

Public Accounts Committee Hearing, 4th December 2014

Office of the Revenue Commissioners

Opening Statement by Revenue Chairman, Josephine Feehily

Chairman and Members of the Public Accounts Committee, thank you for the invitation to attend today's meeting of the PAC. I understand that the Committee's focus for today is on the action taken by Revenue in relation to the information received from the Authorised Officer's Ansbacher Reports. I welcome the opportunity to assist the Committee in this regard and I will endeavour to be as open and transparent as possible. At the same time, the confidentiality of taxpayer information is a central element in the tax system and under section 851A of the Taxes Consolidation Act 1997, it is a criminal offence for any past or serving Revenue officer to disclose taxpayer information and I appreciate the Committee's understanding on this matter any time I have appeared before it previously. This obligation is not affected by the fact that elements of the information enter the public domain and the information retains its character as "taxpayer information" and therefore the protection of section 851A. I am also, inevitably, somewhat constrained by the passage of time and because many of the senior Revenue officers who dealt with the Authorised Officer's Reports have retired.

Special Project Team

As reported to the Committee in the past, over 15 years ago the Revenue Commissioners commenced an investigation into the operation of the Ansbacher Accounts and the tax affairs of the Irish resident account holders following the publication of the McCracken Report. A copy of the report of the Authorised Officer completed in June 1999 was received shortly afterwards from the Minister for Enterprise, Trade and Employment. This Report

contained information about the alleged involvement of 120 named individuals with Ansbacher (Cayman) Limited. On receipt of the Report, a Special Project Team led by a very experienced senior official was set up to investigate the tax affairs of the named individuals, associated persons and trusts. This team consisted of around 20 experienced Revenue staff. The Authorised Officer's Report was a very important contribution to these investigations. This team examined all the information which came to Revenue from the Authorised Officer and his Minister whether there was evidence of an Ansbacher deposit or not. From the outset it was recognised that the Investigations would be complex and time consuming.

High Court Orders

In parallel with the Authorised Officer's Report, in September 1999 Revenue also obtained High Court Orders against two financial institutions and two other entities. These Orders required the parties to supply information, particulars and documentation in relation to the Ansbacher deposits. Some 200,000 documents were received on foot of these Orders alone over a four year period.

As the investigations and examinations continued, the extensive use of legislative powers was necessary, requiring the production by financial institutions and other third parties of books, records, and documentation that were relevant to establishing the liabilities or otherwise of account-holders and other named individuals.

Following receipt, in July 2002, of the High Court Inspectors' Report into the Affairs of Ansbacher (Cayman) Limited, an application was made to the High Court for access to the supporting papers to the Report. This application was held in open Court over three days and the information, when Revenue received it, proved particularly important in progressing investigations into individual cases.

Another helpful Order enabled the Authorised Officer to allow Revenue to inspect and copy microfilm records which he held.

Since the start of the investigation 26 High Court Orders were obtained against financial institutions and third parties requiring the production of books, records and documentation relevant to the liabilities of the Ansbacher account holders, the most recent in 2013.

Revenue received over 300,000 documents in the course of this investigation. Advanced investigative computer software was also used in collating, interrogating and managing the vast volume of financial documentation concerned.

Section 19 and 21 of the Companies Act 1990 as amended

Over the period from September 1999 to February 2011 Revenue received extensive reports, information, books and documents from the Minister for Jobs, Enterprise and Innovation relating to Ansbacher accounts. All of this information has been examined and followed up and is included in the cases which were investigated by the Ansbacher Project Team on which Revenue has previously written to the Public Accounts Committee. My officials also advise me that over this period many helpful meetings were held with the Authorised Officer.

Numbers of cases and results.

Altogether, the investigations and examinations identified some 289 cases. The number of connected entities consisting of trusts, associated companies, offshore entities, etc., related to the 289 substantive cases was nearly 700. As of now, 283 cases have been finalised. Of the remaining six, five have made payments on account and four are under appeal. 138 of the finalised cases yielded €113m in tax, interest and penalties. 58 significant settlements

have been published in the quarterly tax defaulters list and are on the public record, most with the designation “Ansbacher”.

From the outset, there were a small number of cases already under investigation as a result of other Revenue projects, for example Tribunal related investigations, are recorded separately and yielded over €6 million.

In addition to the 289 cases, as a result of increased knowledge of the use of offshore structures and trusts used in the transmission of funds, Revenue set up a number of other projects including a very successful Offshore Assets Project team. For example, one Ansbacher related High Court Order resulted in additional yield of €25m in a spin off investigation. A second such investigation in relation to trusts and offshore structures has resulted in an addition €65million to date. This investigation is on-going and the final yield is likely to exceed €115 million. The combined yield, therefore, from the Ansbacher investigations and two spin-offs will likely exceed €250 million.

The knowledge gained also allowed Revenue to break new legal ground and support the case for changes to Revenue investigative powers.

It is important from a fairness perspective to put on record that although a person may be named in the Ansbacher reports, that in itself is not proof that an Ansbacher account was held by that person, nor is it proof of tax evasion. This was underlined by the High Court Inspectors in their Report published in June 2002 and I quote:

“CAVEAT it is important to bear in mind that a finding that any particular individual is a client of Ansbacher, is NOT a finding that that person evaded tax. As will be seen further on, persons who have been identified as client did not necessarily have deposits with Ansbacher. Some such persons simply borrowed money from Ansbacher in the ordinary course of business, a transaction giving rise to no tax liability whatsoever. Others again established Trusts to which they never transferred any assets.”

In this context, around half of the cases under investigation [145], were finalised and did not result in any yield from this project. Of these, 69 cases were established to be foreign non-resident cases with no liability to Irish tax. 20 cases were covered by the 1993 Waiver of Certain Tax, Interest and Penalties Act 1993. The balance of cases included individuals who were bank clients but not deposit holders and cases that had correctly declared the deposits in their annual returns of income.

The Comptroller and Auditor General has regularly reported in his Annual Report on progress of the Ansbacher project and presented these updates to the PAC in the normal way. Progress was also reported each year in Revenue's Annual Reports from 1999 to 2007.

Prosecution

Revenue actively considered prosecution under the Taxes Acts in a number of cases. However, an essential element for a successful criminal prosecution is the availability of relevant original documents and that element was largely missing. There were few original documents available and there was no legal mechanism to compel Cayman entities to produce documents or their employees to give evidence. The time elapsed was also a very significant factor. The Ansbacher accounts ran from 1971 until the mid-1990s. The time elapsed was typically in excess of 10 years. Section 1078 (7) of the Taxes Consolidation Act 1997 provides proceedings have to be instituted within 10 years from the date of the commission of the offence.

In consultation and coordination with other relevant agencies which were considering prosecution options, Revenue officials provided witness statements to An Garda Siochana at their request.

Conclusion

In conclusion, I am satisfied that Revenue made full and appropriate use of the information received from the Authorised Officer's Reports, the High Court Inspectors' Report and its underlying documents. I want to assure the Committee in particular that all the Authorised Officer's material referred to Revenue by the Minister for Jobs, Enterprise and Innovation was fully examined and followed up.

Revenue allocated and maintained a significant experienced investigative resource in a dedicated project team. We made extensive use of legislative powers to seek books and records, and where these powers didn't achieve success we went to the High Court to progress the investigation and overcome blockages. Revenue obtained a significant number of High Court Orders.

Revenue staff have shown resilience and persistence in bringing all the cases identified to conclusion, with a significant yield of €49m in tax and a further €64m in interest and penalties. The lessons learnt from this investigation have been important in the success of other related projects, in developing new law and supporting enhanced investigative powers.

Our enquiries into Ansbacher were part of a series of special investigations into serious tax evasion involving various forms of bogus non resident accounts and offshore accounts which have yielded in total €2.7billion in tax, interest and penalties. These investigations were comprehensively followed through and provided a model for similar investigations by other revenue authorities.