

## **Credit in respect of tax deducted from emoluments of certain directors and employees**

### **Part 42-04-59**

This document should be read in conjunction with section 997A of the Taxes Consolidation Act (TCA) 1997

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## Introduction

Section 997A of the Taxes Consolidation Act (TCA) 1997 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.

The credit for tax deducted cannot exceed the tax actually remitted in respect of the emoluments paid to a director or employee to whom the section applies.

In addition, section 997A –

- provides that the tax deducted from emoluments paid for a year of assessment relates to that entire year of assessment;
- sets out how payments made by employer companies should be brought to account when applying the provisions of the section; and
- gives a specific right of appeal against a Revenue decision under the section not to grant credit for tax deducted under PAYE.

## 1. To whom does Section 997A apply?

### 1.1. Material Interest

Section 997A applies to any 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. 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 1.2](#) 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.

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 rule applies notwithstanding the fact that the director or employee does not have any shareholding in the company.

While the measure applies equally to directors and employees who have a material interest in a company, in practice, it is more likely to affect directors.

### Example 1

Peter is an employee of company A. He also owns 20% of the ordinary share capital of the company. Therefore, Peter 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 TCA 1997, see [paragraph 1.2](#) below) and secondly, between them they are the beneficial owners of more than 15% of the ordinary share capital of company B.

### 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 in company X. Consequently, he is subject to the section 997A provisions.

## 1.2. Connected Person

### 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 to this Manual.

Therefore, for the purposes 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 employee's spouse or civil partner.

**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, and
- the spouse or 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 above for connected individuals.

With regard to companies and for the purposes of section 997A, 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 (see example 4).

Moreover, 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 (see example 5).

**Example 4**

Anthony owns the entire share capital of a company and, therefore, controls the 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.

**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 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.

## 2. Documentary evidence

No credit for tax deducted from the emoluments paid by a company to a person to whom section 997A 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.

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

Tax includes anything deducted under the PAYE system. Therefore, it includes income tax, the Universal Social Charge (USC), Local Property Tax (LPT) and Pay Related Social Insurance (PRSI).

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

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.

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.

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

#### Example 6

X, Y and Z are proprietary directors of Beta Co. (i.e. they each have a material interest in the company). Their total pay and tax deducted under the PAYE system for 2020 were as follows:

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

**Note 1:** References to tax in this example include USC and LPT.

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 2020 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 the amount of 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 2:** 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 employees with no material interest will get full credit for tax paid notwithstanding that the tax deducted from such employees 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:

$$\begin{aligned} \text{Director X} & \quad \text{€2,000 X €50,000/€90,000} = \quad \text{€1,111} \\ \text{Director Y} & \quad \text{€2,000 X €40,000/€90,000} = \quad \text{€ 889} \end{aligned}$$

The net result is as follows –

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

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

[...]

## 5. Allocation of payments between Tax, USC, PRSI and LPT

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.



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## 6. Section 997A and Debt Warehousing

If an employer is availing of debt warehousing for PAYE (Employer) liabilities, a director or employee with a material interest in the company cannot claim credit for PAYE deducted if it has been warehoused and not paid. However, if the director or employee is eligible for income tax warehousing (because they are also subject to self-assessment), she or he can warehouse all liabilities including any Schedule E liabilities.

## 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 the PAYE details on record for that year (or per form P35 for years up to and including 2018), 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 to whom section 997A applies for credit for tax deducted.

## Appendix

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.

