

Collection Manual

Guidelines to Using The Court Process To Pursue Tax Liabilities

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Legal Disclaimer

While every effort is made to ensure that the information given in this guide is accurate, it is not a legal document. Responsibility cannot be accepted for any liability incurred or loss suffered as a consequence of relying on any matter published herein.

Part 1 Guidelines to using the Court Process to pursue Tax Liabilities

1. Summary

- 1.1 The following is a summary of the main points covered in this guideline which will assist staff in the use of the court process to secure payment of tax liabilities: -
- 1.2 Solicitor referral is the process by which Revenue commences enforcement action through the Courts. The first step in the process is the referral of a liability to the Solicitor for legal action i.e. Solicitor referral via the ICM System. The first legal option available to Revenue will be to obtain a Court judgement that an amount is due to Revenue by a taxpayer. Arising from this, Revenue can pursue further legal action such as:
- Judgement mortgage
 - Forced sale
 - Instalment and committal orders,
 - Bankruptcy for individuals
 - Liquidations of companies
- 1.3 Revenue has entered into a contract with six firms of external solicitors to provide legal services associated with debt collection and the enforcement process. With the exception of liquidation work, which is carried out by the Revenue Solicitor's Office the legal services associated with Revenue debt, collection will be performed by one of these firms of solicitors. These firms have a high level of experience in this area of the law and their personnel will be willing to discuss case options with caseworkers.

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[...]

It should be noted that costs and fees arise once a case has been referred to the Solicitor and the taxpayer will be liable for those costs once Court proceedings have been initiated.

2 Introduction

- 2.1 A key aspect of successful case working is to try and identify at an early date the action that is most likely to impact on the taxpayer and thus secure payment of the tax debt. Where final demand/estimate has been issued and, in the circumstances, where no payment is received or satisfactory agreement is not reached, the caseworker will initiate enforcement action.
- 2.2 The most appropriate enforcement option has to be decided by the caseworker. At this stage there are three options available, namely, attachment, sheriff and solicitor. The caseworker will find that the most appropriate enforcement option will depend on the individual circumstances of each case.
- 2.3 The process of pursuing a tax debt through the Courts consists of securing a Court judgment initially and, if this is not sufficient in itself to secure payment of the tax debt, the caseworker will have to decide to take further Court action to secure payment. This Guideline outlines the various possibilities for pursuit action through the Courts.

3 Scope

- 3.1 These guidelines are for all Revenue staff engaged in debt management case working.

4 External Solicitors

- 4.1 Details of the six firms of solicitors who carry out the legal services associated with Revenue debt collection are available at [Appendix 1](#) for the individual firms and the GCD areas which they cover and [Appendix 2](#) provides the solicitor contact list.

5 Considerations prior to a decision to refer to a Solicitor

- 5.1 In general solicitor enforcement is usually suitable where attachment and sheriff is not suitable or has already proved ineffective.

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- 5.2 In considering whether it is appropriate to refer a liability to solicitor enforcement each caseworker should have regard to the particular circumstances of the case. In general small one-off liabilities (less than €1000) should not be referred to solicitor, especially where the liability is in respect of interest only. Caseworkers should consult with their team leader/manager in any particular case where doubt arises.
- 5.3 Solicitor referral can be a very effective means of collection and in the majority of cases does not involve a lengthy legal process. Almost 85% of tax collected on Solicitor cases is collected following the issue of the solicitor demand letter and prior to the enforcement of judgment stage. Solicitors are focused on getting payment or quickly moving to obtaining Judgment. Registration of judgment will usually have a very serious impact on the financial well being of a taxpayer. It will impair his/her credit rating and therefore most businesses will try to pay the debt prior to this stage, if at all possible. Where payment is not made at this stage you need to consider the various enforcement of judgment options set out in these guidelines. Alternative enforcement options e.g. liquidation proceedings in company cases, should also be considered, in consultation with the solicitors and taking account of data available from various sources i.e. IBI, Land Registry, Customer Notes etc.
- 5.4 In most instances, once it is decided that the liability due by a taxpayer is to be pursued through the Courts, all outstanding liability for that taxpayer should be referred to the solicitors. However, there may be situations where it would be appropriate to divide the amount to be enforced in order to obtain a better result for Revenue, e.g. attachment can be used to secure payment of part of the tax liability outstanding and the balance of the liability referred to the solicitor for a judgement.
- 5.5 It should be borne in mind that apart from the various Court actions outlined in this Guideline, there are other possibilities to help secure the tax debt, such as withdrawing a C2, withholding repayments or refusing to issue a tax clearance certificate. Prosecution for non-submission of the returns can also be effective in some cases particularly where the debt is based on estimates.

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6. Solicitor Referral to obtain Court Judgment

- 6.1 The first step in the Court process is the referral of the liability to the solicitor in order to obtain a Court judgment. Once a liability has been referred to the solicitors, enquiries from taxpayers in relation to that liability should be directed to the solicitors..
- 6.2 It should be noted that costs and fees arise once a case has been referred to the Solicitor and the taxpayer will be liable for those costs once Court proceedings have been initiated.
- 6.3 There are several developments that can potentially emanate from a solicitor referral. [Appendix 3](#) covers AIM outcomes. Appendix 4 lists the various stages, which can follow on from solicitor referral.
- 6.4 Any change in the liability for the periods referred to Solicitor will be notified to the Solicitor on-line.
- 6.5 It should be noted that it is not possible to amend the amounts on a solicitor referral upwards. In cases where liabilities have increased e.g. returns replacing estimates, it may be possible to withdraw the original referral and issue a new referral if the solicitor has not commenced proceedings. This should only be done after consultation with and the agreement of the solicitor.
- 6.6 Where it is not appropriate to withdraw an original referral and issue a new referral to reflect increased liabilities the caseworker has the option of issuing a new referral for the increased amounts (not including amounts on original referral).

7. Deadlines

- 7.1 Most actions involving Court activity have specific time deadlines, either because of the date of the Court hearing itself or because time periods are specifically laid down in the relevant legislation. Care should be taken to ensure that any required action (such as swearing an affidavit) is carried out within the time frame required by the solicitors.

8. Additional liability

- 8.1 Where an additional liability arises following a solicitor referral, the caseworker must check the stage of the earlier referral on AIM. The additional liability should only be referred if the caseworker is satisfied that this is the most appropriate enforcement action to be taken having regard to the circumstances of the case and the progress being made in relation to the earlier referral.

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9. Obtaining Judgment

- 9.1 A Court judgment is a legal determination that an amount is due by a judgment debtor to a judgment creditor. In the case of Revenue, it is a determination by the Court that a taxpayer owes an amount (tax and/or interest) to Revenue.

- 9.2 The majority of Court judgments can be obtained in two to three months if the liability is not contested. If the taxpayer disputes the liability a full Court hearing may be required and this will inevitably take longer.
- 9.3 The purpose of seeking a Court judgment is to put pressure on the taxpayer to pay the debt. In some cases, the judgment itself, or even the threat of a judgment, will be sufficient action to achieve the desired outcome.
- 9.4 In other cases a Court judgment will not of itself be sufficient to induce payment, but the judgment has to be obtained, as it is the first step towards the other enforcement possibilities outlined in this guideline. Insofar as possible caseworkers in consultation with their Team Leader/Managers should consider the further enforcement action that may be necessary – based on the information available in relation to the taxpayer – and have a strategic plan of the further action to be taken if the judgment does not obtain the desired result. **Publication of the Judgment**
- 10.1 Where obtaining a judgment has not achieved the desired result, the caseworker in consultation with the solicitor, will decide what the next course of action should be.
- 10.2 As a first step it is usually agreed that the judgment should be registered and published. Once it has been confirmed that no payment towards the judgment has been received, the solicitor should be asked to arrange for registration and publication of the judgment.
- 10.3 Publication/Registering of the judgement has the effect of putting the details of the debt into the public domain. Stubbs Gazette and Experian All Ireland Gazette search the Court records and publish the list of Judgements registered in their respective publications.

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11. Collector General's Specialised Enforcement Unit

The role of the Specialised Enforcement Unit (SEU) is twofold

- A. To use exemplary enforcement measures to pursue and conclude collection activity in cases of serious debt and non-compliance where standard enforcement collection measures have proved unsuccessful.

The main exemplary enforcement measures are: -

- Bankruptcy
- Forced sale
- Committal Order /Committal to Prison

Other exemplary enforcement options include Mareva Injunction and Garnishee Order. Cases are acquired through referrals from Debt Management Units and Revenue Regions. Debt Management HEO's should refer cases where any of above enforcement options is considered suitable to SEU.

- B. Prosecution Programme for VAT 3 and P35 and Imposition of Penalties

Prosecution is contingent on evidence that there is serious non-compliance and/or a definite expectation that a substantial liability will be quantified on receipt of the relevant returns. Specialised Enforcement Unit take criminal prosecution cases to deal with the non-filing of VAT 3 and P35 returns. This Unit also imposes civil penalties under Section 987 of TCA 1997.

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12.3

13 Judgment Mortgage/Forced Sale

- 13.1 Once a Court judgment has been obtained it is possible to register the judgment as a judgment mortgage against the taxpayer's property. If the property is subsequently disposed of either in the normal course or as a result of a forced sale, the Revenue debt must be paid out of the net proceeds of sale (net proceeds of sale are the amount realised for the property less the costs of the sale less any earlier mortgages or judgments registered against the property).
- 13.2 Registering a judgment mortgage against the taxpayer's property is itself a useful step in putting pressure on the taxpayer for payment of the tax debt. However, in many instances the judgment mortgage will not become immediately relevant unless the taxpayer wishes to dispose of, or re-mortgage the property. Once a judgment mortgage is registered on a taxpayer's property, consideration should be given to seeking Court approval for permission to sell the property without the taxpayer's consent. This is called a forced sale or a mortgage suite.

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14 Considerations prior to proceeding to judgment mortgage

- 14.1 Obviously the key aspect in deciding whether to obtain a Judgement Mortgage is identifying a suitable property owned by the Taxpayer. It is advisable to check if there are other charges on the property (this should be done prior to judgment stage to see if it is feasible to proceed with Judgment Mortgage).
- 14.2 Registering a judgment mortgage will affect the title to a property so care needs to be taken to ensure that the property identified does belong to the taxpayer in question. Pay particular attention if the taxpayer's name is a common one, or the taxpayer has a son/daughter with the same name. If in doubt about the ownership issue discuss with the solicitors.

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15 Discharging a Judgment Mortgage

- 15.1 Where the tax debt is paid after a judgment mortgage has been registered against the taxpayer's property, arrangements must be made for discharge of the judgment mortgage.
- 15.2 In some instances the taxpayer will propose that the tax debt be paid out of the proceeds of sale of the property and request Revenue to lift the judgment mortgage in advance so that a sale can proceed. In these instances the judgment mortgage can be removed provided a mechanism is put in place to ensure that Revenue will get paid from the proceeds of sale. The usual mechanism is a letter of **unconditional and irrevocable** undertaking from the taxpayer's solicitor confirming that **Revenue will be paid from the proceeds of the sale of the property within an agreed timeframe**. As with any undertaking, the caseworker needs

to ensure that the arrangement is watertight and approval to accept the undertaking must be obtained at case manager level. If in doubt about the wording of the undertaking, legal advice should be sought (usually the solicitors dealing with the case for Revenue, otherwise, the Revenue Solicitor's Office).

- 15.3 If Satisfaction papers were to be signed by the Collector General, it would in effect be a legal acknowledgement that the amounts due on foot of the Judgments are no longer outstanding. It could lead to a potentially difficult situation if the taxpayer was unable to raise finance; therefore it is extremely important to ensure that the letter of undertaking is in line with Revenue Procedures.**

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16 Instalment Order

- 16.1 Once a court judgment has been obtained, Revenue can apply to have the Court examine the taxpayer's means and make an Instalment Order for payment of the tax debt based on the taxpayer's ability to pay.
- 16.2 This procedure is relatively inexpensive as proceedings are taken in the local District Court where the debtor normally resides.

17 Committal Order

- 17.1 If a taxpayer fails to honour an Instalment Order, Revenue can apply to the Court for a Committal Order. The court hearing will consist of Revenue testifying as to non-compliance with the original Instalment Order by the taxpayer.
- 17.2 The court in the absence of any reasonable explanation by the taxpayer may grant a Committal Order.
- 17.3 Once a Committal Order has been granted by the Court, Revenue's solicitors, on the instruction of Revenue, will arrange for the issue of an arrest warrant to the Gardai with the intention of committing the taxpayer to prison.

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18 Bankruptcy

- 18.1 Where a person is not in a financial position to settle their debts, it is possible to apply to the Court to have the person adjudged a bankrupt under the 1988 Bankruptcy Act. As a precursor to seeking bankruptcy it is necessary to obtain a Court judgment for outstanding liability and seek to have the judgment executed.
- 18.2 Once a person is adjudged a bankrupt, the person's assets (with certain exceptions such as the articles of clothing, furniture and tools of the individual's trade) are taken over by a Court appointed official (Official Assignee) and used to pay off creditors in a predetermined order.

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19 Arrangements under control of Court

- 19.1 Section 87 of Bankruptcy Act 1988 allows a person experiencing financial difficulties to present a petition to the Court setting out the reason(s) for their inability to pay their debts and requesting that their property be protected until further order from any other action or other process.
- 19.2 When this protection is granted the caseworker must cease collection of any liabilities outstanding on the day. Insolvency and Management Services Unit of the Collector General's Division take over the case. The caseworker will usually be informed via the agent or taxpayer.
- 19.3 The Court, on such petition, may by order grant such protection and renew the protection from time to time as it thinks fit. On the granting of an order for protection, the Court directs the debtor to call a preliminary meeting of his/her creditors and the Court directs a private sitting for the purpose of considering the debtor's proposal for dealing with his/her debts.
- 19.4 If at this sitting, three-fifths in number and value of the creditors vote to accept the proposal it is deemed to be accepted by all creditors subject to the approval of the Court. If approved by the Court, the proposal is binding on the arranging debtor and on all persons who were creditors at the date of the petition and who were notified of the sitting. If the proposals are rejected at the private sitting, the Court may if it thinks fit, adjudicate the debtor bankrupt.

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20 Conveyancing Act 1634

21 Liquidation

In the majority of cases one or a combination of the standard enforcement methods will usually be successful in securing payment of an outstanding tax debt. However, in certain instances, this will not be the case and caseworkers will need to consider alternative possibilities to secure payment.

Liquidation (or winding-up) is a process under Company Law that results in the company ceasing to exist. Companies can themselves decide to go into liquidation in which case the company arranges for a meeting of all creditors to agree to the appointment of a liquidator. Where a third party (such as an unpaid creditor) wishes to pursue liquidation of a company, application has to be made to the High Court which decides whether a liquidator should be appointed to the company. The liquidator's job is to realise the assets of the company and pay the creditors (including Revenue) from the proceeds. Where there are insufficient assets to pay all the creditors, the funds available are distributed in a preset order. Refer to the detailed guideline and procedures for carrying out Liquidation of Companies and other Company Law Issues. Other Company Law provisions, such as Examinership and Receivership, while not enforcement options, are explained in detail in the above O.I.

[...]

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1 Procedure to carry out a solicitor referral through AIM

2. Payment processing

3. Procedure to amend a Referral

4. Procedures for Manual ReferralsReferral Outcomes

6 Instalment Set-up/Termination

7. Re-Referral

8. Referral Stages

9. Reaction to Solicitor Enforcement

10. Court Judgement Procedure

11. Judgment Mortgage Procedure

12. Forced Sale Procedure

13. Discharging a Judgment Mortgage Procedure

14 Instalment Order Procedure

15 Committal Order Procedure

16 Bankruptcy Procedure

Appendices

Appendix 1 Solicitor Schedule

Referrals to Solicitor are made according to the following schedule. In determining the appropriate firm for each referral, the relevant address should be the registered office of a company or the postal address of an individual or partnership except for taxpayers whose relevant address is in Dublin City or County in which case the ending digit of the Revenue Customer Number should be used to determine the allocation. In cases which do not have a customer number, the number to be used should be decided in the priority PREM, VAT, ASC.

FIRM	ALLOCATION
Holmes O'Malley Sexton	GCD 5 Fingal
	GCD 40 Tipperary
	GCD 42 Waterford
	GCD 63 Limerick
	GCD 65 Kerry
	GCD 66 South West 1
	GCD 67 South West 2
Ivor Fitzpatrick & Co.	GCD 2 Dublin South City
	GCD 6 Dun Laoghaire/Rathdown
	GCD 25 Westmeath & Offaly
	GCD 45 Kildare
George V Maloney & Co.	GCD 4 South Dublin
	GCD 23 Sligo, Leitrim & Longford
	GCD 24 Donegal
	GCD 26 Louth
	GCD 27 Cavan & Monaghan
Mason Hayes & Curran	GCD 3 Dublin North City
	GCD 41 Kilkenny, Carlow & Laois
	GCD 43 Wexford
	GCD 44 Wicklow

Matheson Ormsby Prentice	GCD 1 Dublin City Centre & Foreign GCD 20 Galway City & Roscommon GCD 21 Galway County GCD 22 Mayo GCD 46 Meath
Pierse & Fitzgibbon	GCD 60 Cork East & North Cork City GCD 61 North West Cork & West Cork City GCD 62 Cork South West GCD 64 Clare

Appendix 2 Solicitor Contact List

<p>Holmes O'Malley Sexton. Bishopsgate, Henry Street Limerick. P.O. Box 146</p> <p>Telephone 061-313222 Fax 061-310414 E-Mail – jacci.fox@homs.ie</p> <p>Contact: Jacci Fox</p>	<p>Mason Hayes & Curran. South Bank House, Barrow Street, Dublin 4</p> <p>Telephone 01-6145000 Fax 01-6145001 E-Mail – mkehoe@mhc.ie</p> <p>Contact: Marianne Kehoe</p>
<p>Ivor Fitzpatrick & Co. 44-45 St. Stephens Green</p>	<p>Matheson Ormsby Prentice. 30 Herbert Street,</p>

<p>Dublin 2.</p> <p>Telephone 01-6787000</p> <p>Fax 01-6787004</p> <p>E-Mail – colm.farrell@ivorfitzpatrick.ie</p> <p>Contact: Lorraine Horgan John Bermingham</p>	<p>Dublin 2.</p> <p>Telephone 01-6199000</p> <p>Fax 01-6199010.</p> <p>E-Mail – Caroline.Murphy@MOP.ie</p> <p>Contact: Oonagh Hartley, Caroline Murphy</p>
<p>George Maloney & Co.</p> <p>6 Farnham Street, Cavan, Co. Cavan.</p> <p>Telephone 049-4331444</p> <p>Fax 049-4332237</p> <p>E-Mail – Maloney@iol.ie</p> <p>Contact: Dympna Reilly.</p>	<p>Pierse & Fitzgibbon.</p> <p>Market Street, Listowel, Co. Kerry.</p> <p>Telephone 068-50900</p> <p>Fax 068-21692</p> <p>E-Mail – Anna@pierfitz.ie</p> <p>Contact: Anna Lynch, Fiona Keane</p>

