



A Revenue Guide to Professional Services Withholding Tax (PSWT) for Accountable Persons and Specified Persons

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Summary of Guide

This guide to Professional Service Withholding Tax (PSWT) is divided into six parts.

Part 1 outlines the PSWT scheme. It gives an overview of the circumstances in which PSWT applies, summarises how it operates and how credits and refunds can be claimed.

Part 2 contains information relevant to accountable persons (those who are required to deduct PSWT). It advises who accountable persons are and how they should register with Revenue.

Part 3 sets out information which is relevant to specified persons (those from whom PSWT is deducted), including how specified persons can get credit for and refunds of PSWT.

Part 4 provides information on the services to which PSWT applies.

Part 5 gives details of the administrative procedures in place for the PSWT scheme. It provides information on PSWT forms and it also deals with tax clearance certificates and payments to non-residents.

Part 6 sets out relevant contact details within the Revenue Commissioners.

Throughout the document, reference is made to the Income and Capital Taxes Division and the Collector-General's Division. These are two Divisions of the Revenue Commissioners and contact details are given in Part 6.

All information leaflets referred to in the document are available from: www.revenue.ie or from the **Revenue Forms and Leaflets Service at LoCall 1890 306706 (ROI only) or 00 353 1 674 4050 (from outside Ireland).**

Part 1 - Outline of PSWT

1.1 What is PSWT?

Chapter 1, Part 18 of the Taxes Consolidation Act 1997 provides for a withholding tax (PSWT) to be deducted from payments made by certain bodies in respect of professional services. The tax is known as Professional Services Withholding Tax or PSWT for short.

PSWT is deducted by **Accountable Persons** from **Relevant Payments** made by them to **Specified Persons** in respect of **Professional Services**.

In general, PSWT deducted is available for offset against the specified person's final income tax/corporation tax liability for the period within which the relevant payment is charged to tax.

Pending offset against a specified person's final tax liability, provision is made for interim refunds of PSWT deducted where certain conditions are satisfied. In addition, interim refunds may be made on grounds of particular hardship where some of the interim refund conditions are not met. Further information on interim refunds is contained in Leaflet IT 19 and Statement of Practice SP - IT/3/90. These are available at www.revenue.ie, from Revenue Forms and Leaflets Service at LoCall 1890 306706 (ROI only) or 00353 1 674 4050 (from outside Ireland) and from local Revenue Offices.

To avoid misunderstandings, accountable persons are advised to inform specified persons at contract stage that PSWT will be deducted from the payments under the contract.

1.2 Rate at which PSWT is deducted

The rate at which PSWT is deducted is the standard rate of tax in force at the date on which the relevant payment is made. The standard rate of income tax at the date of issue of this guide (tax year 2008) is 20%.

1.3 Employed or Self-Employed

PSWT is deducted from self-employed persons who provide professional services. It does not apply to employees. Payments to employees fall within the PAYE system. Employers must operate PAYE on payments to employees and office holders e.g. board members - they may not deduct PSWT as an alternative

The distinction between self-employed persons and employees is that self-employed persons operate under a **contract for service** while employees are employed under a **contract of service**. Information on the difference between a contract for services and a contract of service is contained in the Code of Practice for Determining Employed or Self Employed Status of Individuals, available at <http://www.revenue.ie/leaflets/code-of-practice-on-employment-status.pdf>, and from Revenue Forms and Leaflets Service at LoCall

1890 30 67 06 (ROI only) or 00353 1 674 4050 (from outside Ireland) and local Revenue offices.

1.4 From which Payments should PSWT be deducted?

Subject to the exclusions referred to in paragraph 1.5, PSWT should be deducted from what are termed "relevant payments". "Relevant payments" are payments made by accountable persons in respect of professional services.

The payments need not be in respect of services provided to the accountable person. PSWT applies where an accountable person makes a payment in respect of a professional service whether it is provided to the accountable person or to another person.

Payments made by authorised health insurers e.g. Quinn Healthcare, VHI, VIVAS, to registered medical or dental practitioners under contracts of insurance are relevant payments.

1.5 Excluded Payments

There are certain payments from which PSWT **should not** be deducted and these are:

- ◆ payments which are subject to PAYE
- ◆ payments which come within the Relevant Contract Tax (RCT) scheme
- ◆ payments to other accountable persons in re-imbusement of payment for professional services (see paragraph 2.5)
- ◆ payments to other accountable persons where the income of the accountable person receiving the payment is exempt from income tax or corporation tax (see paragraph 2.5)
- ◆ payments to charities which have been granted an exemption from income tax by the Revenue Commissioners (see paragraph 2.6)
- ◆ where the payment is made by a foreign-based branch or agency of an accountable person in the circumstances set out in paragraph 2.3
- ◆ where the payment is an inter group payment in the circumstances set out in paragraph 2.4

1.6 Treatment of Expenses

Where PSWT applies to a payment, it applies to the entire payment, including any element which is in respect of the reimbursement of expenses incurred by the specified person. This continues to be the position where expense items are isolated for separate payment or where the expenses are separately invoiced. Examples of expenses include costs incurred for travel, subsistence, postage, printing, stationery, secretarial services, advertising, and payments by the specified person to third parties engaged by the specified person in connection with the delivery of the service.

1.7 Late Payment Interest

With effect from 7 August 2002, it is an implied term of every commercial contract that interest is payable if debts are not paid on time (late payment on commercial transactions). Therefore where interest is payable on a payment which is in respect of a professional service, PSWT should also be deducted from the interest. (see **Appendix 3**)

1.8 Exclusion of VAT, Stamp Duty and certain other fees

Where an accountable person makes a relevant payment to a specified person, the accountable person is obliged to deduct PSWT at the standard rate of income tax from the total amount of the payment due, including any amount in respect of expenses.

However, VAT charged by the specified person should be **excluded** when calculating the amount of PSWT which is to be deducted. In addition, the following fees paid by the specified person to the appropriate authorities should also be excluded:

- ◆ Stamp Duties
- ◆ Land Registry fees
- ◆ Deed of Registration fees
- ◆ Company Office fees
- ◆ Court fees

1.9 Tax Clearance Certificate

Suppliers of goods or services who enter into a public sector contract with a value of €10,000 (including VAT) or more must produce a Tax Clearance Certificate to the public body with whom the contract is being entered into.

PSWT must be deducted from relevant payments made by an accountable persons to a specified person notwithstanding the fact that the specified person produces a Tax Clearance Certificate.

An application for a Tax Clearance Certificate should be made to the applicant's local Revenue office by submitting completed form TCI. Application can also be made online at www.revenue.ie. Contact details for Revenue Offices and form TCI are also available on the Revenue website

Non-resident applicants who are registered for Irish tax and also have a permanent established place of business in the State must apply to the Revenue office which deals with their tax affairs.

Non-resident applicants who are registered for Irish tax and who do not have a permanent established place of business in the State must make their application for a tax clearance certificate to Revenue's Dublin City Centre District, 9/15 Upper O'Connell St, Dublin 1. Phone 01 865 5000, E-mail: dublincitycentreitct@revenue.ie

Non-resident applicants who are not registered for Irish tax and who do not have a permanent established place of business in the State must apply to:

Non-Residents Unit

Collector Generals Division

Sarsfield House

FrancisStreet

Limerick

Fax: 00 353 61 488673

E mail: nonrestaxclearance@revenue.ie

Applicants should note that their tax affairs must be fully up-to-date before a Tax Clearance Certificate will be issued.

Part 2-Accountable Persons

2.1 Who is an Accountable Person?

For the purposes of PSWT, the following public bodies are accountable persons:

- ◆ Government Departments and Offices,
- ◆ Local authorities
- ◆ The Health Service Executive
- ◆ Commercial and non-commercial semi-State bodies and their subsidiaries.

A complete list of accountable persons is set out in Schedule 13 to the Taxes Consolidation Act 1997. A copy of this list is attached at **Appendix 2**.

Where a body/organisation is unsure whether it is an accountable person, it can obtain advice from the Income and Capital Taxes Division (see contact details in Part 6).

2.2 Registration of Accountable Persons

For the purposes of operating PSWT, accountable persons must register as such with the Income and Capital Taxes Division.

On registration, arrangements are made for the supply to the accountable person of the forms required in operating the scheme. Information in relation to PSWT forms is set out in Part 5.

An accountable person's PSWT registration number must be stated on all PSWT documentation used by that accountable person.

2.3 Payments made by a foreign-based branch or agency of an accountable person

PSWT applies to all payments for professional services which are made by accountable persons to non-residents. However, the Revenue Commissioners have accepted that PSWT need not be deducted from payments by a foreign-based branch or agency of an Irish resident company which is an accountable person, where:

- ◆ the payment is made abroad by the branch/agency,
- ◆ the payment is for professional services provided abroad to the branch/agency,
and
- ◆ the person providing the professional service (the payee) is resident abroad.

In all other circumstances, PSWT should be deducted by accountable persons from payments to non-residents.

2.4 Inter Group Payments

PSWT does not have to be deducted from payments in respect of professional services by a company which is an accountable person where such payments are made

- ◆ to a subsidiary of the company, or
- ◆ by a subsidiary to its parent company, or
- ◆ by one subsidiary to another subsidiary of a common parent company.

Subsidiary for these purposes means a 51% subsidiary.

2.5 Payments made between Accountable Persons

Accountable persons must deduct PSWT from payments made in respect of professional services **including payments made to other accountable persons**.

However, some such payments are excluded, namely:

- ◆ payments to other accountable persons in re-imbusement of payment for professional services
- ◆ where the income of the accountable person receiving the payment is exempt from income tax or corporation tax.

Where payments between accountable persons fall within the second category above, the payer should obtain confirmation in writing from the payee that they are in fact covered by this exclusion.

2.6 Payments by Accountable Persons to Charities

PSWT does not apply to payments for professional services to charities which have been granted an exemption from tax by the Revenue Commissioners. In that situation, the payer should obtain confirmation in writing from the payee that they are in fact covered by this exclusion. In circumstances where such confirmation is not provided, PSWT should be deducted.

2.7 Payments by Accountable Persons to Non-Residents

Subject to paragraph 2.3, PSWT must be deducted from all relevant payments to non-residents.

Where an accountable person deducts PSWT from a payment to a non-resident, it must give a form F45 in respect of that payment to the non-resident. Amounts shown on forms F45 must always be in Euro. The equivalent foreign currency amounts may be shown in brackets beside the Euro amounts.

No advance clearance mechanism applies for specified persons in tax treaty countries.

Non-residents can make a claim for a credit or refund of PSWT deducted (see paragraph 3.4)

2.8 Revenue Powers

The Revenue Commissioners are empowered to raise assessments on all taxpayers if they either refuse or neglect to pay over tax owing to the Revenue Commissioners. Accountable persons are responsible for the deduction and remittance of PSWT. Therefore if an accountable person refuses or neglects to remit PSWT, the Revenue Commissioners are empowered to raise assessments on that accountable person.

Section 904J of the Taxes Consolidation Act 1997 provides the Revenue Commissioners with powers to carry out on-site audits of accountable persons.

Part 3 - Specified Persons

3.1 Who are Specified Persons?

Specified persons are persons who provide professional services in respect of which relevant payments are made to them by accountable persons. Specified persons can be individuals, companies or partnerships. An accountable person must deduct PSWT from relevant payments made to all specified persons, including specified persons who may not ultimately have a liability to tax (e.g. non-residents).

PSWT must be deducted from relevant payments made by an accountable person to a specified person notwithstanding that the specified person produces a Tax Clearance Certificate (see paragraph 1.9).

3.2 Credit/Refund of PSWT to Specified Persons

Apart from a situation where an individual commences business, PSWT deducted by an accountable person from a relevant payment to a specified person is available for offset against the specified person's final income tax/corporation tax liability for the period in which the relevant payment is charged to tax.

For an individual commencing business, credit for PSWT deducted in the first year of business will not normally be given until the second year of assessment. This arises because the first 12 months' accounts form the basis for two years of assessment and the PSWT is deemed to be deducted in the second basis period. However, such an individual may qualify for an interim refund.

The accountable person, on making the payment from which PSWT is deducted, gives the specified person a form F45. The form states,

- ◆ the amount of the relevant payment, and
- ◆ the amount of PSWT deducted.

A Form F45 is evidence that the specified person has had PSWT deducted from a payment made to him/her. Accordingly, it is a valuable document and should be retained carefully by the specified person.

Specified persons can claim a credit/refund of PSWT deducted during a tax year/accounting period by completing the relevant section of their tax return. While F45s are no longer required to be submitted with the tax return, they should be retained carefully as they must be presented to Revenue for verification, if requested. Where a credit results in an overpayment of tax by a specified person, the excess is, subject to any other outstanding tax liabilities of the specified person, refunded by Revenue.

To the extent that the amount of PSWT deducted exceeds the tax liability of the preceding period, interim refunds of PSWT deducted may be made provided the following three conditions are met:

- (i) The profits for the period immediately preceding the period of claim have been finalised,
- (ii) The tax payable for that preceding period has been paid in full, and
- (iii) Forms F45 for the PSWT in question must be provided to the taxpayer's Revenue office.

In addition, interim refunds can be made on grounds of particular hardship where some of the interim refund conditions mentioned above are not met.

Some or all of the above conditions may be waived where amounts of PSWT withheld are substantially in excess of likely final liability and failure to meet the conditions would not permit an interim refund in certain circumstances, such as:

- ◆ due perhaps to a once-off or unusual receipt, a once-off or unusual reduction in income, or a demonstrable permanent reduction in income, **or**
- ◆ if, through no fault of the taxpayer, there is a delay in finalising liability to tax for a particular year due to illness or other exceptional circumstance, **or**
- ◆ if income tax liability (net of PSWT credited) paid in a period of claim together with PSWT deducted in that period exceeds an amount arrived at by multiplying the taxpayer's income for the period by the higher rate of tax which applies for that period.

Forms F45 should always be submitted to Revenue when claiming an interim refund.

Further information on interim refunds is contained in Statement of Practice SP - IT/3/90

<http://www.revenue.ie/leaflet/sp-it-3-90.doc>

3.3 What to do where a Form F45 is Lost, Destroyed or Incorrect

Form F45 Lost/Destroyed

Specified persons should retain F45s carefully. Where, exceptionally, a form F45 given to a specified person is lost or destroyed, the specified person should (i) inform the accountable person from whom they received the F45 and (ii) request the accountable person to issue a form F43. Forms F43 replace forms F45 which are lost or destroyed and are the only alternative form of evidence which will be accepted by Revenue. Issue 28 of Tax Briefing contains an article which clarifies the circumstances in which forms F43 should be sought from accountable persons. (see **Appendix 3**)

Incorrect Form F45

Where a detail or details on an F45 given to a specified person is/are incorrect, the specified person should return the original form to the accountable person and request a Form F43.

The most common errors are

- ◆ the amount of the relevant payment stated on the F45 is incorrect, or

- ◆ the amount of PSWT stated on the F45 is incorrect

The accountable person will issue a form F43 to the specified person showing the correct details. The F43 should be submitted by the specified person to their Revenue office when asked to verify the claim for credit/refund of PSWT (the incorrect form F45 having been returned to the accountable person).

3.4 Where to Claim Credit/Refund of PSWT

General

Apart from the specific categories of specified persons identified below, claims for:

- ◆ credit,
- ◆ refund, **or**
- ◆ interim refunds,

of PSWT should be made to the local Revenue office which deals with the specified person's tax affairs. Credits or refunds of PSWT are dealt with solely in the specified person's Revenue Office. Therefore, forms F45/F43 should never be sent to the Collector-General's Division.

Charities

Claims for refund of PSWT by specified persons who are charities should be made to

Charities Section

Collector General's Division

Government Offices

Nenagh

County Tipperary

Tel: 1890 666 333 (ROI only)

00 353 67 63 400 (from outside Ireland)

Email: charities@revenue.ie

Non-Residents

Where a non-resident is not chargeable to tax in the State for the period in which the PSWT is deducted, repayment of the PSWT should be claimed from:

The Revenue Commissioners

International Claims Section

Government Offices

Nenagh

County Tipperary

Tel: 1890 666 333 (ROI only)

00 353 67 63 400 (from outside Ireland)

Email: intclaims@revenue.ie

Non-residents claiming repayment of PSWT should complete a claim form and questionnaire (available from International Claims Section and at www.revenue.ie) and send them with form(s) F45 to the above address. In the case of an initial claim by non-resident, International Claims Section requires certification from the Revenue Authority in the non-resident's country of residence that the claimant is in fact resident in that country. Repeat certification is not generally required until requested by International Claims Section. Normally, this will be five years after the date of the first claim.

Where a non-resident is chargeable to tax in the State for the period in which the PSWT is deducted, claims for credit, refund, or interim refund of PSWT should be made to the Revenue office which deals with the tax affairs of the non-resident. A non-resident is chargeable to tax in the State for the period in which the PSWT is deducted, if during that period they carry on business through a permanent establishment situated in the State.

Part 4 - Professional Services

4.1 Services covered by PSWT

PSWT applies to the provision of professional services. Section 520 of the Taxes Consolidation Act 1997 lists services which come within the meaning of professional services. It provides that professional services which are subject to PSWT, include

- ◆ services of a medical, dental, pharmaceutical, optical, aural or veterinary nature,
- ◆ services of an architectural, engineering, quantity surveying or surveying nature, and related services,
- ◆ services of accountancy, auditing or finance and services of financial, economic,
- ◆ marketing, advertising or other consultancies,
- ◆ services of a solicitor or barrister or other legal services,
- ◆ geological services, and
- ◆ training services provided on behalf of FAS.

The above is not an exhaustive list. Issues have arisen as to whether or not certain services come within the terms of PSWT. A summary of the Revenue position in relation to the application of PSWT to various services is set out in **Appendix 4**. In the case of some of the services included in the appendix, the advice seeks to differentiate between situations where PSWT will or will not apply. In a number of cases, a service may not of itself attract PSWT. However, where a service forms part of a wider consultancy service, it would then come within the scope of PSWT. For example, where printing forms part of an overall professional service provided to an accountable person, it is an expense incurred in the provision of that service. The full amount of the payment in respect of the overall service is subject to PSWT. Where, for example, an accountable person commissions a specified person to design and print a brochure, the entire payment for the production of the brochure (including the printing of the brochure) is subject to PSWT. However, if the commission was confined to printing the brochure, then payment in respect of the printing service only would not be subject to PSWT.

4.2 Services which are not regarded as Professional Services for the purposes of PSWT

Revenue **does not** regard the following services as professional services for the purposes of PSWT: -

- ◆ Teaching, training or lecturing services **other than** training services provided on behalf of FAS (see **Appendix 5**)
- ◆ Translation services including services of an interpreter
- ◆ Proof-reading services
- ◆ Services of stenographers
- ◆ Setting and assessing oral, aural or written examinations

- ◆ Contract cleaning services
- ◆ Maintenance and repair work

Part 5-Administration of PSWT

5.1 PSWT Forms

The forms used in the administration of PSTW are:

- ◆ Form F45 - issued by an accountable person on making a relevant payment to a specified person.
- ◆ Form F43 -issued by an accountable person to a specified person where Form F45 is (i) lost or destroyed or (ii) where the details on the F45 are incorrect.
- ◆ Form F30 - is the monthly return made to Revenue by an accountable person of the total amount of PSWT deducted from all relevant payments made by the accountable person in the preceding month.
- ◆ Form F35 - is the annual return made by an accountable person declaring their PSWT liability for the tax year. It is accompanied by a schedule giving details of the total relevant payments made to, and the total PSWT deducted from, each specified person in the tax year.

5.2 Form F45

(I) General

Form F45 is a valuable document as it provides documentary evidence of the amount of PSWT deducted from a relevant payment. A completed form F45 reflects:

- ◆ the amount of the relevant payment
- ◆ the amount of PSWT deducted
- ◆ the amount of VAT, if any, charged

Specified persons must retain forms F45 for inspection as they may be required by Revenue to support an application for credit/refund of PSWT deducted. A form F45 must be issued in respect of each relevant payment made, including a relevant payment to a specified person who has not supplied their Tax Reference number.

More than one form F45 should never issue in respect of the same relevant payment. Therefore, where a form F45 issued to a specified person is lost or destroyed or where the details entered require amendment, a form F43 should be sought from the accountable person.

Forms F45 are available for completion either manually or using a computerised system.

On registration for PSWT, the accountable person will indicate if they intend to use the F45 version available for completion using a computerised system or the manual form F45.

(2) Security Numbers

Security numbers comprise of six digits preceded by an alpha character. Manual forms F45 incorporate the security number. Where Revenue approval is given for the use of stationery for completion with a computerised system, a range of security numbers is supplied by Revenue for use with that stationery.

A register is maintained by Revenue of the range of security numbers issued to each accountable person. Accountable persons are required to put measures in place to ensure that only security numbers from the range supplied to them by Revenue are used. The accountable person must ensure that a security number from this range appears on each form F45 issued via a computerised system. A security number can be used only once.

(3) Forms F45 for completion using a Computerised System

(a) Revenue Approval

Where an accountable person seeks Revenue approval to use continuous/laser stationery for the completion of F45s, the accountable person's computer system must be capable of:

- ◆ issuing a form F45 in respect of each relevant payment made.
- ◆ printing a security number, from the range of numbers supplied by Revenue, on each form F45 issued.
- ◆ retaining a detailed record of each relevant payment made, including a record of the security number assigned to that payment.

In addition, where the computer system also calculates:

- ◆ the monthly remittance/return of PSWT to the Collector-General's Division, the system should be capable of altering the monthly remittance, to take account of any payment errors made and corrected in the tax year/accounting period.
- ◆ the annual PSWT liability of the accountable person, the system should be capable of producing an end of year schedule, which takes account of any payment errors made and corrected in the tax year /accounting period.

(b) Continuous Stationery F45 (supplied by Revenue)

Where following Revenue approval (as referred to above), an accountable person opts to use continuous stationery, Revenue will supply the necessary forms F45 to the accountable person. Samples of this stationery are available for testing, on request, from Income and Capital Taxes Division.

(c) Laser Stationery approved by Revenue

Revenue has also approved a laser version of form F45 for completion using a computerised system. Information relating to sourcing this version of the F45 is available from Income and Capital Taxes Division.

(4) Forms F45 for Manual completion

Manual forms F45 have a security number printed on each form. Revenue maintains a register of all manual F45s issued, by reference to the security numbers. Forms F45 should be stored in a secure place by the accountable person to whom they are assigned, as, once received from Revenue, they become the responsibility of that accountable person.

When a relevant payment is being made, part 1 of Form F45 should be given to the specified person while part 2 should be retained by the accountable person. Part 2 of the form is retained by the accountable person as a record of the

- ◆ relevant payment made, and
- ◆ security number attaching thereto.

(5) Completion of Form F45 by Accountable Person

All sections of form F45 should be completed in full. Particular points to note are

(a) Specified Person Details

Where the specified person has not supplied a tax reference number, the accountable person should request the specified person to supply it. Where the specified person fails to supply a tax reference number, the accountable person should issue a form F45 leaving the tax reference number part of the form blank. Revenue will take this matter up directly with the specified person.

Specified persons who are not resident in the State and who do not have an Irish tax reference number should quote their foreign tax reference number.

(b) Relevant Payment Details

Insert at **A1** the amount of the payment which is subject to PSWT, inclusive of the VAT attaching thereto.

Insert at **A2** the amount of VAT. VAT is excluded from the charge to PSWT

Insert at **A3** the amount of PSWT deducted. This is calculated by excluding the VAT element from the gross payment and applying the standard rate of tax, as follows:

$$(A1 - A2) \times \text{standard rate of tax}$$

Amounts shown on form F45 must be in Euro. Where a payment is made to a person resident outside the State, the equivalent foreign currency amounts may be shown in brackets beside the Euro amounts.

5.3 Form F43

Form F43 should be issued in exceptional circumstances only.

A form F43 is given by an accountable person to a specified person where the original F45 which was given to the specified person

- ◆ is lost or destroyed and a duplicate is requested by the specified person (in such circumstance, the accountable person should request written confirmation that the F45 is lost or destroyed) or
- ◆ is incorrect (In such circumstances, the accountable person should ensure that the original form F45 is retrieved from the specified person when the form F43 is being issued).

Accountable persons must indicate in the space provided whether the form F43 is issued as a **duplicate** F45 or as an **amendment** to the original F45.

Where the F45 is lost or destroyed, the accountable person must include the details from the original F45/2 on the F43 and tick the **duplicate** box on the F43. Where the F43 is issued as an amendment i.e. the F45 issued was incorrect, the accountable person must include the correct details on the F43 and tick the **amendment** box on the F43.

The security number of the original form F45 must be stated on the F43 in the space provided. A form F43 is invalid where this is not done.

F43s have a pre-printed security number assigned to each form. Forms F43 should be stored in a secure place, as once received from Revenue, they become the responsibility of the accountable person. The form F43 is in three parts: -

- ◆ F43 part 1 should be given to the specified person
- ◆ F43 part 2 should be retained by the accountable person
- ◆ F43 part 3 should also be retained by the accountable person where the F43 issues as a **duplicate** F45. Where the F43 issues as an **amendment** to an original F45, F43 part 3 should be filed together with the original form F45 returned by the specified person.

Where a form F43 is issued to amend the amount of the relevant payment, or the amount of PSWT deducted on the original form F45, the accountable person must ensure that the corrected figures are included on the relevant monthly and annual return forms (F30 & F35)

Tax Briefing Issue 28 contains an article on the correct use of form F43. The text of this article is given at **Appendix 3**.

5.4 Form F30

Form F30 is a monthly return which each accountable person is required to make to Revenue. It is a declaration of the total amount of PSWT deducted by an accountable person from the 1st day of an income tax month to the last day of the same income tax month. The form is issued automatically by the Collector-General's Division and must be returned to that Division together with payment of the PSWT within 14 days from the end of each income tax month. For example, the F30 for the month of March in any year must be returned to the Collector-General's Division together with the relevant PSWT payment by 14 April of that year. Where no PSWT is deducted by an

accountable person in a month, a "NIL" return should be made to the Collector-General's Division on the F30. Queries regarding forms F30 should be made to the Collector-General's Division.

Accountable persons can submit their F30 returns using the Revenue Online Service (ROS) see <http://www.ros.ie/>

5.5 Form F35

General

This is an annual return made by an accountable persons declaring their PSWT liability in a tax year. This form is issued automatically by the Collector-General's Division and must be returned to that Office by 15 February following the end of the tax year to which it relates. Where no PSWT has been deducted by an accountable person in a tax year, a "NIL" return should be made for that year.

Details to be returned on form F35

Details to be returned on the F35 are as follows:

- ◆ Total PSWT liability for a tax year in respect of all relevant payments made by an accountable person in that year. Where a form F43 is issued to amend the amount of the relevant payment or the amount of PSWT deducted on an original F45, the accountable person must ensure that the corrected figures are reflected on the form F35.
- ◆ Total PSWT already paid to the Collector-General's Division for the tax year through the monthly F30 procedure.
- ◆ The difference, if any, between the total PSWT liability for the tax year and the total amount of PSWT paid over to the Collector-General's Division throughout the year. Where a balance of PSWT is owed to the Collector-General's Division, payment of the balance of PSWT should accompany the F35. Where an excess amount of PSWT has been paid, the Collector-General's Division will contact the accountable person directly.

Schedule to Accompany Form F35

A schedule giving details of the total relevant payments made to, and the total PSWT deducted from, each specified person in the tax year must accompany the form F35. The schedule is to be drawn up under the five headings listed on the form F35, as follows:

Name of Specified Person	Address	PPS Number/Tax reference number	Total of Relevant Payments from which PSWT was deducted	Total PSWT Deducted
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Accountable persons can submit their F35 returns using the Revenue Online Service (ROS) see <http://www.ros.ie/>

5.6 Requests for Forms and Security Numbers

Apart from the laser version of form F45, requests for forms F45 and forms F43 should be made to Income and Capital Taxes Division. Accountable persons must provide the following information with their request:

- ◆ The name of the individual requesting the forms
- ◆ The name, address and telephone number of the accountable person
- ◆ The PSWT Registration Number of the accountable person
- ◆ The type and the quantity of forms required and, in the case of forms F45, whether manual forms or continuous stationery forms are required.

Requests for security numbers for use with continuous stationery/laser stationery should also be made to Income and Capital Taxes Division.

5.7 Irish Version of PSWT Forms

Form F45 (Manual), Form F43, Form F30 and Form F35 are available in Irish.

Accountable persons wishing to use the Irish version of the above PSWT forms should inform the Income and Capital Taxes Division in writing.

5.8 Rectifying Errors

(a) *PSWT deducted in error*

Where PSWT has been deducted from a payment in respect of a service which was **not** a professional service, and remitted to the Collector-General's Division, the accountable person should give a letter to the specified person stating that as the payment was not in respect of a professional service, PSWT should not have been deducted. The specified person should give this letter together with the relevant F45 to the Revenue office which deals with the tax affairs of that person. Revenue will refund to the specified person the PSWT deducted in error.

Where the PSWT has not been remitted to the Collector-General's Division when the error is detected, the accountable person must retrieve the F45 (part 1) from the specified person and pay to that person the amount which was deducted in error. Both parts of the original F45 should be marked cancelled and retained by the accountable person.

(b) *Too much PSWT deducted*

An error of calculation may result in the deduction of too much PSWT. Where this occurs, a form F43 showing the correct figure should be completed by the accountable person. This should be given to the specified person and the original form F45 should be retrieved from the specified person at that time. Payment of the balance owed to the specified person should accompany the F43. The accountable person should reduce the next monthly return (Form F30) of PSWT made to the Collector-General's

Division by the amount of the PSWT overpaid in respect of the error. Where the next monthly return falls into a different tax year, refer to subparagraph (f) below.

(c) Too little PSWT deducted

An error of calculation may result in the deduction of too little PSWT. Where this occurs, a form F43 showing the correct figure should be completed by the accountable person and given to the specified person. The original form F45 should be retrieved from the specified person at that time. The accountable person must remit the additional PSWT due on the payment with the next monthly return (form F30) of PSWT made to the Collector-General's Division. Where the next monthly return falls into a different tax year, refer to subparagraph (f) below.

(d) Payment made twice

Where a relevant payment is made twice in respect of the same transaction, the accountable person should

- ◆ retrieve the duplicate payment and the F45 in respect of that payment from the specified person.
- ◆ mark as cancelled both parts of that F45 and retain them together.
- ◆ reduce the next monthly return of PSWT made to the Collector-General's Division by the amount overpaid to that Division in respect of the error.

Where the next monthly return falls into a different tax year, refer to subparagraph (f) below.

(e) Payment made to the wrong person

The accountable person must:

- ◆ recover the payment and the F45, which was issued to the wrong person.
- ◆ mark as cancelled both parts of the F45 and retain them together.
- ◆ issue an F45 together with the payment to the specified person to whom the payment was intended.

While no amendment is required to the remittance of PSWT to the Collector-General's Division, care should be taken to ensure that the schedule accompanying form F35 (annual return) accurately reflects payments made to all specified persons. However, if the payment to the correct person is made in a different tax year to the earlier payment, refer to subparagraph (f) below.

(f) Error made in one tax year and rectified in a subsequent tax year

Where a PSWT error relating to a tax year is discovered after form F35 for that tax year has been sent to the Collector-General's Division, the error cannot be rectified by adjusting the next monthly remittance to that Division.

Instead, an amended form F35 should be completed and submitted to the Collector-General's Division. Where the amended F35 results in an additional payment of PSWT to the Collector-General's Office, a cheque for that amount should

accompany the amended form F35. Where the amended F35 results in an overpayment of PSWT by the accountable person, the Collector-General's Division will contact the accountable person directly.

Part 6- Contact with Revenue Offices

6.1 Accountable persons

Queries regarding the remittance of PSWT and forms F30 and F 35 should be addressed to the Collector-General's Division.

**Collector General's Division,
Revenue Commissioners,
Sarsfield House,
Francis Street,
Limerick.
Tel: 1890 20 30 70**

Queries relating to registration for PSWT, and forms F45 & F43 should be made to

**Income and Capital Taxes Division,
Stamping Building,
Revenue Commissioners,
Dublin Castle,
Dublin 2.
Tel: 01 6475000
00 353 1 647500 (from outside Ireland)
Email: pswt@revenue.ie**

6.2 Specified persons

Specified persons from whom PSWT has been deducted should contact the Revenue office which deals with their tax affairs regarding claims for credit or interim refunds.

6.3 Charities

Enquiries from charities regarding claims for refunds of PSWT or in relation to claiming exemption from tax should be directed to Charities Section in the Collector-General's Division (see paragraph 3.4)

**Charities Section
Collector General's Division
Government Offices
Nenagh**

County Tipperary

Tel: 1890 666 333 (ROI only)

00 353 67 63 400(from outside Ireland)

Email: charities@revenue.ie

6.4 Non-Residents

Non-resident specified persons from whom PSWT has been deducted and who have a tax liability in the State should contact the Revenue office which deals with their tax affairs regarding claims for credit or interim refunds. Non-resident specified persons who do not have a tax liability in the State should contact International Claims Section in order to claim a refund of PSWT deducted (see paragraph 3.4)

The Revenue Commissioners

International Claims Section

Government Offices

Nenagh

County Tipperary

Tel: 1890 666 333(ROI only)

00 353 67 63 400 (from outside Ireland)

Email: intclaims@revenue.ie

Contact details for all Revenue offices can be obtained by using the Contact locator on the Revenue website at www.revenue.ie

Appendix 1

Text of the Article in Tax Briefing, Issue 52 (May 2003) on the Tax Treatment of interest and compensation paid under S.I. No. 338 of 2002 European Communities (Late Payment in Commercial Transactions) Regulations 2002

General

This Article sets out the tax treatment of interest and compensation paid under the new Regulations. The tax treatment of interest payments made under the Prompt payment of Accounts Act, 1997 is outlined in an article in issue 31 of Tax Briefing.

With effect from 7 August 2002 the Regulations give effect to Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment on commercial transactions. They apply, with some exceptions, to commercial transactions in both public and private sectors and amend Prompt Payment of Accounts Act, 1997.

The new Regulations provide that interest shall be payable in respect of a late payment. In contrast to interest paid under the Prompt Payment of Accounts Act 1997, it will now be an implied term of every contract that interest is payable if debts are not paid on time. A payment is regarded as late when 30 days have elapsed unless an alternative payment period is specified in an agreed contract. The interest chargeable for late payment is the European Central Bank main refinancing rate plus seven percentage points unless otherwise agreed.

Also there is provision that compensation may be claimed for debt recovery costs. Like the "late payment interest", compensation is an implied term of every "commercial transaction", i.e. it forms part of the terms of the contract itself and is not in addition to the contract.

Tax treatment of Interest paid under S.I. 388 of 2002

VAT

The payment received in respect of interest under S.I. No. 388 of 2002, European Communities (Late Payment in Commercial Transactions) Regulations 2002 is not regarded as consideration for VAT purposes. Accordingly, any such payment collected by a taxable person from a customer, due to the late payment of that customer's account does not represent consideration for a taxable supply and is not, therefore, liable to VAT.

Income Tax/Corporation Tax

The interest is regarded as a trade expense, which is tax deductible in computing the profits of the person making the payment (i.e. the purchaser)

The Interest is taxable in the hands of the recipient (i.e. the supplier). Although strictly chargeable under Case 111 of Schedule D, it may be included as a trade receipt and accordingly assessed under Schedule D Case 1.

Professional Services Withholding Tax (PSWT)

Unlike interest paid under the Prompt Payment of Accounts Act, 1997, interest paid under the new Regulations is an implied contract.

Accordingly, where interest paid in accordance with Regulation 4 of the new Regulations on foot of payments, which are payments for professional services within the meaning of Section 520 TCA 1997, PSWT should be deducted from the interest.

When completing Forms F45 for issue to specified persons (i.e. the suppliers) accountable persons should include interest amounts.

Relevant Contract Tax

Where interest is paid in accordance with Regulation 4 of the new Regulations on foot of payments, which are payments to subcontractors in certain industries, within the meaning of Section 531 TCA 1997, RCT should be deducted from the interest.

When completing Forms RCTDC for issue to sub-contractors, principal contractors should include interest amounts.

Withholding tax on interest payments by companies to non-residents

Unlike interest paid under the Prompt Payments of Accounts Act, 1997, interest paid under the new Regulations is not yearly interest. Accordingly, Section 246 TCA 1997 does not apply where penalty interest is paid.

Tax treatment of compensation paid under S.I. No. 388 of 2002

The tax treatment of compensation paid under the new Regulations is not the same as interest paid under the Regulations as outlined above, with the exception that the issue of the application of Section 246, TCA, 1997 does not arise.

Appendix 2

List of Accountable Persons as set out in the Second Schedule 13 Taxes Consolidation Act 1997

- ◆ A Minister of the Government
- ◆ A local authority within the meaning of section 2(2) of the Local Government Act 1941
- ◆ A body established under the Local Government Services (Corporate Bodies) Act 1971
- ◆ Primary Care Reimbursement Service
- ◆ The Attorney General
- ◆ The Comptroller and Auditor General
- ◆ The Director of Public Prosecutions
- ◆ The Commissioner of Valuation
- ◆ The Chief Boundary Surveyor
- ◆ The Director of Ordnance Survey
- ◆ The Revenue Commissioners
- ◆ Public Appointments Service
- ◆ The Commissioners of Public Works in Ireland
- ◆ The Clerk of Dail Éireann
- ◆ The Legal Aid Board
- ◆ A vocational education committee or a technical college established under the Vocational Education Act 1930
- ◆ Teagasc
- ◆ A harbour authority
- ◆ An Foras Áiseanna Saothair
- ◆ Údarás na Gaeltachta
- ◆ The Industrial Development Agency (Ireland)
- ◆ Shannon Free Airport Development Company Limited
- ◆ Bord Fáilte Eireann
- ◆ An institution of higher education within the meaning of the Higher Education Authority Act, 1971
- ◆ CERT
- ◆ The Radiological Protection Institute of Ireland
- ◆ A voluntary public or joint board hospital to which grants are paid by the Minister for Health and Children in the year 1988-89 or any subsequent year of assessment
- ◆ An authorised insurer within the meaning of section 470
- ◆ An Bord Glas
- ◆ An Bord Pleanála
- ◆ Aer Lingus Group plc
- ◆ Dublin Airport Authority public limited company
- ◆ Arramara Teoranta
- ◆ Blood Transfusion Service Board
- ◆ An Bord Bia
- ◆ Bord na gCon
- ◆ Bord Gáis Éireann
- ◆ Bord Iascaigh Mhara
- ◆ Bord na Móna plc
- ◆ Coillte Teoranta
- ◆ The Combat Poverty Agency
- ◆ Coras Iompair Éireann
- ◆ Electricity Supply Board
- ◆ Housing Finance Agency public limited company
- ◆ Irish National Petroleum Corporation Limited

- ◆ Irish National Stud Company Limited
- ◆ National Building Agency Limited
- ◆ National Concert Hall Company Limited
- ◆ The Marine Institute
- ◆ An Post National Lottery Company
- ◆ Nítrigin Éireann Teoranta
- ◆ An Post
- ◆ Radio Telefís Éireann
- ◆ Royal Hospital Kilmainham Company
- ◆ The Environmental Protection Agency
- ◆ Forfás
- ◆ The Irish Aviation Authority
- ◆ The National Economic and Social Council
- ◆ The National Economic and Social Forum
- ◆ The National Roads Authority
- ◆ Temple Bar Properties Limited
- ◆ The Irish Film Board
- ◆ An educational institution established by or under section 3 of the Regional Technical Colleges Act, 1992 as a regional technical college
- ◆ The Dublin Institute of Technology
- ◆ Area Development Management Limited
- ◆ The Commissioners of Irish Lights
- ◆ Dublin Transportation Office
- ◆ The Heritage Council
- ◆ The Higher Education Authority
- ◆ The Independent Radio and Television Commission
- ◆ Horse Racing Ireland
- ◆ The Labour Relations Commission
- ◆ The Pensions Board
- ◆ The Office of the Director of Telecommunications Regulation
- ◆ The Law Reform Commission
- ◆ National Standards Authority of Ireland
- ◆ Enterprise Ireland
- ◆ Dublin Docklands Development Authority
- ◆ A Referendum Commission established by order made under section 2(1) of the Referendum Act 1998
- ◆ The Office of the Ombudsman
- ◆ The Public Offices Commission
- ◆ The Office of the Information Commissioner
- ◆ The Central Fisheries Board
- ◆ A regional fisheries board established by virtue of an order made under section 10 of the Fisheries Act, 1980
- ◆ A County Enterprise Board (being a board referred to in the Schedule to the Industrial Development Act, 1995)
- ◆ Western Development Commission
- ◆ The Equality Authority
- ◆ Commissioners of Charitable Donations and Bequests for Ireland
- ◆ Commission for Electricity Regulation
- ◆ A regional authority established by an order made under section 43(1) of the Local Government Act, 1991
- ◆ The Eastern Regional Health Authority, the Health Boards Executive or an area health board established under the Health (Eastern Regional Health Authority) Act, 1999
- ◆ Irish Sports Council
- ◆ An Bord Uchtála
- ◆ National Disability Authority
- ◆ Aquaculture Licences Appeals Board
- ◆ Office of the President
- ◆ Director of the Equality Tribunal
- ◆ Data Protection Commission

- ◆ Competition Authority
- ◆ Chief State Solicitor
- ◆ Central Statistics Office
- ◆ Commission to Inquire into Child Abuse
- ◆ National Sports Campus Development Authority
- ◆ Digital Media Development Ltd
- ◆ Citizens Information Board
- ◆ Human Rights Commission
- ◆ Pensions Ombudsman
- ◆ Refugee Appeals Tribunal
- ◆ The Dublin Institute of Advanced Studies
- ◆ Pre-Hospital Emergency Care Council
- ◆ Sustainable Energy Ireland - The Sustainable Energy Authority of Ireland
- ◆ The Health Insurance Authority
- ◆ Commission for Aviation Regulation
- ◆ Railway Procurement Agency
- ◆ The National Council on Ageing and Older People
- ◆ National Qualifications Authority of Ireland (NQAI)
- ◆ Breast Check, The National Breast Screening Programme
- ◆ The National Council for the Professional Development of Nursing and Midwifery
- ◆ Mater and Children's Hospital Development Ltd
- ◆ The National Consultative Commission on Racism and Interculturalism
- ◆ Office of Tobacco Control
- ◆ The Marine Casualty Investigation Board
- ◆ National Treasury Management Agency as regards the performance of functions by it conferred on, or delegated to, it by or under Part 2 of the National Treasury Management Agency (Amendment) Act 2000. (State Claims Agency)
- ◆ National Development Finance Agency
- ◆ The Personal Injuries Assessment Board
- ◆ The National Council for Curriculum and Assessment
- ◆ The State Examinations Commission
- ◆ Children Acts Advisory Board
- ◆ National Treatment Purchase Fund Board
- ◆ The Mental Health Commission
- ◆ Crisis Pregnancy Agency
- ◆ Irish Medicines Board
- ◆ National Education Welfare Board
- ◆ Oifig Choimisinéir na dTeangacha Oifigiúla
- ◆ The Health Service Executive
- ◆ Commission for Public Service Appointments
- ◆ Commission for Taxi Regulation
- ◆ The National Council for Special Education
- ◆ The National Library of Ireland
- ◆ Education Support Centres
- ◆ The Road Safety Authority
- ◆ Grangegorman Development Agency
- ◆ The Railway Safety Commission
- ◆ The Teaching Council
- ◆ EirGrid
- ◆ The Future Education and Training Awards Council
- ◆ Irish Auditing and Accounting Supervisory Authority
- ◆ Limerick Northside Regeneration Agency
- ◆ Limerick Southside Regeneration Area

- ◆ The Health Information and Quality Authority
- ◆ Teilifís na Gaeilge
- ◆ Food Safety Authority of Ireland
- ◆ National Social Work Qualification Board
- ◆ Sea-Fisheries Protection Authority
- ◆ National Centre for Partnership Performance
- ◆ National Economic and Social Development Office

The above list is not exhaustive. Subsidiaries of accountable persons within the meaning of section 155, Companies Act, 1963 are also obliged to register as accountable persons and to operate PSWT.

Appendix 3

Text of the Article in Tax Briefing, Issue (28 October 1997) on the Documentation used for Professional Services Withholding Tax.

Background

Tax Briefing - Issue 18 contained an article on the revised PSWT documentation, which was introduced with effect from 6 April 1995.

Difficulties have arisen in relation to the use of the Form F43, which was introduced to deal with situations where a form F45 was incorrect or was mislaid. This article clarifies the circumstances in which forms F43 should be sought from accountable persons (employing authority). In particular, the F43's should not be requested as a means of checking that the client has retained all F45s or as an alternative to the client retaining forms F45. We also want to make it clear that summary statements from accountable persons of PSWT deducted are not an acceptable alternative to forms F45/F43 in support of a claim for PSWT credit.

Instances where practitioners/clients are requesting forms F43

It has come to light that for the purposes of completing their 1995/96 return of income, some taxpayers have requested accountable persons to issue forms F43 in respect of every form F45 referable to that tax year. It appears that such requests are made for one of two reasons i.e. either

- ◆ the taxpayer has not retained any of the forms F45 referable to the tax year,
or
- ◆ the F43s are being used to check that none of the original forms F45 are missing.

Where a taxpayer has not retained any of the forms F45 referable to an accounting period or basis period, credit for of PSWT can be given by the Inspector only on receipt of forms F43 in replacement of the original forms F45.

Taxpayers and practitioners are reminded that forms F45 are valuable documents and should be retained. **Form F43 is intended for use in exceptional circumstances only.** Where a taxpayer requests forms F43 in respect of numerous payments, it is open to the employing authority to refuse to issue same - the employing authority has already satisfied the obligation imposed by section 16(2) Finance Act 1987 by the issue of a form F45 in relation to a payment.

Requests for forms F43 to check that none of the forms F45 are missing places a high and unnecessary administrative burden on the accountable person to whom the request is made. Taxpayers and practitioners are asked not to request forms F43 in these circumstances. Where taxpayers or their accountants wish to make such a check, accountable persons may agree to issue a statement setting out F45 details for a basis period or accounting period. Any such statement issued by an accountable person is for the information of the taxpayer or his/her agent only. **It will not be accepted by the Inspector for the purposes of a claim for PSWT credit.**

Practitioners should note that accountable persons are not obliged to issue such statements.

Form F43 replaced Special Letters/Statements

As stated in ***Tax Briefing***, Issue 18, the purpose of form F43 was to provide a secure form which replaced the special letters/statements issued by accountable persons in cases where forms F45 were lost etc. Such letters or statements, including a summary issued by the accountable person of PSWT deducted in a basis period or accounting period, are no longer acceptable as an alternative to forms F45 (and exceptionally F43) in support of a claim for PSWT credit.

Practitioners are asked to notify clients within the PSWT scheme of the above.

Appendix 4

Revenue Opinions regarding Professional Services

1 Advertising Services

Subject to the comments below in relation to advertising space or time, payments for advertising services are subject to PSWT. Advertising services include services involved in-

- ◆ designing an advertisement, and
- ◆ conducting an advertising campaign.

Advertising services can involve the use of many other services. For example, they may involve the services of photographers, models, graphic art designers, commercial artists, freelance writers, and printing. As the overall service provided by the advertising agency is an **advertising** service, PSWT is to be deducted from the total payment by the accountable person to the agency.

It should be noted that outside of the scenario outlined above, services such as photography, modelling, graphic design, commercial artistry, freelance writing and printing are not generally professional services for the purposes of PSWT. Accordingly, where an accountable person makes a payment for such a service directly to the person providing the service, the payment is not subject to PSWT unless such service forms part of a wider consultancy.

Advertising Space or Time

Where advertising space or time is provided as part of an overall professional service e.g. by an advertising agency as part of an advertising service, the total payment for the service (including the advertising space or time) is subject to PSWT.

Payments made to:

- ◆ an advertising medium (e.g. a newspaper), or
- ◆ a person acting as an agent for an advertising medium (e.g. an advertising agency)

in order to obtain advertising space or time are not subject to PSWT.

2 Archaeology

Payments in respect of archaeological consultancies are subject to PSWT. In general, payments in respect of archaeological digs or excavations are not subject to PSWT. However, where archaeological digs or excavations form part of an overall professional service, for example, an archaeological consultancy, the full amount of the payment is subject to PSWT.

3 Auctioneers/Estate Agents/Valuers

Payments in respect of auctioneers, estate agents and valuers fees are subject to PSWT. Where the fee includes advertising costs, the full amount of the fee (including advertising costs) is subject to PSWT.

4 Board Members/Chairpersons

Payments made to chairpersons and individuals who sit on boards and committees are generally emoluments from an office chargeable to tax and subject to the operation of PAYE/PRSI. Accordingly PSWT doesn't apply to such payments.

5 Computer Services

Payments for independent advice on the installation, development (including the development of a web site) or running of computer systems are subject to PSWT.

Payments in respect of the following services are not subject to PSWT.

- ◆ The sale of computer hardware and software packages
- ◆ The sale of software packages developed by the seller. This continues to be the position where the cost of the hardware or software package includes an element of service which is not charged separately to the customer, for example:
 - initial analysis of the work to be computerised
 - development of a hardware or software package for the customer
 - provision of training and other back-up services
- ◆ Maintenance of computer software

6 Consultancy

Payments in respect of any type of consultancy are subject to PSWT. Note that a service which involves the provision of advice is a consultancy.

7 Costs of Acquisitions/Disposals of Land or Property

General

Payments in respect of professional costs associated with the acquisition or disposal of property or land other than under a compulsory purchase order (see below), including payments made in respect of the costs of a person other than the accountable person are subject to PSWT. Payments in respect of professional costs incurred prior to the formal confirmation of a compulsory purchase order are also subject to PSWT unless they are part of an out of court settlement (see **Opinion 8** overleaf)

Property/Land Acquisitions by Compulsory Purchase Order

Where property is acquired by compulsory purchase order, the following are subject to PSWT:

- ◆ Conveyancing costs
- ◆ Payments made by the accountable person in respect of the accountable person's own costs.

Where property is acquired by compulsory purchase order, the following are not subject to PSWT:

- ◆ Professional costs awarded by an arbitrator. Examples include vendors legal costs, auctioneers fees, estate agents fees, valuers fees, etc.
- ◆ Professional costs incurred in reaching agreement, prior to arbitration, where such costs could have been awarded by an arbitrator.

8 *Costs of Legal Actions*

Where, under a ruling of a court, tribunal or similar body which is legally empowered to award costs, an accountable person is required to make a payment to a person in respect of professional costs incurred by that person, the payment is not subject to PSWT. This also applies where the payment is made directly by the accountable person to the person who provided professional services.

The reason for not applying PSWT in these circumstances is that, once awarded, the costs are regarded as a compensation payment made by the accountable person and not a payment in respect of professional services.

PSWT applies to payment of the accountable persons own costs, including any payment out of costs awarded to the accountable person.

Payments made to a person in an "out of court" settlement towards the professional costs of that person are not subject to PSWT if the action was one in respect of which an order for costs could have been made by the court, tribunal etc.

In all other cases, PSWT must be deducted from payments made in respect of the costs of a person other than the accountable person.

9 *Debt Collection*

Payments in respect of a debt collection service are subject to PSWT. However, where no payment is actually made but instead a percentage of the amount recovered is retained by the debt collector, PSWT does not apply.

10 *Dental Technicians*

Payments in respect of the supply by a dental technician of goods such as dentures, dental braces and other prosthetic appliances (which are manufactured by the dental technician), directly to an accountable person, are not subject to PSWT.

11 Employment/Recruitment Agencies

A service involving the interviewing, screening, or selection of candidates for a job is regarded as a consultancy service and, accordingly, payments for such services are subject to PSWT.

Payments to employment or recruitment agencies simply for the placement of individuals are not subject to PSWT.

12 Films/Radio/Television Programmes

Payments made directly to actors, producers and directors and for postproduction facilities solely for the purposes of making a film, radio or television programme or series are not subject to PSWT.

Where accountants, solicitors etc. are engaged to provide professional services for the purposes of making a film, radio or television programme or series, payments made by an accountable person for such services are subject to PSWT.

13 Insurance

Payments in respect of insurance consultancy services are subject to PSWT. Examples of such services include loss adjusting, identification/assessment of risk exposure, marketing risks, policy design, actuarial advice and claims analysis.

Payments of excesses under insurance policies are not subject to PSWT.

Payments of insurance premiums to brokers for transmission to an insurance company are not subject to PSWT. However, where a broker charges a separate fee for his services, PSWT should be deducted from the broker's fee. Such a fee could be in the form of an annual management fee or a fee charged in relation to a specific transaction.

14 Laboratory Tests

Payments in respect of laboratory tests are subject to PSWT where the test involves a service which is a professional service. For example, payments in respect of medical tests such as blood tests and biopsies are subject to PSWT because the service is of a medical nature.

Payments in respect of laboratory tests are not subject to PSWT where the test is not a service which is a professional service. For example, a payment in respect of a test to measure the level of pollution in water is not subject to PSWT.

15 Medical Appliances

Payments in respect of the supply of artificial limbs, artificial eyes, surgical and medical appliances including any incidental service of fitting are not subject to PSWT. However, where a separate fee is charged for fitting, the fee is subject to PSWT as the payment is for a service of a medical/optical/aural nature.

16 Medical Costs incurred in respect of Employees

Where, as part of their conditions of employment, the employees of an accountable person are entitled to submit bills for medical treatment incurred by them for payment by the accountable person, payments made by the accountable person to its employees in reimbursement of those expenses are not subject to PSWT.

Where, the accountable person pays the medical practitioner directly for the provision of medical services to the employee, PSWT applies to the payment.

17 Opticians/Optometrists

Where opticians/optometrists receive payments from the Department of Social Welfare, or from the Health Service Executive, the cost of goods provided may be excluded from the amount to be charged to PSWT where the fee and the cost of the goods are shown separately.

Opinion 15 overleaf applies as regards payments in respect of optical appliances.

18 Printing

A printing service is not of itself a professional service within the terms of PSWT. Accordingly, payments in respect of services which involve printing and nothing else are not subject to PSWT.

Where printing forms part of an overall professional service provided to an accountable person, it is an expense incurred in the provision of that service. The full amount of the payment in respect of the service is subject to PSWT. For example, where an accountable person commissions a specified person to design and print a brochure, the entire payment for the production of the brochure is subject to PSWT.

19 Quality Control

A quality control service is not of itself a professional service within the terms of PSWT. Accordingly, payments in respect of quality control services are not subject to PSWT where the service provided has no professional element. For example, payments in respect of examinations to determine whether a quality control level is achieved are not subject to PSWT.

Where a quality control service includes a professional element, the entire payment is subject to PSWT. For example, payments in respect of a quality assurance consultancy i.e. the provision of advice on quality control matters are subject to PSWT.

20 Retail Chemists

Payments made to retail chemists are subject to PSWT. However, the cost of goods supplied and containers may be excluded from the amount to be charged to PSWT if these costs are separately identified.

21 Teaching/Training

Payments in respect of training consultancy services are subject to PSWT. Examples of a training consultancy service are

- ◆ the provision of advice on training requirements and
- ◆ the design/development of a course, syllabus or programme.

Subject to Opinion 22 below, payments in respect of the following services are not subject to PSWT:

- ◆ Teaching, training or lecturing services (advice on the taxation of part-time lecturers, teachers and trainers is given at Appendix 5)
- ◆ Speeches/lectures given by guest speakers
- ◆ The provision of material for open and distance learning courses including any element of professional service involved in preparing or developing such courses which is part of the overall package of the provision of the material and which service is not charged separately to the customer.

22 Training Provided on behalf of FAS

Payments for training services provided by self-employed persons (see paragraph 1.3) on behalf of FAS are subject to PSWT. In determining whether training services are provided on behalf of FAS, the following rules apply:

- ◆ Payments in respect of training courses which are for FAS employees only are subject to PSWT.
- ◆ Payments in respect of training courses which are open to persons other than FAS employees to participate in are not subject to PSWT.
- ◆ Payments by FAS to its employees e.g. course participants, including payments to employees who provide training services, are subject to PAYE. Accordingly, PSWT does not apply to these payments .

23 Video Production

Payments for the production of a video by a specified person for an accountable person are not subject to PSWT provided

- ◆ there is no element of consultancy included in the service provided by the specified person and,
- ◆ the video is subsequently sold by the specified person as a finished product to the accountable person.

Where there is an element of consultancy involved in the service provide by the specified person, PSWT applies to the full amount of the payments.

Appendix 5

Text of the Article in Tax Briefing, Issue 28 (October 1997) on the Taxation of Part-Time Lecturers / Teachers / Trainers

Introduction

The question as to whether part-time lecturers/teachers/trainers are engaged under contracts of service (employees) or under contracts for service (self-employed) arises regularly.

Revenue Position

Revenue's view is that part-time lecturers/teachers/trainers are employees.

Payments are to be made to these individuals net of statutory deductions for PAYE and PRSI.

Case Law

Revenue's position is founded on a number of precedents, which can be summarised as follows:

Irish Cases

- ◆ In the Circuit Court, in 1992, it was held that part-time lecturers employed in a school were engaged under a contract of service (employee).
- ◆ In the High Court, in 1986, Mr. Justice Murphy held in the case of Stephen Barcroft v Minister for Health and Social Welfare and James Agnew (Social Welfare Appeals Officer), that the teachers engaged by him performed their work under a contract of service and that the employments were insurable.
- ◆ A Social Welfare Appeals Officer, in 1996, upheld a Deciding Officers decision that individuals engaged as part-time lecturers, in a teaching establishment, were insurable under the Social Welfare Acts.

UK Cases

- ◆ *Fuge v McClelland* (High Court Chancery Division, 22 June 1956). This case involved a full-time teacher who also taught adult evening courses. It was held that the night work also came under Schedule E, just as much as the daytime activities.
- ◆ *Mitchell & Eden v Ross* (House of Lords, May/July 1961). In this case it was held that part-time specialists (hospital consultants) engaged under the Health Act 1946 were assessable under Schedule E.
- ◆ *Sidey v Phillips* (Chancery Division 5 December 1986). In this case it was held that a non-practising barrister was properly assessable under Schedule E in respect of his part-time lecturing fees.
- ◆ *Walls v Sinnott* (Chancery Division). This case upheld a decision that a professional singer who lectured in music at a technical college for 4 days each week was assessable under Schedule E.

Exceptions

Revenue accepts that the above position need not apply in situations where the lecturers/teachers/ trainers give "once off" lectures. Lecturers/teachers/trainers in these positions will generally only give lectures once or twice a year for the same body. Such lecture fees must, of course, be returned by the individuals concerned under the self-assessment rules.

It would not be accepted, however, that lecturers/teachers/trainers who give a series of "once off" or guest lectures for the same body are outside the scope of PAYE/PRSI.

Any cases of doubt under this heading can be clarified by contacting the relevant tax office.

