the Revenue Commissioners. The Sheriff may seize goods on foot of an instruction from Revenue or the courts subject to certain rules re family property, type of property, third party property, etc.

Attachment Orders

S.1002 TCA97 provides for significant powers to Revenue. Monies or debts which are due to the taxpayer that is in default can be subject to an attachment order which requires the debtor to pay the debts to the Collector General and not to the taxpayer in default. These debts include money in a bank account, money with an insurance company, etc.

Where the debt is in joint names it is assumed that they are held equally. Notification of the attachment is sent to the debtor and the taxpayer in default. The confidentiality restrictions imposed on Revenue are removed in this situation. Salaries due to the defaulting taxpayer cannot be subject to an attachment order. This method of enforcement is highly effective and widely used by Revenue.

If a taxpayer can not meet these demands then Revenue will move to enforce the collection of the debts.

The procedures of debt collection can be summarised under two headings:

Referral of the case to one of the State Solicitors

This will take place in conjunction with or maybe after the sheriff and attachment order methods have failed or had limited success. There are six appointed solicitor firms. They will pursue court judgements for the amounts due. Costs will be payable by the taxpayer. Other legal methods which could be used are bankruptcy, committal to prison, and other court enforced orders.

The above are examples of the enforcement powers at Revenues disposal. However in practice before initiating any of these methods Revenue may agree to a payment by instalments arrangement where the case is sufficiently realistic and will succeed in the long term. Interest will continue to accrue on unpaid taxes so it is not a solution where there are long term problems with the business.

The Collector General will want full explanations of the trading position and clear time frames to resolve the tax debt difficulties before they will agree to a phased payment arrangement.

As well as that Revenue also have other practical methods available to them in order to encourage compliance including not issuing tax clearance certificates, withdrawing C2 certificates, enforcing secondary liability, offsetting repayments against taxes due or withholding new tax registration numbers.

In the UK, HMRC has a Special Business Support Service which deals with special payment arrangements. Recently HMRC has appointed 4 private debt collection companies to collect debts. Interest on overdue tax in the UK is also only charged at 3% which is much lower than in ROI.

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Insolvency Proceedings – Bankruptcy and liquidation

The Revenue can petition the court in respect of debts due to them. This may lead to bankruptcy proceedings against a person which would lead to the freezing and loss of control of their assets.

In the case of a company in default Revenue can petition the court to appoint a court liquidator.

