

**DEBT IN THE  
ADMINISTRATION OF  
ESTATES  
– TAXATION ISSUES**

**LORNA GALLAGHER  
BARRISTER-AT-LAW**

# INSOLVENT ESTATES

- Succession Act 1965, First Schedule, Part 1

Or

- Administration of the estate in bankruptcy

# Part 1 of the First Schedule to the Succession Act 1965.

- Preferential debts are set out at section 81 of the Bankruptcy Act 1988 and include:
  - Rates and taxes due by the deceased
  - Wages and salaries of employees of the deceased for services rendered during the four months prior to the date of death
  - Contributions payable by the deceased during the 12 months prior to the date of death

# Administration in bankruptcy

- A personal representative
- A creditor (whose debt would have supported a bankruptcy petition)

# Limitation periods

- Section 1048 of the Taxes Consolidation Act 1997
- section 9(2)(b) of the Civil Liability Act 1961

# Section 1048 of the Taxes Consolidation Act 1997

- Where a grant of probate/letters of administration is extracted in the year of death i.e. on or before 31 December in that tax year, Personal Representatives cannot be assessed in respect of pre-death income if more than 3 years have passed since the end of that tax year.
- Where a grant of probate/letters of administration is extracted not in the year of death but in a later year, Personal Representatives cannot be assessed in respect of pre-death income if more than 2 years have passed since the end of that tax year.

# section 9(2)(b) of the Civil Liability Act 1961

- ‘No proceedings shall be maintainable in respect of any cause of action whatsoever which has survived against the estate of a deceased person unless .....proceedings are commenced in respect of that cause of action within the relevant period [i.e. the period prescribed by the statute of limitations] or within two years after his death, whichever period first expires’

## Agency and Secondary accountability - CAT

- Section 139 of the Finance Act 2010
- New CAT section 45AA which provides for the liability of Irish personal representatives in respect of CAT in cases involving non-resident beneficiaries.
- The personal representative is liable only to the extent that he/she has control of the property in the estate



# Agency and Secondary accountability - CAT

- Where there is no Irish resident personal representative, the personal representative in the estate must appoint an Irish practicing solicitor to act prior to extracting probate or a grant of administration.

# Agency and Secondary accountability – Tax debts in IT and CGT

- Section 1034 TCA 97 provides:
- ‘A person not resident in the State, whether a citizen of Ireland or not, shall be assessable and chargeable to income tax in the name of any trustee, guardian, or committee of such person, or of any factor, **agent**, receiver, branch or manager, whether such factor, agent, receiver, branch or manager has the receipt of the profits or gains or not, in the like manner and to the like amount as such non resident person would be assessed and charged if such person were resident in the State and in the actual receipt of such profits were gained; .....

# Agency and tax debts contd.

- Does an assessment under s.1034 operate as a tool to recover the outstanding tax liability against the agent?

# What is an agent? (s.1034)

- No definition in TCA97
- The Revenue guidance notes indicate that the meaning of agent is that of "*any representative of any kind located in the State*".

# What is an agent? (s.1034)

- no requirement to have acted as agent in relation to the underlying transaction
- No limitation as to time

# How to challenge tax assessments.

- Revenue have stated that they "*cannot and will not become a banker of last resort*".

# How to challenge tax assessments contd.

- three steps for the Revenue Commissioners in recovering an outstanding tax debt.
  - The assessment must have become final and conclusive
  - They must obtain judgment on foot of that assessment
  - They must enforce the judgment (in many cases by registering a judgment mortgage against property of the taxpayer and obtaining an order for sale of that property)

# How to challenge tax assessments contd.

- Developments in enforcement – judgment mortgages re registered land
- Revenue describe as an issue of “fundamental importance”

*Irwin v Deasy* [2004] IEHC 104 and [2006] IEHC  
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# How to challenge tax assessments contd.

- Section 67(5) of the CATCA 2003 applies the relevant income tax appeal provisions.
- 30 days from notice of assessment
- 15 days from refusal of appeal

# How to challenge tax assessments contd.

- Appeal Commissioners – no costs
- Assessment vacated
- Assessment affirmed – final and conclusive
- Assessment amended and affirmed – final and conclusive

# How to challenge tax assessments - Circuit Court

- Appeal open to both taxpayer and Revenue in CAT.
- 10 days to file notice of appeal
- Acts as a stay (s. 934(6))
- No extension available
- Jurisdiction to award costs

# How to challenge tax assessments

## High Court

- Case stated on a point of law
- From Appeal Commrs or Circuit Court
- Acts as a stay - 934(6) TCA 97.
- Legal argument only

# Court debt collection – common law

- Final and conclusive *v bona fide* arguable case
- Section 966(8) TCA97

# The Master's Court

- For sums sought in excess of €38,092.14
- Judgment awarded on affidavit
- Transfer to plenary hearing if *bona fide* arguable defence

# The Commercial Court

- summary judgment cases involving substantial sums
- Cases in excess of €1m
- Special and complex circumstances
- Fast track procedures

# How to challenge tax assessments

## Judicial Review

- A new development for tax cases
- Challenge to the legality of the actions of the Revenue Commissioners – not the quantum of tax.



# CONCLUSION

- Consider how the estate will be administered; as an insolvent estate or as an administration in bankruptcy.
- Check that all notices of assessment raised or outstanding are raised within time and are not statute barred
- Ascertain whether there is a defence to any of the assessments on the merits.
- If so, make sure to appeal within 30 days of the notice of assessment (noting that the Appeal Commissioners have no jurisdiction on costs).
- In dealing with Revenue debts for other clients, consider which route of appeal most appropriate in order to resist the debt. If the assessment has become final and conclusive by default, consider whether there is a *bona fide* arguable case to make in respect of the debt which can then be made on affidavit in the summary proceedings so as to seek a full plenary hearing.