

Summary of pay and file system for income tax and capital gains tax in Part 41A Taxes Consolidation Act 1997

Part 41A-01-03

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Introduction

This manual summarises the main obligations of a taxpayer under the new self-assessment system introduced by Finance Act 2012 as Part 41A of the Taxes Consolidation Act 1997 (TCA). The new obligations introduced in Part 41A are specifically identified. The manual also sets out, in general terms, the implications for a taxpayer of failing to comply with any of those obligations.

An individual's obligation to pay and file income tax also cover Pay Related Social Insurance (PRSI) and Universal Social Charge (USC).

1. Obligation to file a tax return (substantially unchanged from Part 41)

1.1 Obligation to file a return upon receiving notice

Section 877 TCA provides that every person who is chargeable under the Income Tax Acts is required, upon receiving a notice from Revenue, to file a statement of the amounts of profits and gains chargeable for the period specified in the notice.

Under section 879 TCA, every person is required, upon receiving a notice from Revenue, to file a return of income in the prescribed form. Section 879(4) provides that if a person files a tax return in the prescribed form, they will be deemed to have received notice requiring that they file that return. Therefore, all the provisions that deal with filing incorrect returns will apply to a return voluntarily filed as to a return filed upon receipt of notice.

Section 913 provides that sections 877 and 879 apply for the purposes of capital gains tax (CGT) as they do for income tax.

Form 12, Form 11 and Form CG1 are all prescribed forms for the purposes of section 879. A person who receives a notice under section 879 should file the appropriate one of those returns.

1.2 Obligation to file a return on a self-assessment basis

Section 959I TCA puts section 877 and section 879 onto a self-assessment basis. It states that a chargeable person¹ must

- file a tax return,
- in the prescribed form,
- by the specified return date,
- for a chargeable period,

notwithstanding that the chargeable person did not receive a notice to file a statement or return in accordance with section 877 or 879 TCA.

¹ See manual 41A-01-01 for details of who is a chargeable person under Part 41A.

Section 959J clarifies that for income tax and capital gains tax purposes, the return must contain certain specific information. For income tax purposes, the prescribed form for a chargeable person is the Form 11 and it contains all the information required. Where an individual is chargeable to capital gains tax and is not a chargeable person for income tax purposes, the prescribed form is the Form CG1.

Section 959A TCA provides that the specified return date for income tax and capital gains tax is 31 October in the year after the year of assessment. While extensions for ROS users have been granted to mid-November, these are administrative measures and are not contained in legislation.

Where an agent files a tax return on behalf of a taxpayer, section 959L provides that the Acts apply as if the taxpayer had filed her/his own return.

1.3 Failure to file a return on a self-assessment basis

Section 959O TCA treats a failure to make a return required by section 959I as if it were a failure to deliver a return on foot of a notice requiring the return. This allows a Revenue officer to take the same action as if a notice to file a return had not been complied with. The same penalties apply whether the failure related to a return required under self-assessment or required under a specific notice.

Penalties under sections 1052 and 1054 and a surcharge under section 1084² may also apply.

2 Obligation to file a self-assessment (New to Part 41A)

Under section 959R TCA every return, with certain specific exceptions, must include a self-assessment.

Section 959S provides that an individual who has an income tax or a capital gains tax liability for a tax year is not required to make a self-assessment if he or she files a paper tax return on or before 31 August³ in the year following the tax year in question. In these circumstances, a Revenue officer makes the self-assessment on the individual's behalf.

In the case of a married couple or civil partners who are separately assessed, a Revenue officer cannot make a self-assessment on behalf of an individual until such time as her or his spouse or civil partner files a return.

Individuals who are required to file electronic returns in accordance with section 917EA must make a self-assessment, regardless of whether they file their return by the 31 August deadline or, if applicable, a later deadline.

² Manual 47-06-01 refers.

³ Revenue has extended this date to 30 September 2019 for the 2018 Form 11.

Section 959T provides that a person who files a tax return on behalf of a chargeable person must also make the self-assessment, and this is deemed to have been made by the chargeable person.

2.1 Failing to make or amend a self-assessment

Under section 959X⁴, a person who is required to make a self-assessment but fails to do so is liable to a penalty of €250; and a person who is required to amend a self-assessment but fails to do so is liable to a penalty of €100. These penalties are collected under Chapter 3A of Part 47 TCA.

3 Obligation to pay tax (substantially unchanged from Part 41)

Every individual who is a chargeable person for income tax has an obligation to pay preliminary income tax and that preliminary tax is treated as a payment on account.

3.1 Income tax

Section 959AO(1) provides that preliminary tax must be paid by 31 October in the year of assessment. As with return filing dates, individuals paying via ROS are usually granted an administrative extension to mid-November each year.

Section 959AO(2) provides that generally the balance of tax must be paid when the tax return for the year of assessment is being filed. However, if the preliminary tax paid is less than:

- 90% of the income tax payable for the year, or
- 100% of the income tax payable for the preceding year, or
- 105% of the income tax payable for the pre-preceding year where payment is by Direct Debits (under section 959AP)

then the due date for the balance of tax is 31 October in the year of assessment.

Section 1080 provides that interest applies to the difference between the total tax payable for the year and the amount of preliminary tax paid with the interest charge running from the preliminary tax payment date.

⁴ Tax and Duty Manual 41A-04-02 deals with what must be included in a self-assessment and gives guidance on dealing with cases where a partially completed self-assessment is submitted.

3.2 Capital gains tax

There is no preliminary tax payment obligation for CGT. Section 959AQ sets out the CGT payment dates:

CGT due on gains made in the “initial period” (defined by section 959AM as between 1 January and 30 November) must be paid by 15 December that year.

The balance of CGT due for the year is due by 31 January the following year.

4 Interaction between withholding taxes and preliminary tax requirements

When looking at the interaction between withholding taxes suffered and preliminary tax requirements, the main question is whether the withholding tax is treated as a tax credit (deducted from tax chargeable in arriving at tax payable) or as tax paid directly to the Collector General (CG) (deducted from tax payable in arriving at the balance of tax due for the period). Below are some common examples of withholding taxes and how they are treated.

4.1 Dividend Withholding Tax (DWT)

Where a person is within the charge to income tax for a tax year, section 172J TCA provides that DWT is available to be set against the amount of income tax chargeable on the person for the year involved. It is given as a credit against the amount of income tax chargeable on a person in arriving at the amount of tax payable by the person for the tax year.

4.2 Professional Services Withholding Tax (PSWT)

Where a person is within the charge to income tax for a tax year or to corporation tax for an accounting period, section 526 TCA provides that PSWT is available to be set against the amount of Income Tax or Corporation Tax chargeable on the person for the year or period involved. As with DWT it is given as a credit against the amount of income tax or corporation tax chargeable on a person in arriving at the amount of tax payable by the person for the tax year or accounting period involved.

4.3 Pay as You Earn (PAYE)

Where a person is within the charge to income tax for a year, section 997(1) TCA provides that income tax deducted under the PAYE system is available as a credit against the amount of tax chargeable in the period.

4.4 Deposit Interest Retention Tax (DIRT)

Where a person is within the charge to income tax for a year, section 59(ii) TCA provides that DIRT is available as a credit in determining the amount of tax payable for the period.

4.5 Relevant Contracts Tax (RCT)

Where a person is within the charge to income tax for a year, RCT is, by virtue of section 530P(1) treated as a payment on account. That is, RCT is deductible from tax payable, rather than being a tax credit deductible from tax chargeable in arriving at tax payable.

4.6 Withholding tax example using 90% preliminary tax rule

An individual makes up accounts to 31 December 2018. The income tax chargeable for that year of assessment (that is, before credits and amounts paid directly to the Collector General) is €18,000. During the year the individual had €11,000 deducted under PAYE and €2,000 deducted as RCT.

Income tax chargeable for 2018	18,000
Credit for tax deducted under PAYE in year	<u>(11,000)</u>
Income tax payable 2018	<u>7,000</u>
Minimum payable to avail of 90% rule	6,300
RCT already paid directly to the CGs for the basis period (i.e. year ended 31 December 2018)	<u>(2,000)</u>
Balance payable to CG to meet 90% preliminary tax obligation	<u>4,300</u>

4.7 Withholding tax example using 100% preliminary tax rule

An individual makes up accounts to 31 December 2018. The income tax chargeable for the 2017 year of assessment (that is, before credits and amounts paid directly to the Collector General) is €20,000. During the year 2017 the individual had PSWT of €9,000 and RCT of €5,000 deducted.

Income Tax chargeable for 2017	20,000
Credit for PSWT suffered in year (i.e. year ended 31 December 2017)	<u>(9,000)</u>
Income Tax payable 2017	11,000
Minimum payable to avail of 100% rule	11,000
RCT already paid directly to the CG for the basis period (i.e. year ended 31 December 2015)	<u>(5,000)</u>
Balance payable to CG to meet 100% preliminary tax obligation	<u>6,000</u>