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"2013 Revenue Project to address the percieved over-claim of expenses, when calculating taxable profits" *(by Brian Keegan, Director of Taxation at Chartered Accountants Ireland)*

National Contractors Project – Questions and Answers

We have received quite a few queries from members on dealing with enquiry letters being issued within this Project. That is not surprising, as Revenue have apparently departed from the customary norms and procedures for sectoral enquiries in their approach. The National Contractors Project was not announced by Revenue as it should have been; that is by formal Revenue announcement via an eBrief or Tax Briefing. Because these are lacking, we will try to answer here some of the issues arising.

1. Why am I or my clients being targeted?

Most likely because you or your client are a small service provider or single member company. Revenue have advised that "cases are selected because of the apparently high levels of tax-free deductions from gross income".

2. What are Revenue actually after?

Although this has been dubbed the "National Contractors Project", what is really at issue is the incorrect claiming of expenses by both individuals and companies. It seems that the Project may have been triggered by instances of service companies paying high amounts of expenses to their employees.

In dealing with these enquiries under the National Contractors Project, you need first of all to establish that:

- The company is not claiming a Schedule D Case I/II deduction on non-business expenses, or
- The company is not paying expenses to employees instead of remuneration which should be taxed under PAYE.

You may need to consider:

- If expenses were actually incurred at all, i.e. fraudulent claims, or
- If the claims were in relation to non-business expenses, e.g. payments for personal goods and services for employees, or
- If expenses were excessive and not subject to appropriate controls, e.g. disproportionate mileage allowances

Particular care needs to be taken in defending the affairs of single member companies; typically where a professional provides services through a wholly owned company and possibly to very few separate clients. We understand that Revenue will look critically at the level of pension contributions, motor expenses and other expenses incurred through the company in such situations. Also we understand that expense claims will not be accepted on a percentage basis. Revenue have advised however that they would accept disclosures where expenses incurred were within industrial norms or were "reasonable for the sector".

3. Does the Audit Code of Practice apply?

Yes it does. So too does the Taxes Consolidation Act 1997. That means that:

- You can insist that the requests from Revenue are reasonable in their scope and time allowed. Requests for a forklift pallet of documents to be provided within 14 days are not on.
- Under the Audit Code of Practice, up to 60 days is allowed to complete a qualifying disclosure if one is required.
- Also under the Audit Code of Practice, normally 21 days notice of an audit is given, and hence 21 days to notify Revenue that a disclosure will be made. Revenue have commented that "If there is a disclosure to be made, that fact must be notified within the 14 days indicated in the audit letter. As stated previously, Districts will be reasonable in response to genuine difficulties experienced by taxpayers and agents, and will allow the normal 60 days for completion of disclosure, as well as co-operating with genuine efforts to make a qualifying disclosure"
- The normal place of audit is at the business premises of the taxpayer; it may be appropriate to refer to the Audit Code of Practice at Section 3.1, in cases where a disproportionate volume of documents is being sought for a "desk audit". The normal powers of inspection available to Revenue are provided for in TCA97 s905, which requires "all reasonable assistance" (but only reasonable assistance) to be provided.

4. Why are Revenue stating that penalties arising will be in the Deliberate Behaviour category?

We are advised that at least some of the cases which led to this Project being set up involved expense claims which were clearly fraudulent. This seems to have made Revenue anxious. However, while Revenue are entitled to the first cut at determining a penalty, remember that since Finance (No.2) Act 1998, the level of ALL penalties can be appealed to a court.

5. Can a company and its directors be audited at the same time?

Yes, they can, but separate audits and audit notifications are required. Also an audit notification may not be issued for any period before the return is due.

A company is a separate legal entity and therefore a separate taxpayer. Do not allow what should be separate audits to be thrown together.

As a matter of convenience both for the taxpayer and for Revenue, it may be convenient to allow a settlement involving both the director and the company to be made by the company. This is long established and documented practice. It does not mean that both a director and the company can be audited as if they were a single taxpayer.

6. How far back do I need to go?

Revenue's position on this in relation to the Project is less than clear. If a tax default involving Deliberate Behaviour has indeed happened, limiting the scope to four years would be a concessional treatment under the Taxes Consolidation Act.

The four-year scope of most of the enquiry letters is not normal practice. Extending the scope beyond the normal one year enquiry is deeply unfair to compliant taxpayers and adds disproportionately to their compliance burden. We raised this with Revenue and their comment is reproduced without prejudice:

"If the taxpayer decides not to make a disclosure, or that there is no disclosure to be made, we agree as a concession applying to this project only that, rather than sending all documentation to the District within 14 days, a letter from the taxpayer saying that there is nothing to disclose, and enclosing a brief reconciliation for the four years in question will be acceptable. The reconciliation is required to reflect the fact that these cases have been selected because of the apparently high levels of tax-free deductions from gross income. The reconciliation should show, for each year, the major (5% or more) deductions from gross income to arrive at the salary paid to the contractor(s). A note explaining unusually high expenses should also be included. It may be that the nature of a business is such that expenses that would otherwise appear high are fully justified. We will then consider these reconciliations, and revert with more specific requirements to allow the audit to be conducted."

That said, if there are outstanding tax liabilities to be settled, members should set about doing so.

7. Do I need to regross figures in a settlement?

Again, we asked that question of Revenue who commented:

"The question of whether a payment on behalf of or a benefit provided to a director should be grossed up or not depends on the facts and circumstances of each case.

Generally, a payment on behalf of or benefit provided to a director by an employer will be grossed up where there is an agreement in place that the director should receive an agreed net amount.

Where the employer fails to deduct and account for the tax/PRSI and USC on a payment on behalf of or a benefit provided to a director in accordance with legislation, there is nothing in tax law which prohibits Revenue from pursuing the director for the tax due as well as pursuing the employer. In such instances, the director is not entitled to a credit for the tax paid by the employer as this tax was not deducted from the payment or benefit."

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