

# **Notes for Guidance - Taxes Consolidation Act 1997**

## **Finance Act 2023 edition**

### **Part 41A Assessing rules including rules for self- assessment**

**December 2023**



The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

## Notes for Guidance - Taxes Consolidation Act 1997

### Finance Act 2023 edition

41A

Part  
assessing rules including rules for self assessment

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## PART 41A ASSESSING RULES INCLUDING RULES FOR SELF ASSESSMENT

### Overview

**Part 41A** provides for the modernisation of the assessing rules for direct taxes (i.e. income tax, corporation tax and capital gains tax) **with effect from 1 January 2013**. The Part contains a common integrated set of rules for those taxes, in place of older assessing rules in **Part 39** and the Pay & File rules in **Part 41**.

The new rules simplify and streamline the previous rules in relation to assessments and related matters, particularly those relating to due dates for the payment of tax. The new rules also provide for a move, **from 2013**, to a system of full self assessment for direct taxes whereby tax returns are required to include a self assessment of the tax payable for a year or accounting period.

The first returns (including self-assessments) under the new arrangements are, in general, to be made by companies in September 2014 and by individuals in October 2014. Individuals who file paper tax returns have the option to submit a tax return for a year by 31 August of the following year if they require Revenue to do a self-assessment on their behalf.

### CHAPTER 1 *Interpretation (Part 41A)*

### 959A Interpretation

#### Summary

This section contains definitions for the purposes of **Part 41A**. The section contains similar definitions to those currently contained in **section 950** for the purposes of **Part 41**. Included in the section are definitions of:

The “Acts” to which **Part 41A** applies, being the Income Tax Acts, the Corporate Tax Acts, the Capital Gains Tax Acts, **Part 18C** and **Part 18D**.

“Assessment” is an assessment to tax, including a self-assessment, made under the Acts, as defined, except in **section 959G**.

“Chargeable period” is a company’s accounting period or the tax year.

“Chargeable persons”, being persons within the self-assessment system, are defined as persons who are chargeable to tax in a chargeable period, subject to **section 959B**.

“Specified return date for the chargeable period” in relation to a tax year means the 31 October in the next tax year, and in relation to the accounting period of a company means the day 9 months after the year end (but the 21<sup>st</sup> of the month if it would be later).

“Self assessment” is an assessment to tax made by or on behalf of a chargeable person. The items that are included in a self assessment e.g. “amount of tax chargeable”, “amount of tax payable” etc. are also defined in this section.

“Tax” for the purposes of this Part other than **section 959G** means any income tax, corporation tax, capital gains tax or any other levy or charge which the Acts place under the care and management of Revenue (e.g. the USC).

### 959B Supplemental interpretation provisions

## Summary

This section provides interpretational guidance on matters that are supplemental to the definitions in *section 959A*. It contains additional rules in relation to the meaning of the term “chargeable person”, provides that references in the “Acts” to assessments etc. are to be construed as including references to self assessments and also contains rules to deal with situations where obligations arise or might be imposed on a person in more than one capacity.

## Details

This section excludes certain persons from the definition of “chargeable persons” in *section 959A*, namely persons:

- whose only source of income is emoluments taxed under the PAYE system (under *Part 42*), or
- who, in addition to their PAYE income, have income from non-PAYE sources (e.g. investment income), where the aggregate of net assessable non-PAYE income –
  - does not exceed €5,000<sup>1</sup>, and
  - is taken into account in determining the individual’s tax credits and standard rate cut-off point or is fully taxed at source under *section 261 TCA 1997* (DIRT).

The forgoing exceptions to the general rule **do not apply** to company directors, or their jointly assessed spouses or civil partners, other than where the company is effectively dormant.

- who have been specifically excluded from the requirements of Chapter 3 by a Revenue officer (by way of notice given under *section 959N*)
- who are only chargeable to tax in relation to annual payments (under *section 237, 238 or 239*)

References elsewhere in the “Acts” to a person being assessed to tax should be construed as including self assessments and amended self assessments.

Where a person has self assessment obligations under the “Acts” in more than one capacity, anything which releases the person from one obligation does not release them from their other obligations.

## CHAPTER 2 *Assessments: General Rules*

### **959C Making of assessments: general rules**

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<sup>1</sup> For 2016 and subsequent years (where gross income from non-PAYE sources does not exceed €30,000). For 2015 and prior years, the respective amounts are €3,174 and €50,000.

## Summary

This section contains the general rules for the making of assessments. Any assessment made under the Acts, other than a self assessment, will be a Revenue assessment made by a Revenue officer. An assessment is to be an assessment to tax for a tax year or accounting period and all tax to be charged on a person is to be included in the one assessment. The section sets out the basic elements to be contained in an assessment and provides that an assessment may relate to amounts chargeable under more than one tax. For example, an assessment may relate to income tax and to USC. Additionally, an assessment may include other amounts (e.g. PRSI) chargeable as income tax and a surcharge, where required by *section 1084*.

## Details

Any assessment, other than a self assessment, is to be known as a Revenue assessment.

All tax charged on a person under the Acts is to be included in one assessment.

The assessment shall include the following:

- The amount of the income, profits or gains for the period
- The amount of tax chargeable (as defined)
- The amount of tax payable (as defined)
- The balance of tax payable / repayable / available for offset after taking account of prepayments and other payments on account.

An assessment under this Part may be for more than one tax and may include amounts due ‘under an enactment other than the Acts’. That is, it may be for income tax and USC (both of which are taxes for the purposes of this Part) and also for PRSI (due under Social Welfare legislation rather than the Acts).

The assessment should also include any surcharge due for late filings under *section 1084*.

## **959D Record of assessments and generation of notices by electronic means**

### Summary

This section provides that Revenue must keep a record of Revenue assessments and self assessments made by Revenue officers. Also, reflecting the fact that most assessments are issued by electronic means, the section provides that Revenue assessments are deemed to be made by the Revenue officer whose name appears on the notice of assessment. This generally will be the person in charge of the Revenue district involved.

### Details

Revenue must keep a record of all Revenue assessments issued and of all self assessments made by Revenue under *section 959U*.

Making a record of the assessments in an electronic record is sufficient to satisfy the requirements of this section.

Revenue assessments are deemed to be made by the Revenue officer whose name appears on the assessment.

## **959E Notice of assessment by Revenue officer**

## Summary

This section contains the rules in relation to the issue of notices of assessment by Revenue officers. Notice may be given in writing or by electronic means. The section provides that the notice must contain certain elements and that it may contain other additional elements. Where an assessment relates to tax chargeable under more than one tax (e.g. tax and USC) or where it includes other amounts (e.g. PRSI) chargeable as income tax, the notice must identify these amounts separately.

## Details

Revenue must notify a chargeable person if they have raised either a Revenue assessment or a self assessment (under *section 959U*) on that person.

Such notice can either be given in writing or electronically.

Where an authorised person files a return and self assessment on behalf of a chargeable person (under *section 959L*), then Revenue shall give a copy of the assessment to notify the authorised person.

Except where it relates to assessments raised under *section 959AC*, in addition to the contents of a self assessment (under *section 959C*) this notice of assessment must also include the name of the Revenue officer making the assessment and the time allowed for giving a notice of appeal against the assessment.

If a Revenue assessment relates to more than one tax, then it must identify the amount of each tax chargeable.

*Subsection (6)* outlines other items which may be included on the assessment, including calculations, the Cases or Schedules under which tax is assessed etc.

## 959F Double assessment

### Summary

This section contains rules in relation to giving relief where a double assessment arises. In such circumstances, the Revenue Commissioners may give relief and make repayment where appropriate. The section also provides a person with a right of appeal to the Appeal Commissioners.

### Details

Where Revenue find that a person has been charged to tax twice on the same profits, then they may vacate one of the assessments.

A person who has been subject to two or more assessments to tax on the same income can apply to Revenue to vacate one of the assessments.

Where a person paid tax under more than one assessment, they can apply to Revenue for an offset of the tax overpaid (subject to *section 865B*) or, if within the time limits set out in *section 865(4)*, for a refund of such overpaid tax.

Taxpayers have a right of appeal to the Appeal Commissioners.

## 959G Transmission to Collector-General of particulars of sums to be collected



## Summary

This section provides that details of sums to be collected are to be sent to the Collector-General after assessments have been made. This is deemed to be have been done where a Revenue officer enters details of the assessment electronically and the electronic record can be accessed by the Collector-General.

## Details

A fuller definition of “tax”, coming from *Chapter 1A* of *Part 42*, is applied for the purpose of this section. This definition includes the tax itself and also items like interest, surcharges and penalties.

The definition of “assessment” from *Chapter 1A* or *Part 42* is also applied. This definition includes items such as estimated assessments under *section 990*, VAT and RCT assessments.

This section provides that Revenue shall give details of the sums to be collected to the Collector General, or a Revenue officer nominated under *section 960B*.

Where a Revenue officer enters details of the assessment onto an electronic record from which the Collector General (or nominated Revenue officer) can read the details, this section shall be satisfied.

## **959H Amended assessment and notice of amended assessment**

### Summary

This section provides that the rules in the Chapter apply to amended assessments and to notices of amended assessments.

## CHAPTER 3

### *Chargeable Persons: Returns*

## **959I Obligation to make a return**

### Summary

This section provides that every chargeable person must submit a return for an accounting period or tax year by the return filing date for the period or year involved.

### Details

Every chargeable person, as defined, must file a tax return, as prescribed, with the Collector General for a chargeable period, as defined, by the due date, as defined.

The tax return may include items relating to gifts and inheritance tax.

When a person files their tax return, they shall be deemed to have done so on foot of a request under *sections 877, 879, 880* or *884*.

A person must file their tax return regardless of whether or not they have received a notice under *sections 877, 879, 880* or *884*.

A person does not have to file their tax return earlier than the due date, as defined.

## **959J Requirements for returns for income tax and capital gains tax purposes**

### **Summary**

This section provides that, in the case of income tax and capital gains tax, the return must include such details as would be required under a notice given under *section 877* and, where relevant, under *section 879*. Adjustments to the preceding tax year, arising under *section 65(3)* due to a change in accounting period, must also be included.

## **959K Requirements for returns for corporation tax purposes**

### **Summary**

This section provides that, in the case of corporation tax, the return must include such details as would be required under a notice given under *section 884*, together with any other details required by the return.

## **959L Delivery of return by person acting under authority**

### **Summary**

This section provides that a person acting under the authority of a chargeable person can submit the return required. Such return is treated as submitted by the chargeable person.

### **Details**

A return, which must be submitted under this Chapter, can be prepared and submitted by a person acting on the chargeable person's authority (effectively an agent).

If the return is prepared and submitted by an agent it will be treated as if it had been prepared and submitted by the chargeable person.

If a return purports to be prepared and delivered on behalf of a chargeable person, it shall be taken as such, unless proven to the contrary.

## **959M Delivery of return by precedent partner**

### **Summary**

This section provides that the precedent partner of a partnership is treated as a chargeable person and must submit a return, as would be required by notice under *section 880*, on behalf of the partnership.

## **959N Exclusion from obligation to deliver a return**

### **Summary**

This section provides that a Revenue officer may exclude a person from the requirement to submit a return. A notice given under this section does not affect the obligation to submit a return where a person has a liability to capital gains tax.

### **Details**

Revenue may exclude a person, by notice in writing, from the obligation to file a tax return.

Such an exclusion remains in force until such chargeable period or the happening of an event, specified in the notice.

If a person receives a notice under this section and is also chargeable to capital gains tax, the exclusion does not affect their obligation to submit a return in that respect.

## **959O Failure to deliver a return**

### **Summary**

This section provides that relevant penalties apply where a person fails to deliver a return. Other rules in relation to taking action on the failure of a person to deliver a statement or return also apply.

### **Details**

Penalties, which apply where a person has failed to file a return on foot of a notice under the sections listed in *section 959I*, shall apply to a chargeable person as if such a notice had been given.

A certificate, signed by a Revenue officer, stating that based on the records they have examined, the person is a chargeable person who did not file a tax return, shall be evidence of such unless proven to the contrary.

Such a certificate may be presented as evidence.

*Sections 1052* and *1054* apply in these cases.

## **959P Expression of doubt**

### **Summary**

This section provides that a person may express doubt when submitting a tax return provided that the return is submitted on time (i.e. by the return filing date for the year or accounting period involved) and that the doubt is genuine. The section provides that a Revenue officer may refuse to accept an expression of doubt in certain circumstances. However, the section provides a right of appeal against such a decision.

### **Details**

A “letter of expression of doubt” is defined as one which:

- Sets out full details of the facts and circumstances of the matter;
- Specifies the doubt, the basis of the doubt and the law giving rise to the doubt;
- Identifies the amount of tax at issue;
- Identifies the supporting documents to be submitted; and
- Is clearly identified as a letter of expression of doubt.

When a chargeable person is in doubt on the application of the law when determining their liability to tax, they should:

- prepare their return on what they believe the correct treatment to be and;
- Include a letter of expression of doubt
- Submit the supporting documents to their Inspector. These documents must be submitted electronically if the return is filed electronically.

Where a genuine expression of doubt is received, and the return was filed on time, the chargeable person is treated as having made a full and true disclosure and any additional

tax arising when the matter is determined is due one month from the date of assessment, in accordance with **section 959AU(2)**.

If Revenue, having regard to published guidelines and supporting documents, believe the matter is sufficiently free from doubt they can refuse to accept the expression of doubt as genuine. Equally, if they believe the expression of doubt was made with a view to the avoidance or evasion of tax, they can refuse to accept the expression of doubt as genuine.

Where an expression of doubt is not accepted as genuine, then any tax arising when the matter is determined is due at the date it was originally due, in accordance with **section 959AU(1)**.

Chargeable persons have a right of appeal to the Appeal Commissioners in respect of such decisions.

### **959Q Miscellaneous (Chapter 3)**

#### **Summary**

This section contains miscellaneous rules relating to the giving of notice and provides that the Collector-General may publish an address to which tax returns are to be sent.

#### **Details**

This section clarifies the relationship between various sections dealing with returns. In essence, nothing elsewhere in the Acts precludes a chargeable person from filing a tax return as required under this Chapter.

The Collector General may publish, in *Iris Oifigiúil*, the address to which returns may be sent.

## CHAPTER 4

### *Chargeable Persons: Self-Assessments*

### **959R Inclusion of self assessment in return**

#### **Summary**

This section provides that every tax return submitted under **Chapter 3** must include a self assessment by the chargeable person to whom the return relates. This is subject to **section 959S** (where a person opts for Revenue to do the self assessment) and **section 959T** (where a person acts on behalf of the chargeable person). The section sets out the basic elements to be contained in a self assessment and provides that where it relates to amounts chargeable under more than one heading, these should be identified separately (e.g. income tax, USC, PRSI and, if required, any surcharge arising).

The section provides that where a taxpayer files electronically and uses the calculation of liability provided by the Revenue Online System in the self-assessment, interest or penalties will not apply should any error or mistake arise from Revenue's computational system.

#### **Details**

Except where a self assessment is made by Revenue, under **section 959S**, or by an agent, under **section 959T**, then every return must include a self assessment made by the chargeable person.

Such a self assessment is part of the tax return and must include the details required by Revenue.

These details include:

- the items set out in **section 959C** (being the amount of income, the amount of tax chargeable, the amount of tax payable and the balance payable / repayable / available for offset, the amount of any surcharge),
- where an assessment relates to more than one tax, the amount of each tax (similar to the requirement for Revenue assessments under **section 959E**) noting that **section 959C** includes amounts such as PRSI as a tax for this purpose.

Where a chargeable person files their tax return via ROS (under **Chapter 6 of Part 38**) and bases their self assessment on the indicative tax calculation that may be provided by ROS, any additional tax shall be due within one month of the amended assessment (in accordance with **section 959AU(1)**). **Part 47** (relating to interest and penalties) shall not apply.

The chargeable person should keep either an electronic or a paper copy of the indicative tax calculation on which they relied.

### **959S Option for self assessment to be made by Revenue**

#### **Summary**

This section provides that an individual filing a paper return does not have to include a self assessment with a return for a tax year if it is filed by 31 August in the following tax year. If the return is filed by that date, a Revenue officer is required to make the self assessment under **section 959U**.

#### **Details**

Where an individual files their paper tax return for either income tax or CGT before 31 August, they do not have to fill out the self assessment.

Instead, Revenue will fill out the self assessment for the individual based on the figures in their return.

This section cannot apply to mandatory e-filers (refer to **section 917EA**).

Where the individual is a spouse or civil partner who has opted to be taxed under separate assessment, then Revenue cannot complete the self-assessment under this section until the other partner files his or her tax return.

### **959T Self assessment by person acting under authority**

#### **Summary**

This section provides that where a person acting under the authority of a chargeable person submits a tax return on behalf of the chargeable person, the person so acting must also submit the self assessment, which is then treated as submitted by the chargeable person.

### **959U Self assessment by Revenue officer in relation to chargeable person**

## Summary

This section provides that a Revenue officer must make a self assessment on behalf of an individual who delivers a return by 31 August in accordance with *section 959S*. A Revenue officer may also choose to do a self assessment in other circumstances where a person does not include a self-assessment with a tax return.

## Details

Where a chargeable person, or their agent (under *section 959T*), files the tax return but has not completed the self assessment, either because they have filed by 31 August and are within *section 959S* or otherwise, then Revenue shall complete the self assessment on their behalf, subject to the 4 year time limit set out in *section 959AA(1)*..

If an assessment is raised under this section, then Revenue must give notice of the assessment to the chargeable person, in accordance with *section 959E*.

An assessment under this section is a self assessment for the purposes of the Acts.

## **959V Amendment by chargeable person of return and of self assessment in return**

### Summary

This section provides that a person may amend a return and self assessment by giving notice in writing (or by electronic means, where relevant) to Revenue. Such amendments may, in general, be notified up to four years after the end of the chargeable period involved unless a Revenue office has started enquiries, an audit or other investigation.

### Details

This section provides that in certain circumstances, a chargeable person may, by notice to Revenue, amend the submitted return.

Where a chargeable person amends the tax return, that notice must also amend the self assessment at the same time.

A chargeable person may only amend their return and self-assessment:

- to claim an allowance, credit, deduction or relief due under the Acts,
- to correct an error or a mistake, or
- to comply with another provision of the Acts.

The notice of amendment of the return and self assessment must give the reason for the amendment.

The chargeable person must notify Revenue that they are amending a return and self assessment under this section. Such notification may be given electronically if Revenue make such facilities available.

Where a chargeable person filed their tax return and self assessment electronically then any amendment, other than one that relates to CGT, must be made electronically. CGT returns and self assessments may still be amended in paper format.

If an agent, under *section 959L*, is amending the return then they can provide the notice required in *subsections (1) and (2)* (being the notice to amend return and notice to amend the self assessment) and the return and self assessment will be deemed to have been amended by the chargeable person.

Notice to amend a return can only be given within 4 years after the end of the chargeable period. This section does not extend the period of amendment for items in the tax return which are themselves subject to a shorter timeframes.

Notice cannot be given in relation to a return or self assessment once Revenue has started making enquiries, under *section 959Z*, or after an audit or investigation has commenced into that return or self assessment.

Penalties under section 1077E or 1077F, as appropriate, may apply where returns are amended under this section.

## **959W Making of self assessment in accordance with return**

### **Summary**

This section provides that all self assessments (including those made by a Revenue officer on behalf of a chargeable person) are to be made by reference to the particulars contained in the tax return for the tax year or accounting period involved. The section also provides that, where a self assessment is submitted, nothing in the Chapter prevents a Revenue office, under *Chapter 5*, from raising a Revenue assessment or from amending the self assessment.

### **Details**

When a person makes a self assessment, under *section 959R*, it must be based on the information included in the return.

When a person amends their self assessment, under *section 959V*, it must be based on information include in their return, as amended by notice under *section 959V*.

Where Revenue make a self assessment in respect of a chargeable person, under *section 959U*, it must be based on the information included in the return.

Nothing in *Chapter 4* of *Part 41A* prevents Revenue from raising a Revenue Assessment (as provided for in *Chapter 5* of *Part 41A*). If Revenue raises a Revenue Assessment, then all previous self assessments are deemed void.

Nothing in *Chapter 4* of *Part 41A* prevents Revenue from amending a self assessment (as provided for in *Chapter 5* of *Part 41A*).

## **959X Penalty for failure to make or amend self assessment**

### **Summary**

This section provides for a fixed penalty of €250 where a person fails, where required, to include a self assessment with a return and of €100 where a person does not amend a self assessment where required.

### **Details**

Where a person files their tax return, but does not complete the self assessment (other than in cases where *section 959S* applies) then a fixed penalty of €250 applies.

Where a person amends their tax return, under *section 959V*, but does not amend the self assessment then a fixed penalty of €100 applies.



## CHAPTER 5

### *Revenue Assessments and Enquiries and Related Time Limits*

#### **959Y Chargeable persons and other persons: assessment made or amended by Revenue officer**

##### Summary

This section provides a general right for a Revenue officer to make or amend an assessment. This is subject to the other provisions of the Chapter e.g. a time limit where applicable. An assessment may be amended to reflect correct amounts of income, profits, gains and tax chargeable.

##### Details

Subject to *Chapter 5 of Part 41A*, Revenue may raise a Revenue Assessment at any time. Equally, an amendment may be made to a Revenue assessment or a self assessment at any time, notwithstanding that the assessment may already have been amended.

When making or amending an assessment, Revenue may accept in whole or in part anything in the return, and they may assess any income, profit or gain / allow any deduction, relief or credit.

That Revenue has already amended an assessment does not preclude a further amendment. .

Where income, profits or gains and the associated tax are not properly reflected in the assessment, Revenue may amend that assessment.

#### **959Z Right of Revenue officer to make enquiries**

##### Summary

This section provides a general right for a Revenue officer to make enquiries. Subject to certain exceptions, this right carries a 4-year time limit linked to the end of the chargeable period in which the return is delivered. The exceptions are where any of the circumstances in *section 959AC(2)* apply (for example, where a Revenue officer has reasonable grounds for believing that a return does not contain a full and true disclosure) or, under *section 959AD(3)*, where a Revenue officer has reasonable grounds for believing that there is fraud or neglect involved in relation to tax due for the chargeable period.

##### Details

Having regard to the powers vested in Revenue, Revenue may make enquiries to determine whether or not a person is chargeable to tax, whether they are a chargeable person, the amount of income, profits or gains on which they are chargeable or a person's entitlement to reliefs, credits or deductions.

Revenue may make any enquiries necessary to enable them determine the accuracy of returns and statements upon which Revenue assessments or amended self-assessments are based under *section 959Y*.

Except in the case of suspected fraud or neglect (*section 959AD*) or where a person has not delivered a full and true return (*section 959AC(2)*) Revenue may make enquiries under this section within 4 years of the end of the chargeable period in which the return was filed.



A chargeable person can appeal to the Appeal Commissioners if they believe that Revenue is making an enquiry outside of the allowable timeframe. Such enquiries will be suspended pending the appeal.

Nothing in this section affects the operation of *section 811, 811A, 811C or 811D*

### **959AA Chargeable persons: time limit on assessment made or amended by Revenue officer**

#### Summary

This section provides for a 4-year time limit on the making and amending of assessments on chargeable persons. This limit is linked to the chargeable period in which the return is delivered. Certain exceptions are provided for in the section (for example, to give effect to a determination of an appeal). There are also other exclusions to the 4-year time limit in *sections 959AC and 959AD*. The section provides that nothing in the section affects the operation of *sections 804(3), 811, 811A, 811C, 811D or 1048*

#### Details

Revenue cannot make or amend an assessment on a chargeable person who delivered a full and true return later than 4 years after the end of the chargeable period in which the return is filed, meaning that no additional tax can be payable and no tax can be repayable after this time.

At any time, Revenue can amend an assessment:

- where the return was not a full and true disclosure
- to give effect to the determination of an appeal
- to reflect an event which happened after the return is filed
- to correct a calculation error in the assessment or
- to correct any mistake of fact which was disclosed by the taxpayer and not correctly reflected in the assessment

At any time, a Revenue officer may make or amend an assessment for a chargeable period to give effect to a bilateral Mutual Agreement Procedures (MAP) reached between Revenue and a competent authority in another jurisdiction with which Ireland has a Double Taxation Agreement (DTA) and any tax due or repayable (notwithstanding the time limits in *section 865*) shall be paid or repaid. Section 90 of Finance Act 2022 amended section 959AA TCA to provide that a Revenue officer may make or amend an assessment to give effect to a MAP, notwithstanding any domestic time limits in the TCA on taxpayers making claims for loss relief, group relief or similar reliefs.

Nothing in this section affects the operation of *section 804* (administration of an estate) *811, 811A, 811C, 811D* (the general Anti-Avoidance provisions) or *1048* (assessments on executors and administrators).

### **959AB Persons other than chargeable persons: time limit on Revenue assessment and amended assessment**

#### Summary

This section provides for a 4 year time limit, on the making and amending of assessments on persons other than chargeable persons. This limit is, in general, linked to the chargeable period to which the assessment relates. However, where certain emoluments are

received in a period later than the period to which they relate, the time limit is linked to the period in which the emoluments are received. There is an exclusion to the 4 year time limit in *section 959AD*. The section provides that nothing in the section affects the operation of *sections 811, 811A, 811C or 811D*.

### Details

Subject to the other provisions of Part 41A, Revenue cannot make or amend an assessment on a person other than a chargeable person after 4 years from the end of the chargeable period to which the assessment relates. If the assessment or amended assessment relates to emoluments assessable in one chargeable period but received in the next, the 4 year period is from the year in which the emoluments are received. Nothing in this section affects the operation of *sections 811, 811A, 811C or 811D*.

## **959AC Chargeable persons: Revenue assessment and amendment of assessments in absence of returns**

### Summary

This section provides that assessments and amendments of assessments on chargeable persons may be made at any time where a return is not received; where a Revenue officer is not satisfied with a return on the basis of information received; or where a Revenue officer has reasonable grounds for believing that a return does not contain a full and true disclosure of all material facts necessary to make an assessment.

### Details

“Information” is defined as including information received from an Garda Síochána

Notwithstanding the general 4 year time limit set out in *section 959AA*, where

- a person fails to file a return
- Revenue are not satisfied with the sufficiency of the return based on information received, or
- Revenue have reasonable grounds for believing it is not a full and true disclosure,

Then Revenue may make a Revenue assessment at any time based on Revenue officer’s judgement.

Where a Revenue assessment is raised under this section the normal particulars, for example under *section 959C*, shall not be required and only the amount of tax payable must be set out.

This section also provides that Revenue may amend a Revenue assessment or a self assessment in similar circumstances.

## **959AD Chargeable persons and other persons: Revenue assessment and amendment of assessments where there is fraud or neglect**

### Summary

This section provides that assessments and amendments of assessments on a person may be made at any time where a Revenue officer has reasonable grounds for believing that there is fraud or neglect involved in relation to tax due for the chargeable period

## Details

“Neglect” is defined as failing to give notice, make a return, or produce information required under the Acts.

A person will not be guilty of neglect if they acted on their obligations without delay after being requested to do so by Revenue, or, if they had failed to act on them because of a valid excuse but acted once that excuse had expired.

Notwithstanding *section 959AA* (time limits for assessments on chargeable persons) and *section 959AB* (time limits for assessments on persons other than chargeable persons) Revenue may make a Revenue assessment at any time where they suspect fraud or neglect.

Assessments made under this section are for the amount that ought to be charged on the person in the Revenue officer’s best judgement.

This section also provides that Revenue may amend a Revenue assessment or a self assessment in similar circumstances.

## 959AE Other Revenue assessments and miscellaneous matters

### Summary

This section provides that the Chapter does not affect the making of assessments under certain sections in order to recover capital gains tax. The section also preserves the right to make and amend assessments under various provisions of the Acts other than this Chapter. Finally, the section provides that an assessment does not cease to be final and conclusive because a Revenue officer has amended or may amend it.

### Details

Nothing in this Chapter prevents Revenue raising assessments under:

- *Section 960Q* – recovery of amounts paid in error
- *Section 977* – recovery of CGT from shareholders
- *Section 978* – recovery of CGT from donee
- *Section 980* – deduction of tax from consideration on disposal of certain assets
- *Section 1042* – CGT on non-residents

And *Chapter 7* of this Part, which sets out tax payment dates, will not necessarily apply to such other assessments.

## CHAPTER 6

### *Appeals*

## 959AF Chargeable persons and other persons: appeal in relation to time limit on assessment made or amended by Revenue officer

### Summary

This section provides a right of appeal to a person where the person is aggrieved that an assessment is made or amended outside of the relevant 4-year time limit (that is, in *sections 959AA, 959AC* and *959AD* in relation to chargeable persons and in *section 959AB* or *section 959AD* in relation to persons other than chargeable persons).

However, an appeal against an assessment containing a late filing surcharge under section 1084(2) is allowed only where a person's grounds for appeal relate to certain specified matters set out in section 1084(1)(b), such as a dispute about the information contained in the return, or where there is a dispute about the date on which the return was submitted. Similarly, there is no right of appeal where the grounds for the appeal relate to the person's compliance in relation to the requirement to deliver a return and pay LPT.

Where an appeal to the Appeal Commissioners, or a request for a mutual agreement procedure under a double taxation agreement, the EU Arbitration Convention or the EU (Tax dispute Resolution Mechanisms) Regulations 2019, is not made within 30 days of the date of the notice of assessment, the assessment made will be final and conclusive.

### **959AG Chargeable persons: no appeal against self assessment**

#### **Summary**

This section provides that no appeal may be made against a self assessment or against an amount specified in such an assessment.

### **959AH Chargeable persons: requirement to submit return and pay tax**

#### **Summary**

This section provides that no appeal lies against a Revenue assessment until the chargeable person involved has submitted a return and paid the tax (including interest and collection costs, if applicable) which is, or would be due, under a self assessment based on the particulars in the return. These requirements must be satisfied within the normal time limits for lodging an appeal.

#### **Details**

No appeal may be made against a Revenue assessment until a return is filed and any tax due paid.

Revenue shall refuse an appeal where the return is not filed or the tax paid within the timeframe set out for bringing an appeal against the assessment.

Tax, for the purposes of this section, includes any interest which might be due under *section 1080* (interest on late payment) as well as any costs which might be incurred, charged or levied in collecting the tax.

This section applies to Revenue assessments and to assessments amended by Revenue.

### **959AI Chargeable persons and other persons: no appeal against agreed amounts**

#### **Summary**

This section provides that no appeal may be made by a person against agreed amounts in an assessment or against details provided by the person in a tax return.

### **959AJ Chargeable persons and other persons: grounds for appeal**

#### **Summary**

Section 959AJ TCA provides for a right to appeal in circumstances where a chargeable person is aggrieved by an enquiry made or an action taken by a Revenue Officer under section 959Z TCA to satisfy themselves as to the accuracy of a return, on the grounds

that the four year time limit for making such an enquiry or taking such action, set out in section 959Z(3), has expired.

### Details

Section 959AJ TCA provides a chargeable person the right to appeal an enquiry or action taken by a Revenue officer under 959Z TCA on the grounds that the enquiry or action taken by Revenue Officer is outside the four-year time period and no assessment has been made or amended. (1)

Where an assessment has not been made or amended for the chargeable period on foot of the officer's enquiry or action, the chargeable person can appeal under section 949I TCA, to the Tax Appeal Commissioners, within 30 days after the date on which the officer made that enquiry or took that action. (2)

Where an assessment has been made or amended for the chargeable period as a result of a Revenue's officer enquiry or action, a chargeable person may appeal to the Tax Appeal Commissioners under 959AF(1) TCA. (3)

Where a chargeable person appeals to the Tax Appeal Commissioner under subsection (2) then the chargeable persons requirement to supply information pursuant to the enquiry will be suspended and no further action will be taken by the Revenue officer pending the outcome from the Tax Appeal Commissioners on that officer right to make the enquiry or action. (4)

Where the Appeal Commissioners conclude that a Revenue Officer was precluded from making such an enquiry or action by reason of subsection 959Z(3) TCA, the chargeable person is not required to take any action and the officer is prohibited from pursuing the enquiry or action. (5)(a)

Where the Appeal Commissioners conclude that the Revenue Officer was not precluded from making such an enquiry or taking such action, the officer may continue with his/her enquiry. (5)(b)

### **959AK Chargeable persons and other persons: appeal against amended assessment**

#### Summary

This section provides that a person may appeal against an amended assessment but that this is limited to changes made by the amendment.

### **959AL Persons other than chargeable persons: other rules**

#### Summary

This section provides, in the case of an appeal against an assessment by a person other than a chargeable person, that an amount of tax is payable pending the determination of the appeal. The amount is the tax relating to matters in the assessment that are not in dispute less the amount of appropriate tax credits due to the person.

## CHAPTER 7

### *Chargeable Persons: Preliminary Tax and Dates for Payment of Tax*

### **959AM Interpretation and miscellaneous (Chapter 7)**

## Summary

This section contains definitions and interpretation for the purposes of *Chapter 7*.

## Details

This sub-section contains definitions of some of the key terms in relation to chargeable persons' tax payment obligations under this Chapter.

Where a company's accounting period is short, and the final preliminary tax payment would be due on or before the date of the initial preliminary tax payment, then that accounting period is not a 'relevant accounting period' for the purposes of this Chapter.

Subsection (3A) ensures that there is no difference in the calculation of preliminary corporation tax where either the current year or the previous year is a leap year. Where an accounting period which lasts 12 months contains 29 February, the figure for that period to be used in the calculation of the "corresponding corporation tax" or "corresponding income tax for the preceding accounting period" will be 365 rather than 366.

A company will be a 'small company' for the purposes of this Chapter if the corporation tax for the preceding period is less than the relevant limit (€200,000 in 12 months).

The provisions of this Chapter are subject to *section 579(4)(b)* (in relation to non-residents) and *section 981* (in relation to payments by instalments).

## 959AN Obligation to pay preliminary tax

### Summary

This section provides a requirement on a chargeable person to pay preliminary tax for a chargeable period. The amount to be paid is the amount which, in the taxpayer's opinion, would be due under an assessment for the period. The section does not apply to capital gains tax as there is no preliminary tax obligation for that tax.

### Details

Every chargeable person must pay an appropriate amount of preliminary tax to the Collector-General.

The amount of preliminary tax is the amount which the chargeable person expects will be due under their self assessment (or a Revenue assessment) for that chargeable period.

Preliminary tax paid, and not refunded, shall be treated as a payment on account.

Where a company's expected tax for a period is less than €200,000, and this is the company's first accounting period, then the appropriate preliminary tax for that company for that period is Nil.

This section does not apply to CGT as it has no preliminary tax obligations.

## 959AO Date for payment of income tax

### Summary

This section sets out the due dates for the payment of income tax. Preliminary tax is due by 31 October in the tax year. Income tax is, in general, due by the return filing date for

the year. However, if relevant preliminary tax requirements have not been met, the due date for income tax reverts to 31 October in the tax year.

## Details

Except in the cases of payment by Direct Debit (dealt with under *section 959AP*) the due date for payment of preliminary income tax is 31 October in the tax year.

Income tax for a year is generally due for payment on or before the specified return date (defined in *section 959A* as the 31 October in the tax year following the year). This date applies regardless of whether or not an assessment has been made.

Income tax may be due earlier than the specified return date if:

- Preliminary tax was not paid.
- Insufficient preliminary tax was paid. That is, the amount paid is less than the least of:
  - 90% of current year liability
  - 100% of prior year liability
  - 105% of the pre-preceding year liability when paying by Direct Debit under *section 959AP*.
- Preliminary tax was not paid by the due date.

In these cases, income tax is due on 31 October in the tax year e.g. the date on which the preliminary tax was due.

For the purposes of determining if sufficient preliminary tax was paid:

- Where the chargeable person was not a chargeable person for the prior year, the income tax payable for that period was nil.
- If additional tax becomes due in the prior year or the pre-preceding year, and that amount is payable one month after the assessment (under *section 959AU(2)* for an amended assessment or under *section 959AV(2)* in relation to the determination of an appeal), then it shall not be taken into account for this test.
- The amount of the tax liability for the prior and pre-preceding years should be before any relief under *section 481* (being investment in films) or under part 16 (being Employment Incentive Initiative or Seed Capital relief)

In the case of joint assessment under *sections 1017* or *1031C*, where a chargeable person was not the chargeable person in the prior year or the pre-preceding year because the other spouse / civil partner was, or where separate assessment under *section 1023* or *1031H* applied, then the correct amount of preliminary tax should be determined by reference to the tax liability that would have been payable, had the couple been jointly assessed and had the chargeable person been the chargeable person in that previous year.

Where the amount of tax assessable on the prior year is to be adjusted because of the operation of *section 65(3)* (e.g. where a chargeable person has changed their accounting date) then any additional tax due under such an amendment is due by the specified return date for the tax year.

This increase amount of tax is not taken into account for the purposes of determining the appropriate amount of preliminary tax.

## **959AP Payment of preliminary tax by direct debit**



## Summary

This section contains rules relating to the payment of preliminary income tax by means of direct debit arrangements with the Collector-General. Where relevant conditions are satisfied, a person is treated as having paid preliminary tax on 31 October in the tax year for the purposes of *section 959AO*.

## Details

Where a chargeable person authorises the Collector-General to do so, and complies with the conditions the Collector-General sets out, they may pay their preliminary tax by direct debit.

Where a chargeable person is paying their preliminary tax by direct debit under this section, their preliminary tax must be paid:

- in at least 3 equal instalments in the first year
- in at least 8 equal instalments in subsequent years.

Direct Debits are on 9<sup>th</sup> day of each month.

The Collector-General may agree to vary the amount or number of instalments, in a particular case.

Unless all of the direct debit payments are made as scheduled, the chargeable person will not be treated as having met their preliminary tax obligation.

Where all of the direct debit payments are made as scheduled, the chargeable person will be treated as having paid their preliminary tax by 31 October, in accordance with *section 959AO*.

## **959AQ Date for payment of capital gains tax**

### Summary

This section sets out the due dates for the payment of capital gains tax. Tax for the period 1 January to 30 November in a tax year is due by 15 December in that year. Any additional tax due in relation to the month of December is due by 31 January in the following tax year.

### Details

There are two payment dates of capital gains tax:

- CGT in relation to gains from the initial period (defined in *section 959AM* as from 1 January to 30 November) must be paid on or before 15 December in the tax year
- CGT in relation to gains from the later period (defined in *section 959AM* as from 1 December to 31 December) must be paid on or before 31 January the following tax year.

When an assessment issues for CGT, the payment dates of any tax due under that assessment are those as set out for the initial and later period.

## **959AR Date for payment of corporation tax: companies other than with relevant accounting periods**

## Summary

This section sets out the due dates for the payment of corporation tax by companies other than those with “relevant accounting periods”, that is, small companies and those with short accounting periods. Preliminary tax is payable in one instalment and is due 31 days before the end of the accounting period (i.e. normally in month 11 of the accounting period) – but no later than day 21 (or day 23 for electronic filers) of the month involved. Corporation tax is, in general, due by the return filing date for the accounting period. However, if relevant preliminary tax requirements have not been met, the due date reverts to the due date for the payment of preliminary tax.

## Details

A small company (as defined in *section 959AM(1)*) and a company with a short accounting period (under *section 959AM(2)*) make a single payment of preliminary tax. The preliminary tax appropriate to an accounting period is due and payable:

- 31 days before the accounting period end, or 21<sup>st</sup> of the month if it would otherwise be later. If using ROS the relevant date is the 23<sup>rd</sup> of the month.
- Where an accounting period is less than one month, preliminary tax must be paid by:
  - The last day of the accounting period
  - The 21<sup>st</sup> day of the month in which the last accounting period ends, if it ends after 21<sup>st</sup> day (23<sup>rd</sup> day for ROS)

The balance of tax payable is due by the specified return date.

Any tax due and payable under an assessment on the company will also be due and payable before the specified return date .

The balance of tax shall be deemed to have been due on the due date for preliminary tax where:

- the chargeable person has defaulted in the payment of preliminary tax
- in the case of a small company, the preliminary tax paid was less than:
  - 90% of the current year liability or
  - 100% of the prior year’s income and corporation tax liability
- in the case of a company with a short accounting period, the preliminary tax paid was less than 90% of the current year liability.
- the preliminary tax was not paid by the due date.

When determining whether or not a company with a short accounting period met the 90% test, and

- they would have met the test but for a chargeable gain or gains / losses on financial assets in the period after the payment of preliminary tax, and
  - they make a top-up payment of preliminary tax within one month of the end of the accounting period bringing the total preliminary tax paid to 90% of the current year liability,
- or
- they would have met the test but for a disallowable amount under *Part 35D*, and

- they make a top-up payment of preliminary tax within six months of the end of the accounting period bringing the total preliminary tax paid to 90% of the current year liability,

then the chargeable person will have met their preliminary tax obligations under this section.

The provision allowing for a top-up payment of preliminary tax 6 months after the end of the accounting period to satisfy the 90% preliminary tax rule applies to accounting periods commencing on or after 1 January 2022 and ending on or before 31 December 2027.

## **959AS Date for payment of corporation tax: companies with relevant accounting periods**

### Summary

This section sets out the due dates for the payment of corporation tax by larger companies with “relevant accounting periods”. Preliminary tax is payable by these companies in two instalments. The first instalment is payable within 6 months of the start of the accounting period but no later than day 21 (or day 23 for electronic filers) of the month involved. The second instalment is due 31 days before the end of the accounting period (i.e. normally in month 11 of the accounting period) – but no later than day 21 (or day 23 for electronic filers) of the month involved.

### Details

Large companies, other than those with short accounting periods, pay their preliminary tax in two instalments.

- The first instalment is due within 6 months from the start of the accounting period but not later than the 21<sup>st</sup> day of the month / 23<sup>rd</sup> day for ROS.
- The second instalment is due 31 days before the accounting period end, or 21<sup>st</sup> of the month if it would otherwise be later. If using ROS the relevant date is the 23<sup>rd</sup> of the month (e.g. the same day as the single preliminary tax payment date for small companies).

The balance of tax payable is due by the specified return date.

Any tax due and payable under an assessment on the company will be due and payable before the specified return date also.

**Finance Act 2021** inserted **subsection 1A** which applies to companies not resident in the State within the charge to corporation tax as a result of the insertion of **section 25(2A)** Taxes Consolidation Act. The subsection provides that the preliminary tax liability of such company that -

- would be considered a “large” company for preliminary tax purposes, and
- has an accounting period ending on or before 21 June 2022,

will be due and payable not later than 21 June 2022, or 23 June 2022 where payment of preliminary tax is made by electronic means.

Subject to **section 959AT** (which deals with the tax payment date of groups) the balance of tax shall be deemed to have been due on the due date for preliminary tax where:

- the chargeable person has defaulted in the payment of either payment of preliminary tax
- The initial payment was less than:

- 45% of current year tax liability, or
- 50% of prior year tax liability
- in the case of a large company's first accounting period within the charge to corporation tax, the adequacy of the initial payment can only be assessed by reference to the 45% of current year liability test.
- the amount paid in both initial and second instalment of preliminary tax is less than 90% of current year tax payable.
- preliminary tax was not paid by the due dates.

The amounts of preliminary tax which a company must pay in two instalments under this section are:

- an initial instalment: 45% of current year tax payable in the initial payment
- a final instalment: balance to bring the total paid up to the current year tax payable.

When looking at whether or not a company met the 45% of current year test for the initial payment, and

- they would have met the test but for a chargeable gain or gains / losses on financial assets in the period after the payment of preliminary tax, and
- the tax paid in the final instalment brings the total tax paid to 90% of the current year tax payable,

then the company will have met their preliminary tax obligations in respect of the initial instalment under this section.

When looking at whether or not a company met the 90% of current year test for the final payment and

- they would have met the test but for a chargeable gain or gains / losses on financial assets in the period after the payment of preliminary tax, and
  - they make a top-up payment of preliminary tax within one month of the end of the accounting period bringing the total preliminary tax paid to 90% of the current year liability,
- or
- they would have met the test but for a disallowable amount under **Part 35D**, and
  - they make a top-up payment of preliminary tax within 6 months of the end of the accounting period bringing the total preliminary tax paid to 90% of the current year liability,

then the company will have met their preliminary tax obligations under this section.

The provision allowing for a top-up payment of preliminary tax 6 months after the end of the accounting period to satisfy the 90% preliminary tax rule applies to accounting periods commencing on or after 1 January 2022 and ending on or before 31 December 2027.

### **959AT Date for payment of corporation tax: groups**

#### **Summary**

This section allows for credit within groups for excess preliminary tax paid by one company against the preliminary tax liability of another. The section sets out the conditions

for the surrendering and claimant companies. In general, this facility is available to larger companies that pay preliminary tax in two instalments.

### Details

This subsection redefines the initial balance and final balance in the context of groups.

Relief under this section may be given where a group company (referred to as the surrendering company) pays:

- an initial payment in excess of the 45% / 50% limits set out in *section 959AS(2)* or
- an amount of preliminary tax for the period in excess of the 90% limits, set out in *section 959AS(2)* or *959AR*, as applicable

and

Another group company who is not a small company (referred to as the claimant company) pays:

- an initial payment which is less than the 45% / 50% limits set out in *section 959AS(2)* or
- an amount of preliminary tax for the period which is less than the 90% limit set out in *section 959AS(2)*

The two companies may, before the specified return date, jointly give notice to the Collector-General that they wish to claim relief under this section

The excess preliminary tax paid by the surrendering company is deemed, for the purposes of this section, to have been paid by the claimant company for the purposes of *section 959AS(4)(b)*, as far as it relates to the initial payment, or *section 959AS(4)(d)* as far as it relates to the final payment.

The claimant company must pay their full tax liability by the specified return date, disregarding this relief (which is a deemed payment and not an actual transfer or payments)

Should the claimant company pay the surrendering company for any amount surrendered under this amount, such an amount would not be taxable income, a distribution or a charge on income.

Where relief is claimed under this section, the amount of underpaid tax / preliminary tax on which interest arises under *section 1080* is reduced by the deemed ‘offset’.

Group in this section has the same meaning as in *section 411*.

## 959AU Date for payment of tax: amended assessments

### Summary

This section deals with the due date for the payment of tax where an amended assessment is involved.

### Details

Additional tax due under an amended assessment is generally due on the same day the tax was due under the assessment before its amendment, unless it arises from the determination of an appeal (*section 959AV*).

If the assessment was made after the chargeable person delivered a return containing a full and true disclosure of all material facts, then any additional tax due under an

amended assessment shall be deemed to be due not later than one month from the date of the amendment (e.g. in situations where a valid expression of doubt was made).

### **959AV Date for payment of tax: determination of an appeal**

#### **Summary**

This section deals with the due date for the payment of tax following the determination of an appeal.

#### **Details**

Where a chargeable person has an additional liability to tax on the determination of an appeal, that additional amount of tax is generally deemed due and payable on the same date as the tax charged by the assessment that was under appeal.

If the tax paid was 90% of the total tax after the determination of the appeal, then it shall be due and payable one month from the date of the determination of the appeal.

## CHAPTER 8

### *Miscellaneous provisions*

### **959AW Mutual agreement procedures**

#### **Summary**

This section ensures that taxpayers who seek redress by way of a request for a mutual agreement procedure are afforded the same treatment as that afforded to taxpayers pursuing domestic appeals. This is achieved by providing that an assessment will not be final and conclusive in circumstances where a taxpayer makes a MAP request under a double taxation agreement, the EU Arbitration Convention or under the European Union (Tax Dispute Resolution Mechanisms) Regulations 2019 ('the 2019 Regulations').

#### **Detail**

This section provides that, notwithstanding section 959AF, an assessment or an amended assessment will not be final and conclusive where, within 30 days of the date of the notice of assessment, the person on whom the assessment has been made pursues redress by way of a request for a mutual agreement under a double taxation agreement, the EU Arbitration Convention or in circumstances where the aggrieved taxpayer submits a complaint under the 2019 Regulations.

The time limit for submitting a request for MAP assistance under a DTA is determined by the relevant DTA. Generally, Ireland's DTAs follow Article 25 of the Model Treaty Convention and provide that a request for MAP assistance must be submitted within 3 years from the first notification of the action resulting in taxation not in accordance with the convention. However, some treaties provide for a different time period.