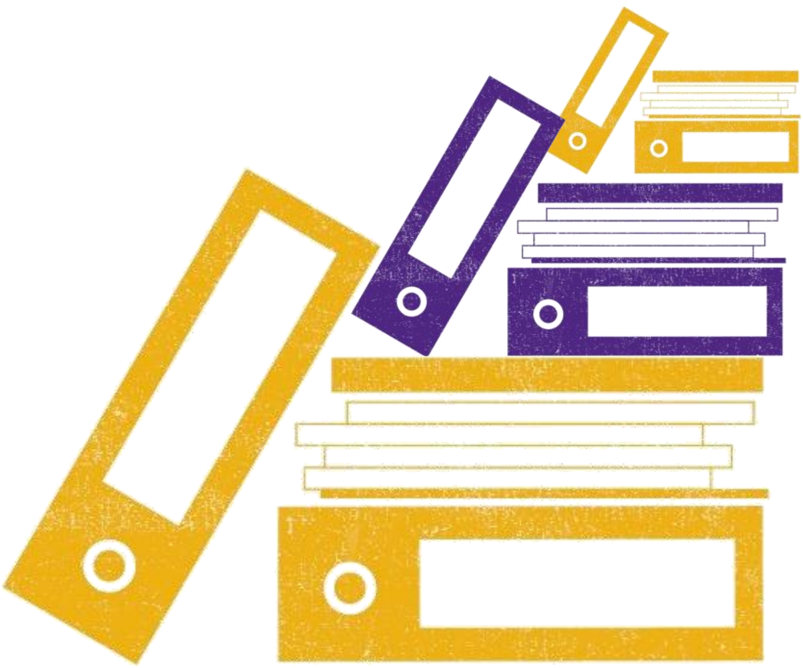
Grant Thornton
An instinct for growth™

Guide to Revenue audits

Essential tax tips



Contents

Introduction

This guide outlines how Revenue audits work in practice. It also contains a range of tips for dealing with audits and highlights many common tax risks (as well as some opportunities).

Revenue audits are an essential component of any self-assessment tax system. It is not possible for Revenue to review every return under every tax-head of every taxpayer. For this reason, Revenue must try to audit returns and taxpayers where there is the greatest chance that an error may have occurred.

Revenue introduced a revised Code of Practice for Revenue audits which is effective from 14 August 2014 and significantly revises the previous 2010 Revenue audit code.

It is now estimated that less than 5% of all Revenue audits are selected randomly. This is because Revenue are now much more targeted in selecting which taxpayers to audit. Advancements in IT and the better use of available information have enabled this approach.

In other words, if you have been selected for a Revenue audit, there may well be a good reason!

Audit yields (Revenue Annual Report 2013)

Audit and assurance checks	Audits and checks completed	Yield
Total audits	8,037	€311,900,000
Total assurance checks	618,542	€236,400,000
Totals	**626,561**	**€548,300,000**

Average yield per audit = €38,808

Types of Revenue interventions

There are several ways in which Revenue can correspond with a taxpayer. For example, it is quite common for Revenue to **query** certain figures contained within a tax return, sometimes by telephone. Revenue will frequently write to a taxpayer asking a particular query about the taxpayer's business. In other cases, it is the Revenue who initiates the correspondence to discuss a particular matter.

None of the above scenarios necessarily mean the taxpayer is being (or will be) subject to a Revenue audit. Quite often, these situations can be dealt with by simply providing the relevant information.

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.

A taxpayer will know that an **audit** is to commence as Revenue will generally write to the taxpayer, (and usually their agent), to confirm this. The letter will contain the wording "Revenue audit" and will contain the relevant details including:

1 what period will be reviewed and by whom;

2 what tax-heads will be reviewed; and

3 where and when the audit is to take place.

What should I do if I receive notification of a Revenue audit?

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 simply phoning 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. It is typically availed of by larger clients, especially where the client believes that there may be a necessity to make a disclosure.

It is also advisable to consult the most recent Revenue Audit Code of Practice. This is a document which outlines how Revenue deal with audits and what a taxpayer can expect from a Revenue auditor. The Code of Practice was substantially updated and published in 2014. It is therefore important to ensure that the most recent version is being consulted. This can be found on the Revenue website (www.revenue.ie).

The Revenue audit process

Audit selection

A Revenue audit is the examination of compliance with tax legislation. Audits are rarely random and are generally based on informed selection from knowledge banks or computer-based profiling on Revenue's REAP (Risk Evaluation, Analysis and Profiling) software. Revenue have also increased their focus on targeting 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 21 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. 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 and this is becoming increasingly common (this is also discussed in more detail later).

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.

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 rules of the Data Protection Act 2003.

e-Audits and Data Analysis Software (DAS)

E for electronic

The term e-audits is used to describe audits consisting, exclusively or non-exclusively, 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 of Practice is still in operation 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 if an extensive e-Audit is required the taxpayer will be notified in writing.

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.

IT involvement

Concerns have been voiced regarding the scope of the information stored being examined by Revenue. It is important to note that the information is provided to Revenue on a disc populated by the taxpayer. Therefore, for larger businesses, the IT Department should be involved in the process. Their involvement 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. Grant Thornton uses DAS in the examination of business records during forensic business examination projects. The following areas can be examined through the use of DAS:

- invoicing errors - gaps can be detected in invoice numbers;
- detect 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; and
- fabricated sales, i.e. customer numbers with no names – DAS can detect line items with no description.

Below are examples of how data can be filtered and examined

VAT Rate Issues1-Vat Rate Issu...

	INVOICE_NO	GROSS_AMT	NET_AMT	VAT_RATE
1	1	687,243.00	605,500.00	0.1350
2	2	736,331.00	648,750.00	0.1350
3	3	736,331.00	648,750.00	0.1350
4	4	719,682.00	654,256.00	0.1000
5	5	736,483.00	648,883.00	0.1350
6	6	833,036.00	733,953.00	0.1350
7	7	840,242.00	740,301.00	0.1350

Incorrect VAT rate identified

Unsual Posting Dates

AC_NO	ACCOUNT	POSTING_DATE	INVOICE_NO	GROSS_AMT
10020000	B000	25/12/2011	10	-200,000.00
10020000	B000	25/12/2011	11	848,490.47
10020000	B000	30/12/2011	27	1,659,112.00
10020000	B000	30/12/2011	28	200,000.00
10020000	B000	30/12/2011	29	-1,930,000.00

Christmas day posting may indicate human interference

What is a "qualifying disclosure"?

A **qualifying disclosure** is a disclosure made to Revenue before the commencement of a Revenue audit.

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 a cheque 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 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.

A **prompted qualifying disclosure** is effectively a disclosure made after receiving notice from Revenue that an audit is about to commence (but before the audit itself has commenced).

An **unprompted qualifying disclosure** is effectively a disclosure made to Revenue before notification of an audit is received. An unprompted qualifying disclosure will result in lower penalties than a prompted qualifying disclosure. The definitions of "qualifying disclosure", "prompted qualifying disclosure" and "unprompted qualifying disclosure" are important.

Disclosure type	Details
Qualifying disclosure	Disclosure of complete information in relation to, and full particulars of, all matters occasioning a liability to tax that give rise to a penalty, is made in writing, is signed by or on behalf of the taxpayer and is accompanied by: a 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 b 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 the Revenue or to a Revenue officer in the period between: a the date on which the person is notified by a Revenue officer of the date on which the audit will start; and b the date the audit starts.
"Unprompted qualifying disclosure"	A qualifying disclosure that the Revenue are satisfied has been voluntarily furnished to them: a before any audit or investigation had been started by them or by a Revenue officer into any matter occasioning a liability to tax; or b where the person is notified by a Revenue officer of the date on which an audit or investigation into any matter occasioning a liability to tax of that person will start before that notification.

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 sometimes happens 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?
- 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	Qualifying disclosure	
All defaults where there is qualifying disclosure	**Penalty table of defaults that occurred on or after 24/12/2008**	**Prompted qualifying disclosure and co-operation**	**Unprompted 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 disclosure has been made.

No qualifying disclosure	Category of default	No co-operation	Co-operation
All defaults where there is no qualifying disclosure	Careless behaviour without significant consequences	20%	15%
	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 a disclosure has not been made.

Note: The terms "deliberate behaviour", "careless behaviour with significant consequences" and "careless behaviour without significant consequences" are explained in the Code of Practice (www.revenue.ie).

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 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 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 (3%, 6% or 9%) 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;
- there is no co-operation from the taxpayer; and
- careless behaviour exists and there is neither a qualifying disclosure nor co-operation.

No loss to Revenue claims may be considered in relation to VAT and RCT. However, in 'exceptional circumstances' the Revenue may also consider claims in relation to taxes other than VAT and RCT.

Self-correction (No penalty due)

A taxpayer can 'self-correct' a return without paying a penalty if the error is identified within 12 months of the due date for filing the return. This generally involves writing to Revenue to explain the error and 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.

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 failure to keep proper books and records etc. In addition, the amount of tax underpaid would also be a factor.

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 on the topic and in particular if there has been Revenue guidance issued. No penalty will be applied where an auditor accepts that a liability has arisen as a result of a technical adjustment.

Late surcharge

The S.1084 'late' surcharge that can be sought for the timely filing of an incorrect return will not be sought where a tax-geared penalty applies in a settlement.

Publication and prosecution

Will the settlement be published?

If a taxpayer is discovered to have underpaid tax and the settlement (including tax, interest and penalties) totals €33,000 or more, the taxpayer will face having the result of the audit published in:

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

Publication can be avoided where:

- a qualifying disclosure is accepted before the audit has commenced;
- the penalty does not exceed 15% of the tax ultimately due; or
- the total of tax, interest and penalty is less than €33,000.

Will I be prosecuted?

Prosecutions are not within the scope of the Code of Practice. 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;
- false claims of repayment;
- use of forged or falsified documents;
- facilitating fraudulent evasion of tax;
- systematic schemes to evade tax;
- use of offshore bank accounts to evade tax; and
- failure in remitting fiduciary taxes.

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 transactions need 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.
- 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?

Revenue recently revised the fixed-penalty regime for a number of offences including:

Offence	Penalty
Failing to keep proper records (including PAYE and 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 **13B** authorisation no longer applies	**€4,000 (every two months)**

These penalties have now been substantially increased and are in addition to the tax-geared penalties (max 100%) that apply to underpayments of tax. Substantial liabilities can arise even when relatively minor mistakes are made.

It is strongly recommended that taxpayers review their tax affairs regularly in order to minimise the chances of costly errors being made.

VAT pitfalls and opportunities

Common pitfalls

Below are some common VAT pitfalls which are frequently encountered during Revenue audits.

VAT cannot generally be reclaimed on the following items:

- entertainment for clients or staff, personal use of assets etc. (VAT recovery relating to business entertainment is currently being examined by the European Court of Justice (ECJ));
- food and drink (unless acquired as stock-in-trade for resale);
- accommodation (unless at a 'qualifying' conference);
- passenger cars (20% of VAT is recoverable on purchase, lease or hire of certain new passenger vehicles used for business purposes); and
- goods/expenses incurred that relate to a VAT exempt activity carried on by the business.

Valid invoices must be received in order to reclaim VAT. Invoices should include:

- date of issue and a sequential number;
- VAT number of supplier;
- details of goods/services supplied;
- full name and address of supplier and customer;
- invoice amount, VAT rate and VAT amount; and
- VAT in question must be Irish VAT expressed in euros.

Property transactions

Errors in VAT frequently occur where properties are bought or sold or where leases are being granted, assigned or surrendered. It is vital that VAT advice is taken prior to entering into any such transactions, particularly in light of the recent amendments in the legislation of this area.

International transactions

Care must be taken when dealing with cross-border transactions. In many cases, VAT is not chargeable as the invoice will be zero-rated. However, this treatment generally requires that certain conditions are satisfied. It is vital that invoices are not issued without VAT (in error) as the supplier remains liable for the VAT, and possibly interest and penalties. It is equally important not to pay VAT to suppliers (where it is not correctly chargeable), as it may be extremely difficult to recover any such VAT.

Self-accounting on goods and services received from abroad

Businesses who purchase services from abroad or purchase goods from suppliers in other EU member states must account for Irish VAT on the value of services/goods through their Irish VAT return on a reverse charge basis. For traders with an entitlement to 100% VAT recovery, they are entitled to a matching deduction for this VAT, resulting in no additional tax due to Revenue. For other businesses who are not entitled to reclaim all of the VAT incurred (including VAT-exempt businesses), the self-accounting for VAT represents a real VAT cost.

Case study – During a routine VAT review we discovered a client had been reclaiming VAT incurred in other EU countries from the Irish Revenue. We were able to assist the client to rectify the position in Ireland and to make the appropriate claims to the other countries, before the relevant time limits had expired. The client had also incorrectly reclaimed VAT on business entertainment and travel costs and this was also rectified without significant penalties (which would not have been the case had the errors been discovered during a Revenue audit).

VAT rates

Businesses need to ensure the correct rate of VAT is applied to all goods and services supplied. While the standard rate of VAT in Ireland is 23%, the reduced rates of 13.5%, 9% and 0% apply to many goods and services (note: some services are exempt from VAT). Additionally, businesses can make supplies at different VAT rates and this can cause confusion particularly where a mixture of goods/services is supplied for a single consideration.

Statistical forms and general compliance

The penalties for a range of offences (including failing to submit VAT returns in a timely manner) have recently been substantially increased. It is therefore important that businesses complete and submit returns on-time. This applies to VAT returns, annual return of trading details, Intrastat returns, VIES returns etc.

Case study – A company asked us to review its VAT position. The client is involved in financial services and therefore does not account for VAT on its income. However, they were not accounting for VAT on services received from outside Ireland and there was therefore a potential liability in this regard. It also transpired that they provided services outside of the EU and consequently were entitled to a percentage of VAT recovery. The client obtained a significant VAT refund from Revenue.

Common opportunities

It is equally important for businesses to be able to identify where VAT savings can be made. In some cases, cash-flow savings can be achieved. In other cases, real savings can be made which will impact significantly on the bottom line for the business. Below are some common opportunities which businesses may be able to avail of

Bad debt relief – can you claim a refund of VAT already paid to Revenue? Many businesses have utilised this relief as debts have become increasingly difficult to collect.

Cash receipts basis – can you account for VAT when paid by your customers rather than when the invoice is raised?

Large asset purchases/unprocessed supplier invoices – are you reclaiming VAT at the earliest opportunity?

VAT groups – can a cash-flow or real VAT saving be generated by using a VAT group? Real savings can be made where one of the parties is involved in exempt activities and the parties make supplies to each other.

Retained deposits/cancellation fees – can you claim a refund of VAT where a deposit or advance payment from a customer has been retained but no supply has taken place?

VAT 56B certificates (Previously known as VAT 13B certificates) – is 75% or more of your turnover generated from selling goods to customers established overseas? If so, you may be able to have your suppliers invoice you without charging VAT?

VAT on ‘qualifying’ accommodation in Ireland – can you reclaim VAT incurred on these costs which relate to attending conferences?

VAT on ‘business cars’ – can you reclaim VAT incurred on such purchases? From 1 January 2009, this is possible assuming certain conditions are satisfied.

Reclaiming foreign VAT – have you incurred VAT abroad – can this be reclaimed? From 1 January 2010, EU VAT refund claims are made to Irish Revenue who in turn get the refund from the other country.

Timing of issue of invoices – can you delay issuing invoices to defer the time at which the VAT is due? This may be possible where goods or services are supplied.

Timing of VAT returns – can you submit your VAT returns less frequently, if you have small liabilities (or pay by direct debit), or more frequently if you are in a continuous refund position?

Review of input tax recovery methodology – should you be reclaiming more VAT? There are many ways to calculate the appropriate percentage recovery (not just turnover basis) and these should be examined.

VAT rates applied – should you be accounting for VAT at a lower rate? Suppliers should review whether there are opportunities to reduce their VAT liabilities, particularly where they supply a wide range of goods to persons who do not have VAT recovery for those items.

The above are a selection of the more common pitfalls and opportunities. There are many others. It is vital that businesses dedicate time to evaluating their VAT position as this can help to ensure that liabilities are less likely to accrue and may well open up the possibility of some actual savings. It all adds up...!

Case study – We have a client with an unusually high amount of bad debts – the client was unaware that a VAT reclaim could be made in respect of most of these debts. We assisted the client to make a claim to Revenue and the client received a significant refund.

PAYE pitfalls and opportunities

Common pitfalls

Below are some common PAYE pitfalls which are frequently encountered during Revenue audits.

PRSI

Employees/directors are often placed on the wrong PRSI rate, the cost of the error for the employer can be significant as the rate of employers' PRSI is 10.75%.

PAYE exclusion orders

There is a tendency for employees placed on secondment to remain on the Irish payroll system, this can lead to significant time/cost incurred in obtaining refunds for the employee post year-end. If certain conditions are met, a PAYE exclusion order can be obtained which allows the employee to be paid without deduction of PAYE.

Employers often obtain exclusion orders for directors however, these can only be obtained in very limited circumstances. Penalties may arise for a director and/or company where an incorrect application is made and an exclusion order issues.

Foreign employers

In certain circumstances a foreign employer must register and account for Irish PAYE if an employee is carrying out their duties of employment in Ireland. Penalties arise for failure to register and operate PAYE.

Relocation expenses

Employers often assist employees with some relocation expenses where an employee is moving abroad or to Ireland. These expenses are potentially liable to Irish payroll taxes with some specific exemptions

Social security certificate of coverage

In order for an employee to be removed or retained within the Irish social security system a certificate of coverage from the appropriate jurisdiction must be obtained. In the absence of such permission the company's exposure would be 10.75% (or the local country rate, which may be higher) employers' PRSI, as well as employee costs, or possibly the social security cost of the other jurisdiction.

Salary sacrifice

If an employee forgoes any remuneration (there are specific exemptions) in return for any benefit, then the legislation in relation to salary sacrifice may apply and the remuneration sacrificed is taxable in full and so subject to payroll taxes.

Case study – A company underwent a Revenue audit and did not make a voluntary disclosure prior to commencement of the audit. During the course of the audit it was discovered that they were not operating benefit-in-kind in respect of three company cars. The Revenue imposed a 75% penalty on the basis that a higher duty of care arises on fiduciary taxes. This level of penalty warrants automatic publication however, after much negotiation by us, Revenue agreed not to publish the details.

Expenses

A common error in calculating motor expenses is where a journey commences from the employee's/director's home the journey is not restricted if the journey from home to temporary place of work is shorter than normal place of work to temporary place of work.

Ex-gratia redundancy payments

One of the common errors in the calculation of ex-gratia payments is the inclusion of contractual pay in lieu of notice in the ex-gratia payment. The tax treatment depends on the contract.

Calculation of tax free element of cessation payments

A typical error made in this area is the inclusion of total years service rather than the number of whole years service.

Life time limit for tax free cessation payments

With effect from 1 January 2011 cessation payments are subject to a life time tax free payment limit, and it is the employers' responsibility to ensure that this threshold has not been breached previously by the employee.

Employed v self-employed

The question of whether an employee/employer relationship exists between two parties can sometimes be difficult to ascertain. Over the past number of years there has been an increase in Revenue audits targeting this area, failure to account correctly for the appropriate taxes can prove costly and depends on whether there is re-grossing.

The Universal Social Charge (USC)

The introduction of complex legislation in this area has led to confusion as to what income is liable to this charge and what items are deductible. The Revenue are aware of the confusion and are carrying out yearly payroll audits.

Benefits-in-Kind (BIKs)

Common errors in this area relate to BIK on company cars, medical insurance premiums, employee's/director's loans etc.

Share-based remuneration

There is onerous legislation for employers who have share schemes. Care is needed to correctly determine where the tax and USC is due, whether the shares are liable to PRSI etc.

Occupational pension schemes and PRSAs

There are complicated rules surrounding pension schemes and the amounts allowable for tax purposes. Care is needed to ensure that deductions are only taken for amounts allowed under the legislation.

Reporting requirements

Legislation imposes a number of reporting requirements which are often overlooked, such as the RSS1 form for share schemes, P11D for director's remuneration and employer PRSA contributions and reporting requirements relating to termination payments.

Third party benefits

Where a benefit provided to an employee by a third party (who is not that employee's employer) gives rise to a charge to income tax, the provider of the benefit is responsible for accounting for the PAYE/PRSI.

Common opportunities travel pass/bike scheme

A tax efficient method of increasing an individual's remuneration is through the provision of a monthly or annual travel pass under the "Taxsaver Commuter Ticket Scheme" or the bike scheme. A taxable BIK does not arise nor is the scheme affected by the salary sacrifice provisions.

Company pension scheme

A taxable BIK does not arise on employer contributions to a Revenue approved superannuation scheme.

Life assurance and permanent health insurance

It is possible for an employer to provide life assurance and permanent health insurance to an individual without giving rise to a taxable BIK if certain conditions are met.

Subsistence and mileage

Where qualifying expenses are paid within published civil service rates, payments to employees can be made without deduction of payroll taxes.

Payments in respect of disability, death or illness

There is a specific exemption (subject to certain criteria) from payroll taxes in respect of payments made in connection with the termination of an office or employment by the death of the holder, or made on account of injury or disability of the holder of an office or employment. These payments are not subject to the life time limit imposed on other termination payments.

Case study – We performed a PAYE review for a large company and discovered that they were failing to comply with the benefit in kind rules applying to company cars (circa 30 cars). The company made an unprompted voluntary disclosure of this issue to the Revenue, and a lower penalty of only 3% was incurred.

Special assignment relief programme (SARP)
Tax relief may apply under certain conditions to employment income of non-Irish domiciled individuals who are employed by a foreign employer to carry on employment in Ireland.

In-house medical plans/corporate general practitioner services
In some circumstances payroll taxes need not be applied to any benefit arising from the employer's contribution to an in-house medical plan or payment to the general practitioner.

Medical check-ups
Where an employer requires and pays for their employee to undergo a medical check-up it will not be considered to be a taxable benefit in kind.

Staff discounts
If an employer gives their staff discount on the purchase of goods no taxable benefit will arise where the cost paid by the employee is greater than the cost of the employer acquiring the goods.

Mobile phones/laptops/home high speed connection/computers
When employers provide these for business use, a tax charge will not apply to the employee provided that private use is incidental.

Course or exam fees
Course or exam fees paid by an employer will not give rise to a taxable benefit in kind if the course undertaken by the employee is relevant to their employment.

Professional subscriptions
Professional subscriptions paid by an employer on behalf of employees in specific circumstances will not give rise to a taxable benefit in kind.

Examination awards
Examination awards paid to an employee will not give rise to a taxable benefit if the amount can be regarded as a reimbursement of expenses considered to be incurred while studying for an examination relevant to the business of the employer.

Long service awards
A taxable benefit in kind will not arise in respect of an award made to mark long service where specific conditions are met.

New employees – FÁS schemes/PRSI exemption
If as an employer you are taking on employees, it is worth considering the various funding provided by FÁS for employing certain individuals such as the Revenue Job Assist scheme and Employers' PRSI Exemption Scheme.

Small benefits
Where an employer provides an employee with a small non-cash benefit (a benefit with an annual value not exceeding €250), PAYE and PRSI need not be applied to that benefit.

Payments to directors

Payroll taxes must be operated on all payments to directors (including non-executive directors) of Irish companies. For non-executive directorships, class S PRSI should apply. This means a liability to employer PRSI should not arise. Under Irish tax legislation a director is an office holder and an employer must operate payroll taxes on any remuneration or benefits received. This is also the case for individuals who invoice their fees through a corporate, as the Revenue's view is the individual is merely mandating their fees as a company cannot hold a directorship. The obligation to withhold payroll taxes rests with the employer.

Proprietary directors who own or control 50% or more of the shareholding of the company, either directly or indirectly, cannot be regarded as an employee of that company for PRSI purposes. The classification of proprietary directors who own or control less than 50% of the company will continue to be determined on a case by case basis for PRSI purposes.

Case study – We performed a PAYE health check for a not-for-profit organisation. It was discovered that they were not restricting mileage claims to the shorter of:

- work to temporary place of work; or
- home to temporary place of work where the journey commenced at home.

We made an unprompted voluntary disclosure and obtained a satisfactory result for the media sensitive organisation.

Direct debits

It is possible to file an annual P35 return and avoid monthly returns. This can be done by paying agreed monthly amounts by direct debit. This may be of particular interest to seasonal businesses as it can spread the annual PAYE liability over the year.

Corporation tax pitfalls and opportunities

Common pitfalls

Interest costs

The area of deductibility of interest can be complex. The relationship between the lender and payer should be reviewed as in certain cases, the payment of interest to related parties may not be deductible for corporation tax purposes and dividend withholding tax may need to be operated. However, there are mechanisms available to ensure interest payments are structured in a tax efficient manner.

Close company rules

The extension of loans to directors of close companies generally results in the company being obliged to operate income tax on such loans while benefit in kind issues may also arise. Conversely, where directors lend money to companies there may be restrictions surrounding the deductibility of interest payable by the company. Another consideration pertains to passive income earned by close companies (such as interest and passive income) along with professional service income, as the receipt of such income streams may result in the imposition of a close company surcharge. However, if advice is sought on such matters, the related tax exposures may be mitigated or eliminated.

Payroll issues linked to corporation tax

Where bonuses or remuneration is not paid within six months of the year end, this can result in the triggering of payroll tax liabilities. However, these liabilities may be mitigated in certain cases depending on the corporation tax approach adopted. In this regard, advice should be sought on this area where bonus schemes are in place or there is unpaid remuneration to employees for extended periods of time.

Tax rates

Whilst the general rule is that trading income is taxable at 12.5% and passive income is taxable at 25%, for certain income it can be difficult to ascertain whether it is trading or passive income. Taxing income at a lower rate than applicable can result in a significant exposure to tax and interest/penalties over time. Thus, where there is uncertainty over the nature of income, advice should be sought.

Case study – We had been engaged to do the corporation tax compliance for a company involved in the development of computer software. As part of our year end review, we had asked the question on whether the client carried out R&D activities and the answer to this was no. We then met the client in advance of the deadline for filing its return and discussed the nature of the operations in detail. It transpired that the company was actually involved in R&D activities and the client had just not understood the broad definition of R&D for tax purposes. Thus, the client was entitled to a sizeable tax refund as a result of its R&D tax credit claimed for the year (and for subsequent years).

Irish tax residence

As a general rule of thumb, a company incorporated in Ireland or centrally managed and controlled in Ireland is Irish tax resident. However, there is a risk that if a company's management and control is exercised outside Ireland, it may be deemed to be tax resident in another jurisdiction. This jurisdiction may then seek to tax that income. Thus, it is critical to ensure that Irish tax residence is vigilantly monitored and advice should be sought on this.

With effect from 1 January 2015 all companies incorporated in Ireland will be deemed to be tax resident here.

Taxable presence abroad

Where a company has operations abroad, it is important to obtain advice on whether these operations constitute a taxable presence. Equally, sending employees to other jurisdictions may also result in a taxable presence abroad. The consequences of this may be that foreign taxes would need to be operated and failure to do so would represent a significant tax risk. We would recommend that tax advice be sought in respect of all ventures or operations carried out abroad.

Client entertainment

Generally, costs incurred on client entertainment or expenditure of gifts to customers or suppliers would not be deductible for corporation tax purposes. It is critical to review all account codes to ensure all such expenditure is captured and the appropriate adjustments are made in the corporation tax computations.

Common opportunities

IP planning

There may be scope to structure operations to obtain tax relief for IP held in the group. By locating IP within a certain company in the group, there may be tax allowances. Also, group restructurings may be carried out in a tax efficient manner to migrate IP to a dedicated trading IP company. Furthermore, for international groups, the housing of IP in Ireland can often result in very efficient structure and can lead to a lower effective rate of tax within the group.

R&D tax credits

To the extent a company is involved in R&D activities, there may be potential to obtain an R&D tax credit for spend on qualifying R&D activities. This can result in a cash refund payable to the company carrying out the R&D. It should be highlighted that the definition of R&D is broad and advice should be sought on the applicability of this relief.

Revenue is increasingly scrutinising R&D credit claims and you should note that:

- there is increased Revenue activity in this area; and
- it is important to have supporting documents in place.

Use of losses

Where losses are incurred within a group, there may be a number of tax efficient options available in the context of using these losses. These options include efficient structuring of group relief or in some cases, the creation of a tax refund. This is a complex area and advice should be sought to ensure any loss utilisation is effected efficiently.

Capital allowances

Capital expenditure incurred by companies can result in valuable tax relief in the form of capital allowances. However, this can be a complex area and reviews should be carried out to ensure all appropriate expenditure qualifying for capital allowances is captured. The careful segregation of the various categories of assets may also result in a more tax efficient solution.

Foreign taxes

To the extent withholding tax is operated on amounts payable to Irish companies (e.g. interest, dividends or royalties), generally some form of tax relief should be available in Ireland. There are opportunities available to ensure that double tax relief is optimised and advice should be sought on this matter where this arises.

Case study – We have a client, which has a very strong brand name. This client was profit making and paying high amounts of corporation tax each year. We identified an opportunity for this client whereby the IP associated with the brand was migrated to a new company, tax relief was available thereon and the overall tax bill for the group was significantly reduced.

How can Grant Thornton help you?

Grant Thornton has a wealth of experience in dealing with Revenue audits. We can assist you to prepare for the audit, to deal with Revenue on-site and to negotiate any settlements on your behalf.

In addition we provide

- VAT reviews for clients to determine potential VAT exposures and savings;
- specialist VAT advice regarding property-related transactions (e.g. sales and purchases, leasing);
- advice in relation to cross-border transactions;
- assistance with Revenue audits and investigations and we can deal with the authorities on your behalf;
- VAT compliance services (VAT returns, Intrastat returns, VIES returns etc);
- payroll tax and VAT reviews for clients to determine potential exposures and savings;
- specialist payroll tax advice in relation to cross-border issues, ex-patriate and non-resident employer issues;
- payroll tax compliance services (monthly payroll services, annual P35 returns);
- systems reviews to identify weaknesses and risks in the way in which your returns are processed; and
- advisory services relating to all tax issues.

If you wish to discuss any of these issues contained in this booklet, please call your usual Grant Thornton contact. Alternatively feel free to call any of our specialists.

Contact

Frank Walsh
Partner, Tax
M + 353 (0)87 258 6965
E frank.walsh@ie.gt.com

Jarlath O'Keefe
Partner, Head of Indirect Tax
T + 353 (0)1 680 5817
E jarlath.okeefe@ie.gt.com

Leslie Barrett
Partner, Tax
M +353 (0)87 987 1085
E leslie.barrett@ie.gt.com

Jim Kelly
Director, Tax
M + 353 (0)86 820 9406
E jim.kelly@ie.gt.com

Liam Kenny
Director, Tax
M +353 (0)86 170 6021
E liam.kenny@ie.gt.com

Kevin Devenney
Director, Tax
M +353 (0)86 304 8008
E kevin.devenney@ie.gt.com

Sasha Kerins
Director, Tax
M +353 (0)86 803 9474
E sasha.kerins@ie.gt.com

Theresa O'Gorman
Director, Tax
M +353 (0)87 203 3799
E theresa.ogorman@ie.gt.com

Fionn Uibh Eachach
Associate Director, Tax
M +353 (0)87 637 3720
E fionn.uibheachach@ie.gt.com

@GrantThorntonIE

www.grantthornton.ie

Offices in Dublin, Belfast, Cork, Galway, Kildare and Limerick