

# **Guideline for Auditors and Caseworkers**

## **Role of Regions and the Collector-General's Division in the collection of Audit Debts**

**October 2016**

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## 1. Introduction

The following guideline and template is to assist with the referral of cases from the Districts/Regions to the Collector-General's Debt Management Units for the collection/enforcement of Audit Related Debts.

## 2. Purpose

The purpose of this guideline is to clarify the respective roles of Audit and Case Management staff in the Districts and Debt Management Units (DMU) in the Collector-General's Division (C-G's) respectively, in relation to the collection of audit related debts including taxes, interest and penalties.

## 3. Role of the District

**The District is responsible for:**

- Establishing the extent of underpayment including tax, interest and penalties, taking account of the ability to pay.
- Seeking payment of the overall debt from the customer.
- Where necessary, raising a formal assessment and finalising the assessment as due and payable, taking account of any Appeal in the case.

It is expected that the vast majority of audits will lead to a settlement between Revenue and the taxpayer resulting in full payment of any debt due (including any debt due over and above that arising from the audit).

## 4. Settlement and Instalments

Where the auditor agrees with the customer that the audit assessment be paid through a Phased Payment/Instalment Arrangement, then it is the responsibility of the auditor to ensure that the terms of the arrangement will be in keeping with **Revenue's Guidelines for Phased Payment/Instalment Arrangements**. If the case under audit is being monitored by either the Collector-General's Phoenix or Commonality Units, then any proposed phased payment or instalment agreement should not be finalised by the Auditor without prior consultation with the relevant unit.

Following formal agreement the Phased Payment/Instalment arrangement details should be forwarded to the relevant **Collector-General's Debt Management Manager**. The transfer of the case must be recorded on CRS.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

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### 4.1 Assessments and Collection/Recovery

Where a Phased Payment/Instalment Arrangement is not an option and enforcement action is required in order to recover the debt due (and following completion of any necessary determination process in regard to penalties) the C-G's will, on receipt of the completed template at [Appendix 1](#) from the District or Region, initiate enforcement action to recover the amounts due. Such referrals should be the subject of an advance phone call between the Auditor and the DMU Manager.

## **5. Payment/Collection of Penalties**

Procedures for the payment/collection of fixed or tax-geared penalties that are charged following receipt of a “qualifying disclosure” or during finalisation of a Revenue audit or intervention are as follows:

### **5.1 Legislation:**

Following the passing of Finance (No.2) Act 2008 on 24 December 2008, fixed or tax-geared penalties charged following a Revenue audit or intervention or following receipt of a qualifying disclosure may be agreed with the taxpayer and paid. If the penalty is not agreed and paid, the penalty will be determined by a relevant court<sup>1</sup>.

### **5.2 Penalty Not Agreed with Taxpayer or Penalty Agreed but Not Paid:**

Where there is no agreement with the taxpayer on the amount of the penalty or where an ‘agreed’ penalty is not paid, the Notice of Opinion and Court Application procedures apply.

In these cases, it will be a matter for a judge in court to determine the amount of the penalty due. Where a court has made a determination that a taxpayer is liable to a penalty, the court may also make an order as to the recovery of that penalty, and without prejudice to any other means of recovery, that penalty may be collected and recovered in like manner as an amount of tax.

### **5.3 Claims of Inability to Pay:**

Auditors may encounter cases where taxpayers are finding it particularly difficult to meet their tax payment obligation and may claim inability to pay.

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### **5.4 An ‘Agreed Penalty’ or a ‘Court Determined Penalty’:**

**A penalty can be either:**

- (i) An ‘Agreed Penalty’ - agreed with taxpayer and payment obtained, or
- (ii) A ‘Court Determined Penalty’ - determined by a judge in the relevant court.

<sup>1</sup>The term ‘relevant court’ means the District Court, Circuit Court or High Court

## 5.5 Collection of ‘Agreed’ Penalties:

**Penalties agreed with the taxpayer may be collected as follows:**

- (1) **Full payment of the ‘agreed penalty’ received from the taxpayer.**  
The majority of cases will be settled by obtaining a cheque in payment of the full amount of the penalty from the taxpayer on completion of the audit or intervention.
- (2) **Payment of the ‘agreed penalty’ accepted as part of a Phased Payment/ Instalment Arrangement.**  
The ‘agreed penalty’ can be included as part of a Phased Payment/Instalment Arrangement.

### **Phased Payment/Instalment Arrangements Procedures - ‘Agreed Penalties’**

- (1) Where payment of an ‘agreed penalty’ is accepted as part of a Phased Payment/ Instalment Arrangement, no interest is charged on the penalty element of the Instalment Arrangement. There is no provision in the Tax Acts for the charging of interest on penalties.
- (2) Where a down payment for the outstanding debt is received from a taxpayer, the down payment must be set against tax arrears first, then against interest arrears and finally against the ‘agreed penalty’.
- (3) Where payment of an ‘agreed penalty’ is accepted as part of a Phased Payment/ Instalment Arrangement, the instalments will be first set against the tax/duty arrears, then against the interest arrears and finally against the ‘agreed penalty’.
- (4) Where a Phased Payment/Instalment Arrangement breaks down and the ‘agreed penalty’ is not fully paid, the taxpayer may pay the outstanding amount of the ‘agreed penalty’ to the Revenue auditor. Where the full ‘agreed penalty’ is paid, the C-G’s DMU will collect the tax and interest element of the debt.
- (5) Where a Phased Payment/Instalment Arrangement breaks down and the ‘agreed penalty’ is not fully paid, the Notice of Opinion and Court Application procedures apply. The C-G’s DMU will
  - Notify the Revenue auditor that the ‘agreed penalty’ has not been paid and it will be the responsibility of the Revenue auditor (the officer that agreed the penalty with the taxpayer) to initiate the Notice of Opinion procedures.
- (6) The C-G’s DMU will pursue the tax and interest arrears due following the breakdown of the Phased Payment/Instalment Arrangement while the Revenue auditor is dealing with the Notice of Opinion and Court Application procedure.

## 5.6 Collection of ‘Court Determined’ Penalties:

In all cases where a penalty is determined by a court, an application will be made to the court for an order for the recovery of that penalty. Fixed or tax-gearred penalties determined by a court may be collected as follows:

- (i) **Full payment of the ‘court determined penalty’ accepted from the taxpayer:**  
The majority of cases will be settled by obtaining a cheque in payment of the full amount of the penalty from the taxpayer on completion of the court process.

**(ii) Payment of the ‘court determined penalty’ accepted as part of a Phased Payment/Instalment Arrangement:**

The ‘court determined penalty’ can be included as part of a Phased Payment/Instalment Arrangement.

**Phased Payment/Instalment Arrangements Procedures - ‘Court Determined Penalties’**

- (1) Where payment of a ‘court determined penalty’ is accepted as part of a Phased Payment/Instalment Arrangement, no interest is charged on the penalty element of the arrangement. There is no provision in the Tax Acts for the charging of interest on penalties.
- (2) Where a down payment is received from a taxpayer, the down payment must be set against tax/duty arrears first, then against interest arrears and finally against the ‘court determined penalty’.
- (3) Where payment of a ‘court determined penalty’ is accepted as part of a Phased Payment Instalment Arrangement, the instalments will be first set against the tax/duty arrears, then against the interest arrears and finally against the ‘court determined penalty’.
- (4) Where a Phased Payment/Instalment Arrangement that includes a ‘court determined penalty’ breaks down and the ‘court determined penalty’ is not fully paid, the taxpayer may pay the outstanding amount of the ‘court determined penalty’ to the Collector-General. Where the full ‘court determined penalty’ is paid, the C-G’s DMU will collect the tax and interest element of the debt.
- (5) Where a Phased Payment/Instalment Arrangement that includes a ‘court determined penalty’ breaks down the C-G’s DMU will enforce the outstanding tax/duty and interest arrears and the “court determined penalty”.

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**5.7 Role of the C-G’s Debt Management Unit (DMU)**

After the Phased Payment/Instalment Arrangement is agreed, the auditor will then refer details of the arrangement on the appropriate template, which will address the tax, interest and penalties included in the settlement, to:

- (i) the relevant Debt Management area where the terms of the arrangement comply with the normal Phased Payment/Instalment Arrangement guidelines
- (ii) the liaison officer where the terms of the arrangement is outside of the normal Phased Payment/Instalment Arrangement guidelines.

The C-G’s Debt Management unit will then set up the Phased Payment/Instalment Arrangement and will continue to monitor the arrangement. Where necessary the DMU will also commence enforcement activity in a case.

This includes:

- (1) Referral for Sheriff enforcement
- (2) Referral for Solicitor enforcement (for obtaining and registering judgment, registering the judgment as a judgment mortgage)

- (3) Issuing a Notice of Attachment
- (4) Exemplary enforcement (Forced Sale, Bankruptcy, Examination of Means, Committal)
- (5) Liquidation

### **Appendix 1 – Template for Completion by Regions/Districts**

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### **Appendix 2 – Template for Completion by Regions/Districts Non Standard Cases**

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### **Appendix 3 – Collector-General's Office – Debt Management Tier Structure**

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### **Appendix 4 – Examples of Different Scenarios**

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