

## **[42.04.59] Credit in respect of tax deducted from emoluments of certain directors and employees - Section 997A of the Taxes Consolidation Act 1997**

*Updated March 2016*

### **1. Introduction**

- 1.1 Section 997A of the Taxes Consolidation Act 1997 (TCA 1997) was introduced by way of section 13 of Finance Act 2005. It applies to directors or employees who have a *material interest* in the company that pays emoluments to the director or employee. Its purpose is to deny such directors and employees a credit for tax deducted from their remuneration until such tax has been remitted to the Collector-General.
- 1.2 Section 8 of Finance Act 2010 introduced a technical amendment to section 997A to put beyond doubt that the credit for tax deducted cannot exceed the tax actually remitted from the emoluments paid to a director or employee to whom the section applies.
- 1.3 Section 15 of Finance Act 2012 introduced further changes to Section 997A in order to –
  - (a) clarify that the tax deducted from emoluments paid for a year of assessment relates to that entire year of assessment;
  - (b) clarify how payments made by employer companies should be brought to account when applying the provisions of the section; and
  - (c) introduce a specific right of appeal against a Revenue decision not to grant credit for tax deducted under PAYE.

### **2. To whom does Section 997A apply?**

- 2.1 As noted above the section applies to a director or employee who has a *material interest* in the company that pays emoluments to that director or employee. A director or employee can have a material interest in a company in one of two ways. Firstly, the director or employee, has a material interest where, in his or her own right, or with one or more “connected” persons, (“connected” as defined in section 10 of the TCA 1997, see paragraph 2.4 below) he or she is the beneficial owner of, or is able to control directly or indirectly, more than 15% of the ordinary share capital of the company paying the emoluments.

**Example 1**

Peter is an employee of company A. He also owns 20% of the ordinary share capital of the company. Peter therefore has a material interest in company A.

**Example 2**

Andrew is an employee of company B and he owns 11% of the ordinary share capital of the company. Andrew's brother James is also an employee of company B and he owns 6% of the ordinary share capital of the company. Both Andrew and James have a material interest in company B. Firstly, they are 'connected persons' (as defined by Section 10 of the TCA 1997 see paragraph 2.4 below) and secondly between them they are the beneficial owners of more than 15% of the ordinary share capital of company B.

If any person connected with a director or employee, is the beneficial owner of, or is able to control directly or indirectly, more than 15% of the ordinary share capital of the company paying the emoluments, then the director or employee has a material interest in the company. This is notwithstanding the fact that the director or employee does not have any shareholding in the company.

**Example 3**

Sean owns 20% of the ordinary share capital of company X. He is not a director or employee but, by owning 20% of the ordinary share capital, he has a material interest in the company. Joe is Sean's father and is an employee of company X. Joe does not own any of the ordinary share capital in the company and therefore does not have a material interest in it in his own right. However, by virtue of the fact that he is a relative of Sean's and is therefore connected to him, he is deemed to have a material interest and is therefore caught by section 997A provisions.

- 2.2 No credit for tax deducted from the emoluments paid by a company to a person to whom section 997A TCA 1997 applies shall be given unless there is documentary evidence to show that the tax deducted has been remitted by the company to the Collector-General.
- 2.3 Whilst the measure applies to directors and employees who have a material interest in a company, in practice, it is more likely to affect directors.

## 2.4 Connected Person

### 2.4.1 Connected individuals

Section 10(3) TCA 1997 states:

*A person shall be connected with an individual if that person is the individual's husband, wife or civil partner, or is a relative, or the husband, wife or civil partner of a relative, of the individual or of the individual's husband, wife or civil partner.*

A relative for the purposes of Section 997A means brother, sister, ancestor or lineal descendant. See Section 10(1) TCA 1997 and the Appendix.

Therefore, for the purpose of this section, a director or employee is connected to –

- his/her spouse,
- his/her civil partner,
- a relative,
- a relative of the individual's spouse,
- a relative of the individual's civil partner,
- the spouse of a relative,
- the civil partner of a relative and,
- the spouse or civil partner of a relative of the director or employees' spouse or civil partner.

### 2.4.2 Connected Persons via Partnerships and Companies (Sections 10(5), 10(7) & 10(8) TCA 1997)

A person may also be connected to another person through a partnership or a company.

With regard to partnerships and for the purposes of Section 997A, a director or employee is connected to-

- a person with whom the director or employee is in partnership
- the spouse/civil partner of the person with whom the director or employee is in partnership, and a relative of a person with whom the director or employee is in partnership

Relative has the same meaning as outlined in paragraph 2.4.1 above.

With regard to companies and for the purposes of Section 997, a director or employee is connected to -

- a company where the director or employee has control of the company or where the director or employee and persons connected with the director or employee have control the company.

#### **Example 4**

Anthony owns the entire share capital of a company and, therefore, controls a company. Anthony and his wife are treated as connected to the company. (Anthony's wife is treated as connected to the company because she is connected to him)

- the members of a group of 2 or more persons who act together to obtain control of, or a holding in, a company are (in relation to that company) treated as connected with one another. The group members are also treated as connected with any person acting on the direction of any member of the group to obtain control of, or a holding in, the company.

#### **Example 5**

Anthony and Bernard, who are not connected to each other, together purchase the entire share capital of a company and, therefore, control the company. Anthony and Bernard are treated as being connected with one another. Chris acts on their behalf to obtain control of the company. Anthony and Bernard are also treated as being connected to Chris.

### **3. What is tax for the purposes of Section 997A?**

- 3.1 Tax includes anything deducted under the PAYE system. Therefore it includes income tax, Universal Social Charge (USC), Local Property Tax (LPT) and, as a result of the Social Welfare provisions in the Social Welfare Consolidation Act 2005, it also includes any amount due in respect of PRSI

For the years 2009 and 2010, it also includes the income levy.

### **4. What happens when only a proportion of tax deducted is actually remitted?**

- 4.1 Any tax remitted to the Collector-General that has been deducted by the company from emoluments paid by the company shall be treated as having been deducted, in the first instance, from emoluments of directors and employees who do not have a "material interest" in the company.
- 4.2 Any tax remitted to the Collector-General which is deducted from emoluments paid to persons to whom section 997A applies will be treated as deducted from emoluments paid to each such person in the same proportion as the emoluments paid to that person bears to the aggregate amount of all emoluments paid by the company.

Section 997A(4) clarifies that in determining the amount of tax remitted to the Collector General which relates to persons to whom this section applies, the tax remitted by the company for the year of assessment as a whole must be considered.

- 4.3 The credit due to any director or employee to whom this section applies cannot exceed the PAYE tax actually deducted from his or her emoluments.

### 5. Example 6

X, Y and Z are proprietary directors of Beta Co. (i.e. they each have a material interest in the company). Their details according to the form P35 for 2010 were as follows:

Director	Salary	Tax Deducted per P35
X	€50,000	€15,000
Y	€40,000	€12,000
Z	€10,000	€ NIL
Total	€100,000	€27,000

Beta Co. also has a number of employees who do not have a material interest in the company, and the total tax deducted from their emoluments for 2010 was €40,000. The overall position was as follows:

Tax deducted from the emoluments of employees who do not have a material interest in the company	€40,000
Tax deducted from the emoluments of directors/ employees with a “material interest” in the company.	<u>€27,000</u>
Total due to Revenue	€67,000
Amount remitted to Revenue	<u>€60,000</u>
Shortfall	*€ 7,000*

As there is a shortfall in the tax actually remitted compared to tax deducted, in accordance with the provisions of section 997A(4), credit for tax will be granted in the first instance to persons who do not have a material interest in the company and then to the persons who do have a material interest as follows:

- Employees’ with no material interest €40,000
- Directors with material interest €20,000

**Note:** Employees with no material interest will always be entitled to a full credit for tax deducted from their emoluments. Therefore, if for example, the amount remitted to Revenue is only €30,000, the employee with no material

interest will get full credit for tax paid notwithstanding that the tax deducted from such employee is €40,000.

The €20,000 appropriate to the directors with a material interest is apportioned in accordance with the provisions of section 997A(5) as follows (i.e. in the same proportion as the emoluments paid to that person bears to the aggregate amount of emoluments paid by the company to all such persons):

Director	Tax*	Apportion	Credit Due
X	€20,000	* €50,000/€100,000	€10,000
Y	€20,000	* €40,000/€100,000	€ 8,000
Z	€20,000	* €10,000/€100,000	€ 2,000

However, Director Z in this instance is not entitled to €2,000 credit for tax deducted as that director did not suffer any tax deduction – [section 997A(6) refers].

The €2,000 credit is therefore re-distributed among the other proprietary directors in accordance with the formula above resulting in an additional credit for tax to Director X and Director Y of €1,111 and €889 respectively. This is calculated as follows:

$$\text{Director X } €2,000 \times €50,000/€90,000 = €1,111$$

$$\text{Director Y } €2,000 \times €40,000/€90,000 = € 889$$

The net result is as follows –

Director	Salary	Tax Deducted under PAYE	Credit for tax against directors' liability
X	€50,000	€15,000	€11,111 (€10,000 + €1,111)
Y	€40,000	€12,000	€8,889 (€ 8,000 + € 889)
Z	€10,000	€ NIL	Nil
<b>Total</b>	€100,000	€27,000	€20,000

**\*Note: Reference to tax in the Example includes the income levy, the USC and LPT.**

**\*\*Note: Since 1<sup>st</sup> July 2013 any remaining unpaid household charge is treated as a charge to LPT and may be collected in the same manner as LPT.**

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

#### **6. Allocation of payments between Tax, USC/Income Levy, PRSI and LPT.**

For the tax year 2012 and subsequent years section 997A(7) confirms that any amounts deducted from the emoluments of a person to whom this section applies that are remitted to the Collector General for a year of assessment will firstly be set against PRSI due, secondly against USC and, lastly, against income tax.

Section 78 of the LPT Act provides that Section 997A will apply as if the reference to tax were a reference to local property tax. Therefore, for 2013 and subsequent years any remaining amount should be set against the LPT liability of the person to whom this section applies. This applies to both voluntary and mandatory deductions of LPT at source.

For tax years prior to 2012, payments should be allocated in accordance with Section 960G TCA 1997. This section provides that where a taxpayer identifies the tax to which the payment relates, the amount remitted should be allocated accordingly. For example, where a payment is received by Revenue from an employer and is accompanied by a form P30, etc. the payment should be treated as relating to the tax referred to on the P30.

Where a payment is received from an employer and it cannot reasonably be determined which liability the employer wishes the payment to be set against, then the payment may be set against any liability due by the employer.

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#### **7. Assessing an Individual to whom Section 997A applies**

In cases to which Section 997A applies, the correct pay to be included on the Notice of Assessment is the Gross Pay per form P35, unless there is evidence that the gross pay is in fact higher. Under no circumstances should the net amount of pay be treated as the assessable emoluments.

#### **8. Right of appeal**

Section 997A(8) provides a specific right of appeal against a Revenue decision as regards a claim by an individual for credit for tax deducted to whom section 997A applies.

**Appendix 1**

For the purposes of Section 997A, all the individuals indicated in the diagram are connected with individual 'A' and therefore 'A' is connected with each of them. Any reference to Spouse also includes Civil Partner.

