

July 15th 2021

NCC Seminar

AML/CFT –Taxation

Criminal Investigations

&

Information Sharing

The Irish Story.....so far

M Beagan

Overview..

- ❖ Some Background
- ❖ Prosecutions agenda
- ❖ An Add-on?
- ❖ Designated and Self-Contained
- ❖ Selection and evaluation
- ❖ Criminal Justice powers
- ❖ Sentencing Trends
- ❖ Suspicious Transactions/Activities

...Overview

- ❖ Administration of Justice
- ❖ Not just about tax
- ❖ International dimension
- ❖ Reservoir of juicy intelligence
- ❖ Tax Treaties (DTAs)
- ❖ Information Exchange Agreements (TIEAs)
- ❖ Legal Instruments
- ❖ Law enforcement Agencies
- ❖ Informal networks

Context...

- ❖ Gross Annual receipts €80>billion
- ❖ Nett Annual receipts €67>billion
- ❖ < 7,000 staff employed
- ❖ 500,000 > interventions annually
- ❖ 3,000/4,000 audits/investigations p.a.
- ❖ <€550 million in settlements
- ❖ <200 defaulters published with settlements €50million>
- ❖ < 1% of audits/investigations selected for prosecution**

***Note case selection criteria*

...Context

- ❖ STRs 25,000> annually (<29,000 in 2020)

- ❖ Average yield circa €5million**

***not comparable as audit/investigations are historical while STRs are real time*

***actual yield arising from STRs may be higher, as the information received can become an integral part of the overall risk profile for individual taxpayers*

- ❖ Mutual Assistance specific requests received annually <2,000

- ❖ Mutual Assistance specific requests made annually 700>



Managing Compliance/ Confronting Non-Compliance

- ❖ PAYE checks
- ❖ Profile Interviews
- ❖ Aspect queries
- ❖ Assurance checks
- ❖ Single tax-head Audits
- ❖ Comprehensive/multi-tax head Audits
- ❖ Civil (Administrative) Investigations
- ❖ Criminal Investigations with view to Prosecution

Prosecution programme

- ❖ Finance Act 1983 introduced criminal charge:
 - Indictable offences
 - < 5 years custodial
 - Up to £100K in fines, or both
 - 10 year time limit
- ❖ Garda (police) and ad hoc application initially
- ❖ Extra Resources, structures, methodologies - 2003
- ❖ Enhancing/Empowering legislation - FA 2007
- ❖ Criminal Investigation function is self-contained in a single Branch
- ❖ Specialist trained and experienced staff

Indictable Tax Crimes

- ❖ Serious default in, or failure to keep, to produce, to furnish, to remit
- ❖ Incorrect returns -“wilfully with intent to evade tax”
- ❖ Falsified documentation
- ❖ Use of offshore bank accounts to evade tax
- ❖ Possessing Sales Suppression Devices
- ❖ Aiding, Abetting, Assisting, Inciting others
- ❖ Conspiracy – “knowingly concerned in fraudulent evasion..”
- ❖ Collusion – “knowingly concerned in facilitating evasion..”

Other Offences

- ❖ VAT Carousel Frauds
- ❖ Theft and Fraud
- ❖ Customs/Excise:
 - Oil Laundering
 - Smuggling of Tobacco products
 - Importation
 - Cross-Border
 - Alcohol and Excise licences
 - Anti-Dumping Duty

Specified Powers

- ❖ Non-routine
- ❖ Intrusive and Compelling
- ❖ Specific authority
- ❖ Sworn information (written and oral) to obtain Warrants and Orders
- ❖ Order - to inspect and take copies - Financial institutions
- ❖ Order - to uplift material - Solicitors, Accountants, auctioneers,
- ❖ Order: to provide information
- ❖ Warrant to search any place
- ❖ Mirrors Criminal Justice Act powers

Irish Prosecution Experience

- ❖ Time Consuming
- ❖ Litany of Offences; all tax heads
- ❖ No Arrest and Charging
- ❖ DPP Directions
- ❖ Service of summons – suspect and witnesses
- ❖ Nominated State Solicitors – order of business
- ❖ Investigator is Principal witness
- ❖ Summary disposal on guilty plea
- ❖ Plea to specimen charges
- ❖ Convictions

Selection

- ❖ Compliance & Audit interventions
- ❖ CHIS reports (Covert Human Intelligence Source)
- ❖ GCR (Good Citizen Reports)
- ❖ STRs /SARs (Suspicious Transaction/Activity Reports)
- ❖ Risk based approach - REAP - a computerised Risk Evaluation Analysis and Profiling programme
- ❖ Prosecution guidelines issued
- ❖ Demystification
- ❖ Collaboration

Evaluation

❖ Independent Evaluation Committee to ensure:

- Fairness
- Consistency
- Transparency

❖ Criteria, inter alia:

- Seriousness of Offence
- Tax at risk,
- Degree of Culpability/responsibility
- Time since alleged offence was discovered
- Health/age of suspected offender
- Prospects for positive directions from DPP
- Length and expense of a trial

Iniúchtaí Coirpeacha

- ❖ Profiling
- ❖ Evidence
- ❖ Witnesses
- ❖ Statements
- ❖ Interviews
- ❖ Chain of Evidence
- ❖ File Compilation
- ❖ DPP (Director of Public Prosecutions) is sole prosecuting authority
- ❖ Judicial Phase

Interviewing

❖ Witness:

- Interviews are Voluntary
- No obligation to give witness statement

❖ Suspect:

- Right against self-incrimination
- No obligation to assist or contribute
- No obligation to attend for interview
- May not be detained
- Right to have solicitor present

Judicial Phase

- ❖ Positive Directions
- ❖ Service of Summons – suspect + witnesses
- ❖ Collating witnesses
- ❖ Attendance at Hearings
- ❖ State Solicitors responsible for conduct in court
- ❖ Investigator assists as principal witness
- ❖ Other Revenue witnesses
- ❖ Briefings and Consultations
- ❖ Judicial Reviews

Outcomes/Outputs

- ❖ DPP directions - positive
- ❖ Guilty Pleas - generally
- ❖ Trials - few
- ❖ Settlements concluded
- ❖ Custodial Sentences - up to 3 years
- ❖ C.C.A. appeals/reviews
 - Severity of sentence
 - Undue Leniency
- ❖ Publicity

We are never alone...

- ❖ Tax evasion and money-laundering does not recognise borders and state boundaries, in fact they manipulate them
- ❖ Legal instruments for automatic Exchange of information (EOI) between tax administrations (100+ jurisdictions) to ensure offshore assets and income are fully declared.
- ❖ Mutual Assistance (MA), between EU Member States and other countries - <2,000 requests received and 700>made annually
- ❖ Assistance Mutuelle (AM) communications from European Anti Fraud Office (OLAF) - circa 60
- ❖ Tax Treaties (DTAs) signed with **74** countries
- ❖ Tax Information Exchange Agreements (TIEAs) in effect with **26** countries
- ❖ New international automatic Exchange of Information agreements.
- ❖ Mutual Legal Assistance

Statutory Frameworks

- ❖ **Eurofisc** - *an EU programme for exchange of information between Member States for the early detection of organised VAT and Carousel Fraud.*
- ❖ **International Organisation of Tax Administrations (IOTA)** - *forum to share information regarding emerging trends and best practice for combating VAT fraud.*
- ❖ **Foreign Account Tax Compliance Act (FATCA)** *an information sharing and reporting agreement between Ireland and the United States of America (200> interventions with immediate tax yield and publication)*
- ❖ **DAC 6** - *reporting obligations on cross-border tax arrangements*
- ❖ **European Anti Fraud Office (OLAF)** *sharing intelligence and information and investigating irregularities involving evasion of duty on imports into the EU*
- ❖ **World Customs Organisation (WCO)** *directed towards addressing the threats posed by fraud and smuggling.*

And others

- ❖ Maritime Analysis Operations Centre (Narcotics), (MAOC-N)
 - *prevent illegal maritime drug trafficking into Europe*
 - *comprises of Law Enforcement and Military personnel from seven European countries including Ireland. (a Revenue officer and a member of An Garda Síochána are assigned full time as liaison officers)*
- ❖ Europol -
 - EU law enforcement agency to support Member States in preventing and combating all forms of serious international and organised crimes
 - Platform for programmes under the European Multidisciplinary Platform against criminal threats
 - Revenue Officers on secondment
- ❖ Serious Organised Crime(SOCA) and Asset Recovery Agency (ARA)
- ❖ Interpol -
 - *192 member countries in cooperation to fight international crimes - to include fraud, corruption, drug trafficking and money-laundering*

Informal Networks

- ❖ Bi-lateral arrangements
- ❖ CARIN (Camden Asset Recovery Intelligence Network)
 - *multi-agency of law enforcement officers and judicial practitioners involved in asset tracing and confiscation to deprive those involved in crime of their ill-gotten gains*
- ❖ ALEFA (Association of Law Enforcement Forensic Accountants):
 - *Specialists from EU member States*
 - *Developing financial analysis techniques and expert witnesses best practice in*
 - *combating money laundering, corruption and other fiscal frauds*
- ❖ Others...

There are rewards..

- ❖ Targeting Offshore Evasion and confronting non-compliance via offshore assets is an integral component of overall compliance framework
- ❖ Foreign Income and Assets Disclosure initiative (2016 deadline) - 2,786 disclosures with a declared value of almost €84 million in tax debts.
- ❖ Special investigations project against evasion through Offshore Accounts, Structures and Assets
- ❖ **35,000** defaulters identified
- ❖ **<€3 billion** recovered from “legacy” investigation projects

Addendum

- ❖ Profits or gains arising from all criminal activity is chargeable to tax in Ireland
- ❖ Persons with income chargeable to tax are “chargeable persons” and obliged to furnish tax returns annually
- ❖ In absence of returns, inspectors make tax assessments and burden of proof to displace such assessments rest entirely on defaulters
- ❖ Failure to submit annual returns may be indictable offences with evidence of chargeability being the fundamental proof
- ❖ Tax evasion is predicate offence
- ❖ In the words of a world leader of the modern era, Barack Obama
 - “..is féidir linn, is féidir linn..”
 - “Yes we can , yes we can”