

VOTE 9. - OFFICE OF THE REVENUE COMMISSIONERS

6. Revenue Account

Basis for Audit

An account showing all revenue received and paid over to the Exchequer by the Revenue Commissioners is furnished to me annually. I am required under Section 3 of the Comptroller and Auditor General (Amendment) Act, 1993, to carry out such examinations of this account as I consider appropriate in order to satisfy myself as to its completeness and accuracy and to report to Dáil Éireann on the results of my examinations. The results of my examinations have been generally satisfactory.

I am also required under Section 3 of the Comptroller and Auditor General (Amendment) Act, 1993 to carry out such examinations as I consider appropriate in order to ascertain whether systems, procedures and practices have been established that are adequate to secure an effective check on the assessment, collection and proper allocation of the revenue of the State and to satisfy myself that the manner in which they are being employed and applied is adequate. Paragraphs 12 and 13 refer to matters arising from this examination.

Revenue Collected

Revenue collected under its main headings was as follows-

	1998 £m	1997 £m
Income Tax	5,742	5,208
Value Added Tax	4,267	3,707
Excise	2,825	2,523
Corporation Tax	2,059	1,697
Stamps	541	424
Customs	160	180
Capital Acquisitions Tax	112	89
Capital Gains Tax	193	132
Residential Property Tax	1	3
	15,900	13,963

The amount paid into the Exchequer was £15,899m leaving a balance of £10m prepaid to the Exchequer compared to a balance of £11m prepaid at the end of the previous year.

7. Write-Offs

The Revenue Commissioners have furnished me with details of taxes written off during the year ended 31 December 1998. The total amount written off is made up as follows:

Tax	1998 £'000	1997 £'000
Value Added Tax	79,128	73,702
PAYE	47,158	61,625
Corporation Tax	15,412	40,801
Income Tax	19,762	47,343
Health/Social Insurance-Self Employed	109	55,183
Other Taxes	5,342	2,495
PRSI	49,582	-
	216,493	281,149

The distribution according to the grounds of write-off is:

	1998 £'000	1997 £'000
Liquidation/Receivership/Bankruptcy	92,522	152,008
Ceased trading - No Assets	52,958	20,855
Deceased and Estate Insolvent	2,864	-
Uneconomic to pursue	54,192	77,806
Unfounded Liability	85	19,594
Cannot be traced / Outside Jurisdiction	7,099	4,889
Compassionate Grounds	4,030	2,938
Uncollectable due to financial circumstances of taxpayer	2,073	-
Examinership	670	3,059
	216,493	281,149

The large increase in the amounts written off since 1996 (£90.73m in 1996) is due to a revision of the Commissioners' write-off policy with a view to deleting from their records the large amount of debts which are old and regarded as uncollectable and in the case of estimated assessments likely to overstate the actual liabilities. The objective of the programme, which will take a number of years to complete, is that the debt showing on the books will be more realistic and in large measure collectable, and enable resources to be better targeted and more effectively deployed in collecting arrears. The 1998 write-off programme is summarised as follows;

- £43.4m was written off on an automated basis comprising £2.9m Capital Gains Tax (Declared Liability), £10m Value Added Tax (Declared Liability), £11.1m Value Added Tax (Estimated Liability), £10.8m PAYE/PRSI (Estimated Liability) and £8.6m PAYE/PRSI (Declared Liability).
- Approximately £17m was written off as a result of the 1997 change in policy whereby amounts owing by companies in liquidation are written off at the beginning rather than at the end of liquidation proceedings.

- The sum of £49.6m in respect of Pay Related Social Insurance was formally written off in 1998. This was in accordance with new arrangements for write off of PRSI agreed with the Department of Social, Community and Family Affairs and my Office.
- Enhanced efforts were also put into the task of reviewing the debt showing in respect of companies in liquidation and arising from this an additional £76m was written off in 1998. An amount of approximately £17m still remains on the books in respect of amounts owing from companies in liquidation which is intended to be written off over a number of years.

Details of taxes automatically written off amounting to £43.4m were retained by Revenue in electronic media. It would be difficult however to determine with accuracy the number of cases involved without extra work being undertaken. For this reason, the number of items making up the amounts written off is not presented in the Report.

I have made a test examination of the cases and I am satisfied with the action taken.

8. Outstanding Taxes and Levies

Table 1 was prepared on the basis of information furnished by the Revenue Commissioners and reflects the activities and transactions in the twelve month period ended 31 May 1999 - the latest date for which data was available at the time of finalising my Report.

Table 1 - Outstanding Taxes and Levies

	Balance at 31 May 1998	Charges/ Estimates Raised ^a	Paid	Dis- charged	Balance at 31 May 1999	Estimate of amount likely to be collected
	£m	£m	£m	£m	£m	£m
Income Tax (Excluding PAYE) ^b	555	1,253	1,289	25	494	250
VAT (Declared liabilities Net of Repayments)	98	3,680	3,691	-	87	59
VAT (Estimates) ^c	151	16	21	-	146	20
PAYE (Declared Liabilities)	91	4,389	4,401	-	79	50
PAYE (Estimates) ^c	44	244	261	-	27	7
PRSI (Declared Liabilities)	105	2,059	2,077	-	87	45
PRSI (Estimates) ^c	33	202	213	-	22	5
Corporation Tax	184	2,103	2,043	82	162	76
Capital Gains Tax	48	190	181	13	44	19
Capital Acquisitions Tax	14	117	117	1	13	7
Abolished Taxes	6	1	1	-	6	2.5
Total	1,329	14,254	14,295	121	1,167	540.5^d

a. Net of write-offs.

b. Includes Deposit Interest Retention Tax, Withholding Tax, PRSI for the Self-employed, Health Contributions and Levies.

c. Net of discharged estimates.

d. The estimate of the amount likely to be collected takes into account factors such as :

- anticipated reductions of estimated amounts included in balances brought forward from previous years
- the level of liquidations and business closures
- historical collection patterns.

9. Prosecution of Non-Filers

A summary of prosecution action in 1998 for failure to file Income Tax and Corporation Tax returns is as follows:

	Income Tax	Corporation Tax	Total
Cases awaiting court hearing 1 January 1998*	1,117	448	1,565
Legal proceedings instituted	<u>1,968</u>	<u>327</u>	<u>2,295</u>
	3,085	775	3,860
Cases heard	<u>659</u>	<u>198</u>	<u>857</u>
Cases awaiting court hearing 31 December 1998	2,426	577	3,003

Fines were imposed in all cases heard to a total value of £709,090 in 1998.

* Note

The Revenue Solicitor's Office carried out a review of the status of all cases outstanding with each State Solicitor in 1999 which has resulted in a revised set of statistics for 1997. The opening balance for 1998 has therefore been adjusted accordingly.

10. Revenue Audit Programme

An effective tax system must incorporate procedures for verifying the validity of the returns submitted by taxpayers. This involves the desk checking of returns for completeness, accuracy and reasonableness and on-the-spot inspection of documents and records.

The majority of audits carried out by the Revenue Commissioners are specific to taxheads, like VAT and PAYE, but a significant number of comprehensive audits are also carried out which may focus on all or any taxes payable but in practice are primarily aimed at Income Tax, Corporation Tax and Capital Gains Tax. There is also a body of work which comes under the general category of Revenue audit arising out of the activities of the investigation and anti-avoidance branches. In addition a special programme of field visits was undertaken in 1998 to check whether persons registered as self employed sub-contractors were correctly registered or whether they should pay tax and PRSI through the PAYE/PRSI system. A total of 6,040 visits were carried out under that programme during the year. The audit programme will involve continued monitoring of such taxpayers in future years. The outcome of the Revenue audit programme is summarised in Table 2.

Table 2 - Revenue Audit Programme

(i) Audits Completed

<i>Audit Type</i>	1998		1997	
	No of Audits Completed	Yield £m	No of Audits Completed	Yield £m
Comprehensive Audits	3,283	61.62	3,635	60.10
Value Added Tax	9,162	45.28	7,764	38.93
PAYE Employers	4,423	14.03	5,095	14.10
Capital Acquisitions Tax	293	3.32	315	3.30
Relevant Contracts Tax	996	3.72	1,856	8.10
Investigation Branch	22	1.33	77	3.71
Anti - Avoidance	16	2.90	20	2.40
Total	18,195	132.20	18,762	130.64

(ii) Comprehensive Audit Results

As part of the self assessment system comprehensive audits are carried out following review of returns made for Income Tax and Corporation Tax purposes. The result of this audit activity is as follows:

Audit Activity	Total		Income Tax Returns		Corporation Tax Returns	
Audits in progress at 1/1/98	1,808		1,072		736	
Audits initiated in 1998	<u>3,430</u>		<u>2,462</u>		<u>968</u>	
Total		5,238		3,534		1,704
Returns accepted	824		528		296	
Cases closed with additional liability	<u>2,459</u>	3,283	<u>1,827</u>	2,355	<u>632</u>	928
Audits in progress at 31/12/1998	1,955		1,179		776	

(iii) Yield from Comprehensive Audits

Income Tax Returns		No.	As % of Total	Yield £'000	As % of Yield
Returns Accepted - No additional tax payable		528	23	-	-
Agreed settlements					
£1 - £5,000	763		32	1,261	4
£5,001 - £50,000	902		38	14,278	45
£50,001 - £100,000	70		3	5,992	19
Over £100,000	<u>35</u>	1,770	1	9,145	29
Referred to Collector General for enforcement action (a)		24	1	450	2
Settled by restriction of losses carried forward to future years (b)		33	2	410	1
Totals		2,355	100	31,536	100

Corporation Tax Returns		No.	As % of Total	Yield £'000	As % of Yield
Returns Accepted - No additional tax payable		296	32	-	-
Agreed settlements					
£1 - £5,000	245		27	902	3
£5,001 - £50,000	290		31	10,556	35
£50,001 - £100,000	36		4	3,008	10
Over £100,000	<u>38</u>	609	4	13,537	45
Referred to Collector General for enforcement action (a)		2	-	280	1
Settled by restriction of losses carried forward to future years (b)		21	2	1,800	6
Totals		928	100	30,083	100

- Where the Inspector is unsuccessful in collecting the additional tax and interest arising on audit adjustments, the amounts are referred to the Collector General. It is likely that the amounts eventually collected by the Collector General will be significantly less than the full amounts shown.
- A number of audit settlements involve the restriction of losses available for carry forward against future years' profits, thereby providing higher tax yield in those years. The yield shown assumes that taxable profits in future years will fully absorb the losses. This may not always be the position and hence the yield figure may be less than the figure shown.
- The amounts of the highest individual settlements in 1998 were £6,623,677 and £3,184,290 for Income Tax and Corporation Tax respectively.
- Interest charges of £7.94m and penalties of £3.11m are included in the yield from agreed settlements.

(iv) Random Audits

Random audits were carried out as part of the comprehensive audit programme up to 1997. For 1998 random audits were extended to the VAT and PAYE/PRSI audit programmes also. The objective is that 2% of all audits undertaken in the year will be selected randomly.

Cases selected randomly for audit were sent to districts late in 1998 and as a result not all audits were completed. A total of 89 comprehensive, 84 VAT and 70 PAYE/PRSI audits were however completed as part of the 1998 programme. Additional liabilities of £172,544 including £33,154 in penalty and interest charges were assessed in 61 cases while the returns of the remaining taxpayers were accepted as originally submitted.

(v) Arrears of Tax collected by Auditors

In addition to the yield collected by auditors on adjustments made to tax returns, they also collect any arrears of tax already on record with interest. This amounted to £27.6m in 1998 (£22.2m in 1997).

11. Investigation Branch Settlements and Prosecutions

Audits carried out by Revenue staff on taxpayers may reveal underpayments of tax due to inaccurate records, incorrect application of taxation rules and regulations and other factors. A settlement in relation to the taxes underpaid and interest and penalty charges arising is generally reached on audit between the taxpayer and Revenue staff. However, where evidence of systematic or widespread evasion of tax comes to the attention of Revenue, either through audit or from other sources, the cases are referred to their Investigation Branch. Where such investigation reveals that a taxpayer has failed to disclose relevant information, resulting in an underpayment of tax, legal proceedings may be instituted against the taxpayer. Alternatively, the Revenue Commissioners may agree to accept from the taxpayer a sum in settlement of the tax outstanding with the addition of interest and penalty charges.

Early in 1997 the Revenue Commissioners completed a reorganisation of the Investigation Branch, concentrating the preponderance of the staffing resource in pursuing a prosecution strategy in contrast to the previously prevailing policy of accepting monetary settlements in virtually all cases. The continuing reduction in both the number of investigations completed and the yield therefrom is a direct consequence of this change in emphasis.

During 1998, investigations were completed in 22 cases, 11 of which resulted in back-duty settlements amounting to £1,337,382 (77 cases in 1997 of which 24 yielded £3,712,897) becoming collectable inclusive of £553,553 (£1,462,818 in 1997) in penalty and interest charges.

The Accounting Officer supplied me with the following information in relation to prosecutions in 1998:

Cases in hands at 1 January 1998	25*
Cases referred for consideration for prosecution in 1998	8
Cases dropped due to lack of evidence	(1)
Cases brought to Court in 1998	<u>(6)</u>
Cases in hands at 31 December 1998	<u>26</u>

Of the 26 cases on hands at the year end, 20 were still under investigation and decisions to prosecute had been made in 6 cases.

Of the cases brought to Court in 1998 six resulted in successful convictions. Fines were imposed in 5 cases. In the sixth case, a director received a 6 month prison sentence (suspended), and disqualification from acting as a director was re-affirmed. Details of the fines imposed are shown in the following table:

Category	No. of Cases	Total Fines £
Company	1	2,250
Company/Director	2	22,500
Individual	1	1,000
Director	1	<u>8,000</u>
		<u>33,750</u>

Note *

The Office of the Chief Inspector of Taxes carried out a review of the status of all cases outstanding at 1 January 1998, which resulted in a revised set of statistics for 1998. The opening balance for 1998 has therefore been adjusted accordingly.

12. Judgment Mortgages

Enforcement measures used by the Revenue Commissioners in pursuing arrears from defaulting taxpayers include the referral of cases to their own Revenue Solicitor and to two firms of external solicitors. Cases are referred to Solicitors after failure by the sheriff to effect collection or are deemed unsuitable for sheriff enforcement. Solicitors may pursue the recovery of tax debts through the courts. When a court judgment has been obtained against the debt Revenue may request the Solicitors to identify any property assets to which the debt may be attached. Having identified unencumbered property assets owned by the defaulting taxpayer the Solicitor may then seek to have a judgment mortgage registered against that property. When the judgment mortgage is registered the owner cannot make an unencumbered sale of the property. The judgment mortgage remains in place until the debt has been satisfied or discharged. The Revenue appointed solicitor, with the permission of the court, may proceed with the forced sale of the property and offset the proceeds against the debt. Ultimately the Solicitor can initiate liquidation or bankruptcy proceedings or pursue a prosecution against the defaulting taxpayer.

Information provided by the Revenue appointed solicitors showed that 1,249 judgment mortgages were registered between 1990 and 1997 to a total value of £58,089,587 and the judgment mortgage was satisfied in approximately 10% of cases. Publication of a notice of satisfaction or discharge of the judgment mortgage in *Iris Oifigiúil* ends the enforcement process and the case is then settled.

In the course of an audit of the procedures for enforcing tax collection through the use of judgment mortgages the following points were noted:

- (a) The profile of many tax defaulters was of individuals with their own business or classified as professionals who had been assessed for Income Tax mainly. These individuals had accumulated unpaid arrears for considerably long periods (up to 10 - 20 years). Some, in fact, have never paid tax or made an annual return. Despite the incentives provided by the tax amnesties of 1988 and 1993 to all tax defaulters to clear their arrears without penalty or interest charges on late payments none of these cases availed of the amnesties. In some cases Revenue had advised individuals directly to avail of the tax amnesties but received no response. These individuals also failed to respond at any stage of the enforcement process. Some defaulters continue in their businesses or professions up to the present.

The enforcement process did not commence in many cases until many years of unpaid arrears had built up. Several cases were noted where the elapse of time was so long that Revenue were ultimately constrained from proceeding to applying to the courts for a judgment mortgage because the taxpayer, by that stage, was deemed too old and no longer had any visible means of income.

There were also delays of between one and four years from the time Revenue obtained a court judgment to registering the judgment mortgage.

I sought an explanation for the long delays in proceeding to and applying the various enforcement stages.

- (b) When a judgment has been obtained against tax arrears Revenue request their Solicitors to conduct a search for property assets to which the debt may be attached. Such searches invariably identified the family home but only in very few cases were other property assets traced. In some cases other properties were identified as owned by somebody of the same name

as the tax defaulter but no other checks were conducted to establish if he/she was the owner. Revenue currently operate a policy of not forcing the sale of the family home and since 1994 did not proceed with judgment mortgages in some cases because searches failed to reveal property other than the family home. Revenue have, in fact, never proceeded to a forced sale of any property, even in the occasional instance where a judgment mortgage was registered to property other than the family home.

I inquired as to the adequacy of the process and its value as a means of recovering tax arrears in the absence of any further action by Revenue.

(c) Judgment mortgages were satisfied or discharged on foot of:

- settlements offered by defaulting taxpayers and accepted by Revenue for amounts which were substantially less than the amount of the judgment mortgage registered.
- a reduction of the tax liabilities by Revenue to agree with the total already paid. There were cases where there was no payment and the tax assessments for all years in arrears were reduced to nil.
- tax returns submitted for the taxpayer some time after the registration of the judgment mortgage - such returns were outside the statutory deadline and were up to 20 years late in some cases. These returns were accepted without change and the tax charge was invariably reduced to an insignificant amount as a consequence.
- discovery that the 'charged' property was, in fact, owned by somebody other than the taxpayer, usually somebody by the same name or a close relation.
- discovery that other financial institutions had a prior charge or security on the property.

An analysis of the total tax paid for cases where the judgment mortgage was satisfied showed that the yield amounted to 30% of the registered debt at £1.25m.

In view of the non-compliance record of these tax defaulters I inquired as to why Revenue compromised on legally enforceable debts and failed to properly identify ownership and charges on property for the purpose of registering judgment mortgages.

In relation to (a) the Accounting Officer stated that:

- The longest gap between the original tax charge and referral to solicitor which could be located was 17 years in one case, while in a minority of other cases the gap was up to 10 years. In all of these cases there was activity in the intervening period, including appeals, amnesties and sheriff enforcement. Most defaulters sought to avoid imposition of the mortgage by negotiating with Inspectors or other areas of Revenue, but the responses were not satisfactory.
- Enforcement policy in Revenue has undergone a process of development since the mid 1980's. The treatment of each case depended on the date of the liability and the date at which crucial decisions concerning enforcement were taken.
- Revenue has always recognised that there were problems and difficulties in their enforcement of collection. Prior to 1986, enforcement was normally through solicitor action. There was scope also for the Collector General to refer warrants directly to the County Registrars for collection, but this was not a favoured option.

- Enforcement generally was hampered by the scope for taxpayers to appeal assessments, delaying the finalisation of a tax charge for years. In addition, the length of time taken to progress a case through the Courts rendered solicitor action ineffective, and the quality of information and information-handling systems available to Revenue often undermined attempts to focus on the most serious cases and take prompt action against them. Thus, the very resource-intensive process of instructing solicitors and managing cases through the courts made it difficult to work on recent liability and yet was not fully effective in collecting tax arrears.
- The result of such enforcement was the accrual of arrears and estimated arrears to a level of over half of total annual collection by the mid-1980s. The appointment of Revenue sheriffs in 1986 and 1987 had an immediate and marked effect on the collection of recent liabilities, but the amount of liability (especially estimated liability) which had accrued was too large for any rapid inroads to be made.
- The move to self-assessment and the Arrears Review Project were all attempts in the late 1980s to make some progress with the accumulated arrear, and considerable progress was made. At the same time, attachment was introduced, the registering of judgment mortgages against taxpayers' property was adopted as a normal practice. All of these initiatives were directed in varying degrees at more effective quantification of older liabilities and more effective enforcement of collection.
- Notwithstanding the beneficial effects of the measures taken, some of the older liability was based on unreliable estimates. Much of this type of liability has been written off in recent years. There still remains some soundly based liability, accrued before 1990, where attempts at collection have proved ineffective, but write-off is clearly inappropriate. Some of this liability is in cases where judgment mortgages have been registered.
- During the period (up to the early 1990s) when Revenue's systems and the available enforcement options were both less than fully effective, it was not possible to provide a streamlined enforcement system. This is the principal reason why there were sometimes very long delays in initiating action, and in progressing from one stage of legal action to the next. During the amnesties of 1988 and 1993, new referrals for enforcement could not be made and this contributed to the delay in many cases. By 1997 only a negligible number and value of cases referred for solicitor action were more than five years old. Most of the judgment mortgage cases are being enforced following an examination, under the Arrears Review Project or by a caseworker, which quantified the liability and rendered it suitable for enforcement. These cases are continuously progressed, but the length of time taken to reach the point of deciding whether to impose a judgment mortgage depends on the circumstances of each case.
- In regard to the tax amnesties, no case where solicitor action was underway or where a judgment had been registered was eligible for the 1993 amnesties, and these taxpayers were not advised by Revenue to avail of them. In relation to the 1988 amnesty, a thorough check of all of the cases would be required to establish whether any cases being proceeded against were advised to avail of the amnesty.

In relation to (b) the Accounting Officer stated that:

- the search for property assets by solicitors is not the only search carried out. In every case where the possibility of judgment mortgage is being explored, local Revenue officials are consulted in order to avail of local knowledge. In addition, since 1995 it has been a standard

part of collection case-working to establish in communication with the taxpayer whether assets exist which may later be called on as security for tax debt. In many cases, there were, in fact, no property assets other than the family home.

- It would be possible to conduct more extensive formal searches than at present. However, the cost of such a procedure would be excessive except in the most serious case, and in any event, it has been found that enquiries by the caseworkers managing the case are themselves very effective. He stated that he was satisfied that the current search procedures are generally adequate and that the new solicitor arrangements will add further to the progress being made.
- A forced sale of the family home would not normally be proceeded with except where the value of the property is sufficient to allow the taxpayer to obtain a substitute dwelling from the proceeds of sale. While there has never been a forced sale of a family home, the possibility of such a sale and the encumbrance of the mortgage have been effective in forcing payment in a number of cases. Since the introduction of collection case-working (where larger cases are individually managed) in 1995, forced sale has been threatened in several instances, resulting in sale of the property by the taxpayer, and payment of the tax from the proceeds of sale. It has not yet been necessary to proceed to actual sale by Revenue.
- In certain circumstances, it may be justifiable to register a mortgage as a means of securing the debt even where no other form of enforcement is available but as a general rule it is current policy that a mortgage should be used only as part of a definite scheme to obtain payment of all outstanding taxes. Most payments received on judgment mortgage cases result from further action taken by Revenue in the course of case-working.
- There is little benefit in mortgaging a fully encumbered property as a general practice. However, the actual debt owed and secured by mortgages may be much less than the nominal value of the mortgage where, for example, a debt is largely repaid or the tax debt is estimated. The sale value of a property may not be readily available and may be understated by the taxpayer in certain circumstances. For these reasons, it is sometimes prudent to register a further mortgage where there is a lack of information about the actual debts of the taxpayer or the value of the property.
- At present, Revenue are well advanced in the process of selecting new external solicitors for debt collection activity. New working arrangements will apply to the new solicitors. They will be expected to take responsibility for the effectiveness of their actions, and will be paid accordingly. They will be given considerable freedom of action within agreed parameters to pursue the enforcement option most likely to succeed in each case. In the event of failure to collect, they will report back to Revenue with a reasoned recommendation for further action to finalise the case. Revenue expect that this new arrangement will considerably improve the speed and effectiveness of solicitor action particularly when combined with the increasing proportion of solicitor referrals which originate with caseworkers who are fully familiar with each case.

In relation to (c) the Accounting Officer stated that:

- The great majority of judgment mortgages are now more than five years old, and much of the tax debt involved is older than ten years. In these cases, there is usually no other route which might reasonably be followed for the recovery of the tax. In the majority of cases, the mortgage is on the family home and the taxpayer no longer has the means to pay the full amount for

which the mortgage was registered.

- Mortgages are released after an approach by the taxpayer concerned, and the full amount of tax owing (including amounts not covered by the mortgage) is always demanded. In most cases, the mortgage was registered in the first place in the absence of any response from the taxpayer so that when release of the mortgage is being discussed it is normal for the taxpayer to substitute declarations (returns) for the estimated tax liability on record. It is not surprising that these declarations are for smaller amounts than have been estimated in the past, because the practice up to early 1990s was often to overestimate liability in order to elicit a response. In some cases it has emerged that trade ceased earlier than our records show, so that the liability for some tax periods is actually nil.
- Once the actual liability is established, it is necessary to obtain payment. Thorough and extensive checks, including consultation with Revenue officials in the taxpayer's locality, extensive interviews with the taxpayer, and examination of any relevant documentary evidence are carried out to establish the actual financial capacity of the taxpayer, and the full amount is required to be paid where Revenue are not satisfied that there is an inability to pay. It is often the case, however, that the taxpayer has no means except a retirement pension, and simply wishes to have his or her home unencumbered in their late years. Even in these cases, the largest possible payment is insisted on, and the mortgagee must also pay the legal costs of release. In many cases, other family members come together to raise a reasonable payment towards the tax debt. At a certain point, however, it must be recognised that the taxpayer cannot improve on his/her offer. At that point, Revenue must judge whether there is a practical alternative to acceptance of the offer. Only where there is no alternative the mortgage is released on payment of less than the full amount of tax due with any remaining uncollectable balance written off.
- Every reasonable effort is being made to identify property owned by the taxpayer. The most stringent measures are taken to ensure that property which is identified as being associated with a taxpayer is actually his/her legal property. It is sometimes the case, however, that the name of the taxpayer is shared by several people in the locality and it is only by carrying out a variety of checks that the legally registered owner is confirmed to be the taxpayer with whom Revenue are concerned. Despite thorough checking there have been only two cases identified where the property on which the mortgage was registered belonged to another individual with the same name (and in one case the same address) as the taxpayer. With the current approach to judgment mortgages the possibility of this happening is extremely remote.
- There is no specific link between the decision to proceed to register a mortgage and the decision to audit a case. At the present time, where judgment mortgages are used in conjunction with case-working, it sometimes occurs that a caseworker, in the absence of co-operation from a taxpayer, would request that an audit be carried out to establish actual tax liability. The decision to register a mortgage would, however, come later in the collection process.
- Many judgment mortgage cases contain old liabilities and are therefore likely to have been reviewed as part of the Arrears Review Project between 1989 and 1993. This project entailed examination of older cases by inspectors, who attempted to establish the actual level of tax liability, and submitted a report which included some information on assets held by the taxpayer. Due to resource constraints in the early 1990s and because of the disruption caused by the 1993 amnesties, however, some of these reports were not acted on for some time and

the information lost currency. In addition, the cases concerned continued to accrue liability after the inspector's examination, and in some instances, absence of books and records (or lack of co-operation) forced the auditors to estimate liability. For these reasons, even where a visit took place it was not always possible to be sure that the extent of debt and the capacity to pay were fully established.

In general, the Accounting Officer stated that most of the shortcomings identified in the use of judgment mortgages are historical in nature and have been corrected by Revenue as part of the ongoing development of the collection and enforcement processes.

He stated that he was satisfied that judgment mortgages will continue to be an important part of the range of enforcement options available to Revenue, but he was also of the view that the appropriate enforcement option must be chosen on the basis of good knowledge of the taxpayer concerned. At present and for the foreseeable future, the appropriate form of enforcement is selected on a case-by-case basis. Revenue are currently in the course of identifying suitable cases where it is intended to execute mortgages in default of payment. The process will be reviewed in the context of the proposed new arrangements with external solicitors.

13. Tax Implications of Companies Struck-off

Companies are obliged to make annual returns to the Companies Registration Office (CRO). Failure to do so can result in the company being struck-off the Company Register. Revenue became aware in early 1998 of proposals by the CRO to strike-off about 50,000 non-filers from the register commencing from November 1998. The main implication from a Revenue standpoint was that companies with tax liabilities could be struck-off and the collection and enforcement process against them would cease. Once the company is struck-off it is no longer a legal entity with the result that Revenue are unable to pursue tax liabilities from the dissolved company.

A survey carried out by Revenue of cases struck-off in an earlier period indicated that approximately 3% of cases could be 'live' Revenue cases. Other than the company taking steps to be restored to the register Revenue's only option is to apply to the High Court for reinstatement. This option would only be pursued if there was a realistic prospect that the tax recovery would exceed the costs of reinstatement.

In response to my inquiries as to the steps being taken to protect Revenue's interest the Accounting Officer informed me that:

- Since becoming aware in early 1998 of the proposed huge increase in company strike-offs Revenue had been working in consultation with the CRO to find a solution and to issue operating instructions.
- Revenue can identify, on a case by case basis, struck-off companies that are on the Revenue register by selecting the company CRO number from the lists published in *Iris Oifigiúil*. However, in order to bulk process those cases at District level a number of technical problems had to be overcome. These problems are currently being addressed and it is hoped to provide access shortly in each District to an extract of the CRO file to enable it to check, among other things, the status of a company. When this facility becomes available, together with a linking programme to the Revenue serial number of each case, work on struck-off cases will be prioritised starting firstly with those posing the greatest revenue risk, and written instructions will issue to staff.

- In relation to the reinstatement of cases through the High Court, while it is generally the position that such action is largely governed by recoverability and the costs involved, decisions are made on the facts of each case which would also take on board other relevant information relating to associated companies, directors *etc.*
- A new initiative to achieve better enforcement of company laws in response to the Report of the Working Group on Company Law Compliance and Enforcement on which Revenue was represented and to which Revenue made a submission has been announced by the Tánaiste. It recommends an amendment to the Companies Acts to allow a Court, if it thinks it proper to do so, to declare that any director or secretary of a company which has continued to trade while it had been struck-off shall, upon restoration, be personally liable without any limitation of liability for all or any part of the debts or other liabilities of the company during the period when it was struck-off. This will add considerably to the ability of Revenue as a notice party to effectively pursue the relevant liabilities if and when enacted.
- It is anticipated that the return filing compliance rates in the CRO will be significantly improved as a result of other recommendations of the Working Group thereby reducing the need to strike-off companies.
- Revenue have also discussed with the Company Registrar the possibility of further amendments to the Companies Acts to address some of the problems of struck-off companies continuing to trade. Briefly, if enacted, these would provide for reinstatement only from the date of the reinstatement decision by the Registrar or order of the Court. This would allow Revenue to compulsorily register and assess a continuing business as a sole trade and pursue the individuals concerned for the tax liabilities arising in the interim period before reinstatement. Alternatively, new legislation could provide for pursuit against the restored entity.
- The Companies (Amendment) (No.2) Bill, 1999, proposes to recognise Revenue as a notice party to any reinstatement *via* the High Court. This provision, if enacted, would enable Revenue to seek to have conditions, such as payment of taxes outstanding before strike-off, applied to all applications for Court reinstatement.
- Revenue are also examining the potential of the State Property Act, 1954, in relation to struck-off companies, with a view to the assets of these companies becoming the property of the State.
- When the computer programmes to support bulk processing of cases become available, administrative measures will be implemented including:
 - cancelling of all enforcement procedures
 - determining if the case currently has live status and continues in business
 - contacting the taxpayer with a view to having the company voluntarily reinstated
 - initiating reinstatement proceedings where there is a realistic prospect of tax recovery and the amount involved is material.