

PAC-R-1651 Correspondence 3A.4 Meeting 148 22/01/15

Chairman's Office



Oifig na gCoimisinéirí Ioncaim Caisleán Bhaile Átha Cliath Baile Átha Cliath 2 Éire www.revenue.ie

Office of the Revenue Commissioners
Dublin Castle
Dublin 2
Ireland

100523/14

22 December 2014

Ms Margaret Falsey, Committee Secretariat, Committee of Public Accounts, Leinster House, Dublin 2

Dear Ms Falsey,

I refer to your letter of 10 December 2014. The answers to your queries are as follows:

1. A copy of any notes or minutes of meetings held with the official from the Department of Jobs, Enterprise and Innovation

There were many meetings held over a number of years between Revenue officials and representatives from the then Department of Enterprise, Trade and Employment including with the Authorised Officer. As outlined by me during the recent Committee meeting many of the Revenue officials engaged in Ansbacher related work have retired. This together with the passage of time have meant it has not been possible to retrieve minutes of all of the meetings some of which were of an informal nature with most likely no notes retained. My officials have however located minutes of meetings between Revenue and the named Authorised Officer held on 11th July 2005; 15th May 2006; 29 September 2006; and 9th October 2006 and a mail note on a meeting of 25th October 2006. However, I am not sure that these would be of value to you as there would be a need to redact significant elements in view of the taxpayer confidentiality provisions in section 851A of the Taxes Consolidation Act 1997. I attach one such minute for information (which shows the level of redaction required for taxpayer confidentiality reasons).

2. A note on the yields collected on the 27 isolated cases following receipt of the Authorised Officer's Report

Of the 120 cases contained in the Authorised Officer's Report, 27 were not identified to Revenue from any other source. Of these cases 26 are closed, with 16 having no tax liability and 10 with additional liability. The remaining case is still under investigation. The 10 cases closed with additional liability yielded a total in excess of €1.5m in respect of tax interest and penalties.





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3. A note on the reasons Revenue may not be able to pursue an investigation

As I noted at the meeting, Revenue can have difficulties in pursing a prosecution or finalising an investigation for a number of reasons. These include:

- Time limits
- Burden of proof
- Difficulties in determining liability e.g. death of a taxpayer
- Quality of evidence
- Entering into a settlement agreement
- The taxpayer availing of Amnesty provisions

Time limits

Generally, Revenue is not permitted to make enquiries or raise an assessment outside a four year period after the end of the year of assessment in circumstances where the taxpayer has submitted a return of income. A Revenue officer may make enquiries outside the four year period provided the officer has "reasonable grounds for believing that the return is insufficient due to it having been completed in a fraudulent or negligent manner". The onus is on Revenue to provide evidence relation to the "reasonable grounds".

To clarify an answer to a question raised by the Committee, it was the Finance Act 1983, section 94(7), which provided that proceedings must be instituted within 10 years from the date of the commission of the offence. Section 94 introduced a comprehensive range of criminal offences and penalties for taxes and duties. Section 94 is now section 1078 of the Taxes Consolidation Act 1997.

In the context of Ansbacher, the prosecution of persons for knowingly or wilfully delivering an incorrect tax return or furnishing incorrect information was actively considered by Revenue. A number of specific cases were identified for potential prosecution and reports prepared on these for consideration by Revenue's Prosecutions Branch. Revenue obtained legal Opinion on the application of the 10 year time limit in the legislation. As the Ansbacher accounts had been wound up in the mid 1990s, typically in excess of 10 years had passed since the alleged offence occurred, the opportunity to commence prosecution proceedings was effectively closed.

Burden of Proof

There is a significant difference in the burden of proof for a successful criminal prosecution compared to a successful tax assessment or settlement. A tax assessment would be dealt with as a civil matter and the burden of proof is "on the balance of probabilities". For a successful criminal prosecution the burden of proof is "beyond reasonable doubt".

¹ Prior to the introduction of self assessment in 1988 the time limit for raising an assessment was 10 years at which point it was reduced to 6 years. It was reduced to 4 years with effect from 1 January 2005.





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Determining the tax liability

Where an investigation is triggered because Revenue discovers that a taxpayer has a concealed financial asset of some kind, such as an offshore account, the investigation has to extend far beyond the question of tax on the income generated by the asset. It is also necessary to investigate the source of the capital and to see if it is derived, for example, from concealed earnings. If this appears to be the case then any investigation is likely to be protracted. In fact, it may not be possible to determine with complete accuracy, having regard to the passage of time and the possible lack of complete records, the source of the capital funds. Even when the source of the funds can be established in a general way as concealed earnings from a trade or profession, it is still necessary to attribute those earnings to individual tax years. This in itself is a difficult task and generally involves the use of various assumptions and estimates.

Where a taxpayer has died, and the investigation is being pursued with the estate, matters are made more difficult because sometimes the only person who really knew all the facts was the taxpayer.

Quality of Evidence

The fundamental requirements for a criminal prosecution are documentary evidence and proofs by way of witness statements. There were very few, if any, original documents available and there was no mutual legal assistance agreement or other legal mechanism to enable Revenue to access and gather original documentation or to compel Cayman entities to produce such documents in relation to Ansbacher account holders.

A further impediment to accessing documentation was the passage of time. The Ansbacher accounts ran from 1971 with the Irish business finally wound up in the mid 1990s. With many accounts opened and operated in the 1970s the actual existence of records was an issue as there was no obligation on financial institutions and advisers to hold documents indefinitely.

Entering into a settlement agreement

Entering into a settlement agreement cannot be used as evidence of a criminal offence. The fact that someone enters into a settlement agreement and pays tax, interest and penalties, including penalties for deliberate default, cannot be used as evidence in a criminal prosecution.

Taxpayer availing of Amnesty provisions

The Waiver of Certain Tax, Interest and Penalties Act 1993 allowed a person to avail of an amnesty in respect of undeclared income or gains. As I mentioned at the meeting, under the Amnesty legislation Revenue had to create a "Chinese wall" between the Chief Special Collector, who administered the scheme, and the rest of Revenue. Even in relation to offences under the 1993 Amnesty Act, my advice is that Revenue's capacity to obtain admissible evidence is negated by the confidentiality provisions imposed upon the Chief Special Collector.





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Authorised Officer

I have given further consideration to Revenue's response to any Authorised Officer information that might be relevant to Revenue and have asked the Manager in charge of the Ansbacher investigation, who would have worked closely with the Authorised Officer, to write directly to him in this regard.

Yours sincerely,

Josephine Feehily

Chairman

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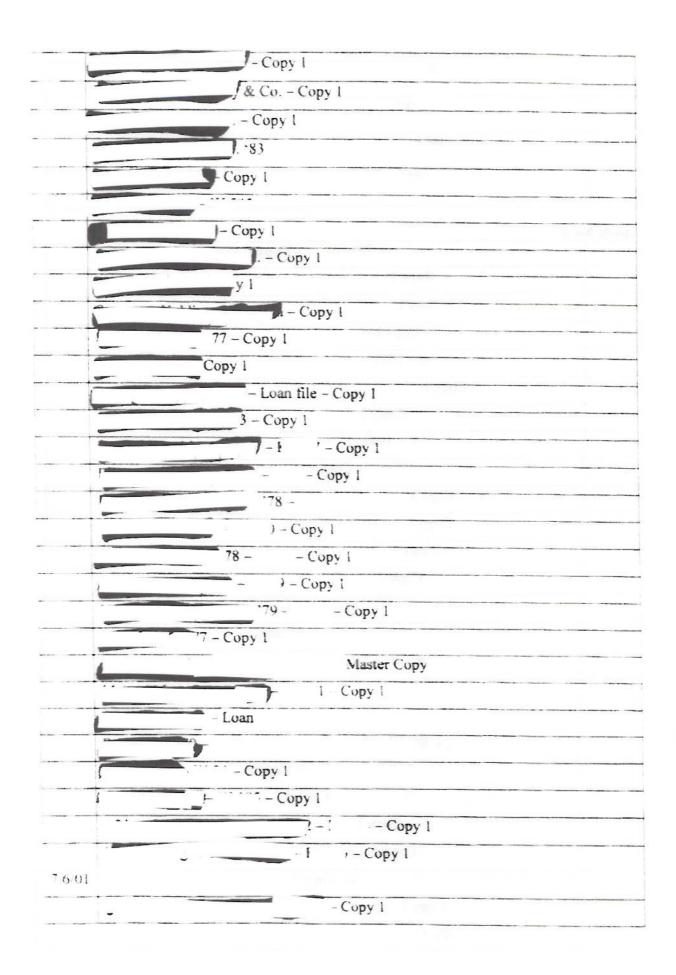
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	. Loan File (From Jan '86)	
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SAFE NO. 4 - DENISE'S ROOM

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	- London (Nov. 82/Dec.'82 Jan.'83/Feb'83/Mar.'83/Apr '83/May '83)
	ondon (Sept. & Oct. '90)

	(Jan'86/Feb '86/March '86)
-	Jan '87/Feb '87/March '87/April '87)
	Sept '89/Oct '89/Nov '89/Dec '89)
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Co.	London July '81 – Jan '82	
	1977, 1978, 1979, 1980 and 1981	
¹ Co.	London May '80 - Oct '80	
	s of interview with y 30 March 2000.	

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SAFE No. 5 - Denise's Room

Shelf 1

atements & tracing for a/c 11035005 & 10407014
. – Volume 57
(Non statutory non consolidated accounts of the Bank for 1989 to 1997)
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etatements a/c no.
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- Sept-Nov. '89)
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- Oct '86-Dec. '87)
: Central Bank reports/minutes etc.
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file;	Financial Statements for y/e 31/12/94; 31/12/	93; 31/12/92
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SAFE NO. 6 - Gerry's Room

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Meeting No. 295 (24th January, 1989) to Meeting No. 304 (7th April, 1989)
Meeting No. 305 (28/4/89) to Meeting No. 311 (8/6/89). Part XII
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SAFE NO. 9 - JOHN'S ROOM

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