

# The Revenue Commissioners Overseas Property Investigation – Where to now?

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***My article in “The Property Valuer” in autumn 2004 detailed the action taken in May 2003 where Revenue Officials under the direction of the Offshore Assets Group made several unannounced and simultaneous visits to business premises of Irish property agents. This article is intended to update members regarding developments since 2004.***

As you will recall, the Revenue Commissioners requested information from property agents regarding groups of unnamed persons who may have bought or sold non Irish property. The specific information requested was the names and addresses of persons who purchased or sold property outside Ireland, the consideration paid, and this information was to be extracted from the records of the property agent.

The Revenue Commissioners believed that they had the power under Section 905 of the Taxes Consolidation Act 1997 (“Section 905”) to visit premises of property agents and oblige them to disclose relevant information regarding groups of unnamed persons who may have purchased or sold property abroad.

The IAVI consulted JM Burke, Tax Solicitors, as specialists on Revenue law and Revenue powers, who advised the IAVI that the Revenue Commissioners may not under current legislation carry out a trawling exercise of unnamed clients files or request the property agent or his employees to extract this confidential information from their records.

It was stressed to the Revenue Commissioners that whilst property agents as compliant taxpayers seek at all times to aid and assist the Revenue Commissioners in tackling tax evasion and continue to comply with all requirements under the relevant tax legislation, clearly any requests for information by the Revenue Commissioners must be within the scope of the existing tax legislation.

The IAVI were advised by their consultant that “*Unless there is a clear and unambiguous legal requirement to disclose information under current legislation, property agents who disclose personal data (such as that required by the Revenue Commissioners during their visits in May 2003) may be potentially exposed to civil claims from affected parties.*”

The IAVI entered into discussions with the Revenue Commissioners and informed the Revenue Commissioners of its legal advice. However, the Revenue Commissioners continued to seek information regarding overseas properties bought by Irish tax payers. During 2007, the Revenue Commissioners informed Savills Hamilton Osborne King, an IAVI member Firm, that they intended visiting their offices to identify and seek information about all overseas property bought by unnamed Irish taxpayers from the firm’s records.

Savills Hamilton Osborne King informed the Revenue Commissioners that whilst they have at all times complied and intended to continue to comply with the Revenue Commissioners requirements under relevant tax legislation, they had received legal advice from this Firm and from Senior

Counsel that the Revenue Commissioners did not have the power to make this request.

Ultimately, in the absence of the introduction of a new specific legislative power to enable this information to be obtained, to resolve the issue, it became necessary to seek the direction of the High Court. Accordingly, an application was made by Savills Hamilton Osborne King on the 17<sup>th</sup> of December 2007 for injunctive relief and judicial review of the matter.

In April 2008, the Revenue Commissioners informed Savills Hamilton Osborne King that its request for information from the firm's records about all overseas property bought by unnamed Irish taxpayers was withdrawn. Accordingly, as proceedings have been withdrawn, there is no longer a requirement for the matter to be heard by the High Court.

### ***New Legislative Powers to seek information***

In late April, the Revenue Commissioners announced that they are to seek new powers to compel Irish property agents to deliver details of Irish residents who have bought or sold foreign properties.

The newly appointed Revenue chairman, Josephine Feehily, indicated that discussions with the Minister for Finance would commence regarding the introduction of the new power. New powers are generally introduced in the Finance Bill which is published in January of each year. Therefore the scope of any new power, if introduced, will not be known until the Bill is published in 2009.

The Revenue Commissioners have clearly indicated that this investigation is high priority and the information which the Revenue Commissioners currently believe is held by Irish agents would greatly assist in identifying relevant Irish taxpayers.

The purpose of the investigation is twofold, firstly to determine whether undeclared funds were used to buy foreign properties and secondly whether Irish tax is being paid on any rental income earned from such properties. In both cases, if Irish residents have failed to pay Irish tax, they will be liable to tax, interest and penalties of up to 100% of the amount of the underpaid tax and potentially criminal prosecution.

It is unclear at this point whether the Revenue Commissioners will introduce an incentive to property owners to voluntarily disclose any outstanding tax liabilities within a certain time

limit. Full disclosure usually affords the taxpayer reduced interest (in certain cases) and reduced penalties (for tax years from 1991) in respect of any underpaid tax liability and is usually accompanied by an assurance of non prosecution, provided certain conditions are satisfied. As with any voluntary disclosure, there are certain persons who will be precluded from availing of the benefits associated with making a qualifying disclosure, for example any person who has already made a disclosure under a previous special investigation such as the Bogus Non Resident and Offshore Accounts.

### ***Other Sources of information regarding foreign properties***

It is understood that the Revenue Commissioners Offshore Assets Division tested one of its "other means" by sending letters to a small sample of people, in an endeavour to determine whether Irish tax has been evaded on funds used to buy foreign properties or from foreign property rentals.

It was a project carried out using information obtained under an EU Savings Directive, effective since July 2005, which enables tax authorities to share information about foreign nationals who have interest-earning bank accounts.

This assumes that anyone with an interest-earning account in another country owned property there, the Revenue Commissioners commenced enquiries in July 2007 to obtain more information. The Revenue Commissioners have indicated that a significant percentage of those in receipt of enquiry letters had funded purchases of offshore properties from fully taxed sources.

The Revenue Commissioners have indicated that despite the existence of information sharing powers under the EU Mutual Assistance Directive, no further exchanges of information with EU tax authorities are planned. The Revenue Commissioners have also flagged that they have access to foreign land Registries.

### ***Conclusion***

Member will be briefed fully regarding any developments and in the meantime you should be aware that there are limitations under current Tax Legislation, as detailed above, regarding the information which the Revenue Commissioners can request in relation to the purchase and sale of foreign properties where the purchaser/vendor is Irish resident. ■