

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

**Finance Act 2020 edition**

## **Part 37 Administration**

**December 2020**



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

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

### **Finance Act 2020 edition**

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## MANAGEMENT PROVISIONS

### PART 37 ADMINISTRATION

#### Overview

This Part sets out the procedural details and management provisions necessary for the operation of the tax system.

#### 849 Taxes under care and management of Revenue Commissioners

The duties of income tax, corporation tax and capital gains tax are placed under the care and management of the Revenue Commissioners. (1) & (2)

The Revenue Commissioners are authorised to do all such acts as may be deemed necessary and expedient for the purposes of raising, collecting, receiving and accounting for income tax, corporation tax and capital gains tax and, unless the Minister for Finance otherwise directs, to appoint such officers and other persons for those purposes as are not required to be appointed by some other authority. (3)

If one of the Revenue Commissioners dies in office or resigns or retires, all appointments made under *subsection (3)* during his/her tenure continue in force. The holders of such appointments have the power to execute the duties of their offices and to enforce in the execution of those duties the laws and regulations relating to tax in every part of the State. (4)

The Revenue Commissioners may suspend, reduce, discharge or restore any person appointed under *subsection (3)*. (5)

Any Revenue function in relation to tax may be carried out by any one Revenue Commissioner. (6)

#### 850 Appeal Commissioners

The Minister for Finance is obliged to appoint persons to be Appeal Commissioners for the purposes of the Income Tax Acts. Persons so appointed have the authority to exercise the powers, and to perform the duties, assigned to them under the Income Tax Acts. (1)

The Minister for Finance must direct what salary and expenses are to be allowed to the Appeal Commissioners. (2)

The Minister for Finance must lay an account of the appointment of Appeal Commissioners and their salaries before Dáil Éireann within 20 days of their appointments or within 20 days of Dáil Éireann resuming to sit where an appointment was made during a recess. (3)

Unless otherwise expressly provided for, the functions of the Appeal Commissioners or any other Commissioners may be carried out by any 2 or more Commissioners. (4)

#### 851 Collector-General

The Revenue Commissioners are required to appoint from among their officers a person to act as Collector-General to hold office at their will and pleasure. (1)

*This subsection has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.* (2)

The Revenue Commissioners are empowered to nominate persons from among their officers or employees to exercise on behalf of the Collector-General any or all of the powers and functions conferred on the Collector-General by the Tax Acts and the Capital Gains (3)

Tax Acts. Those powers and functions, as well as being exercisable by the Collector-General, will also be exercisable by persons so nominated.

If the office of the Collector-General is vacant or the Collector-General is ill or otherwise unable to carry out his/her duties, the Revenue Commissioners may nominate from among their officers an acting Collector-General to carry out such duties. References in law to the Collector-General are to be taken, where appropriate, as including a reference to a person so nominated. (4)

The Revenue Commissioners may revoke any nomination made under this section. (5)

## **851A Confidentiality of Taxpayer Information**

### **Summary**

This section formalises taxpayer confidentiality and provides a specific tax related provision which will reassure taxpayers that personal and commercial information revealed to Revenue for tax purposes is protected against unauthorised disclosure.

In relation to a registered farm partnership, provision is made to allow disclosure, to the Minister for Agriculture, Food and the Marine, of information relating to failure to maintain the conditions for registration.

The section also provides for the imposition of fines on Revenue officers or any persons engaged by or on behalf of the Revenue Commissioners found guilty under this section of a breach of confidentiality.

### **Details**

#### ***Definitions***

A number of terms are defined for the purposes of this section and are self-explanatory.

A definition of “service provider” was inserted by Section 81 of the Finance (No 2) Act 2013. The purpose of the definition is to ensure that the taxpayer confidentiality provisions apply not only to Revenue officers but also to service providers and their employees who may be engaged by Revenue for the purposes of carrying out work relating to the administration of any taxes or duties.

Having regard to the addition of service provider, the definition of “taxpayer information” has also been amended to provide that it means personal information relating to one or more persons obtained for the purposes of the Acts not only by a Revenue officer, but also by a service provider. The definition is also extended to information obtained by a Revenue officer or service provider purportedly for the purposes of the Acts. This amendment is to provide that only information actually required for the purposes of the Acts may be obtained by a Revenue officer or service provider.

#### ***General position regarding disclosure***

Taxpayer information is confidential and may only be disclosed under this provision or under any other provision which specifically allows it.

#### ***Offence of disclosure***

A Revenue officer, service provider or any person to whom taxpayer information is disclosed who knowingly-

- provides taxpayer information to anyone,
- allows taxpayer information to be provided to anyone,
- allows anyone to have access to taxpayer information, or
- uses taxpayer information, otherwise than in the course of their work,

that he or she purports is required for the purposes of the Tax Acts but is not, is guilty of an offence and liable to a fine of €3,000 if summarily convicted or €10,000 if convicted on indictment.

### ***Legal Proceedings***

Except in the case of criminal proceedings or other legal proceedings concerned with tax, a Revenue officer is not required to give or produce evidence in connection with any legal proceedings.

### ***Exception***

Disclosure of information may be made in the case of criminal proceedings or other legal proceedings concerned with tax, including Appeal Commissioners cases.

### ***Criminal Offences***

Where a Revenue officer has information that suggests that a criminal offence has been committed, he/she may report the matter and provide relevant information to the relevant investigation authority. Any information provided to an investigation authority may only be used by that authority for the purposes of detection or investigation of the matter reported.

### ***Professional Standards***

Where a Revenue officer has formed the view that the work of a tax adviser/agent does not meet professional standards, he/she may report the matter and provide relevant information to the relevant professional body. Any information provided to a professional body may only be used by that body for the purposes of any investigation of the matter reported.

### ***Authorised Disclosure***

A number of circumstances in which a Revenue officer may disclose information are listed. These are

- (a) When authorised by the Freedom of Information Acts, provided the information is not confidential information.
- (b) Under the Tribunal of Enquiry (Evidence) Acts.
- (c) Disclosure of confidential information to the taxpayer to whom the confidential information relates.
- (d) Where a taxpayer agrees to the disclosure of confidential information that relates to him/herself.
- (e) Information provided to a personal representative, in that capacity.
- (f) Specified information in relation to a charity.
- (g) Disclosure to the Department of Finance in connection with fiscal policy formulation and evaluation.
- (h) Disclosure of information relating to a taxpayer which is necessary in connection with establishment of the liability of another taxpayer.
- (i) Disclosure of information that is not confidential information.
- (j) Disclosure that is authorised by another Act.
- (k) Disclosure of taxpayer information to a person engaged by the Revenue Commissioners for the purposes of carrying out work on behalf of the Revenue Commissioners relating to the administration of taxes or duties.

A person to whom taxpayer information is disclosed in these circumstances is prohibited from using that information for any purpose other than that for which it is disclosed.

- (l) Disclosure of information to the Minister for Agriculture, Food and the Marine, insofar as it relates to the failure of a registered farm partnership to continue to meet the conditions for registration.
- (m) Disclosure of information to the Minister for Agriculture, Food and the Marine, insofar as it relates to relief granted under section 667C or under section 81D of the Stamp Duties Consolidation Act 1999 in order to comply with an EU Commission Regulation

## **851B Use of, and access to, taxpayer information**

### Summary

This section governs the use of and access to taxpayer information to ensure that Revenue legislation is compatible with the Regulation EU (2016/679), General Data Protection Regulation (GDPR).

The section;

-ensures that processing, including automated processing, of taxpayer information carried out by Revenue has a clear legal basis that is compatible with the GDPR;

-sets down the rights of the taxpayer with regard to safeguarding, use of, retention and accuracy of their information;

-sets out the purposes for which the taxpayer information may be processed;

-sets down restrictions on specified grounds to the rights of individual taxpayers with regard to access to their information and confirmations in respect of processing and profiling of their information;

-where the rights of the taxpayer are restricted written grounds are given to facilitate challenge by the taxpayer.

### Details

#### Definitions

(1)

A number of definitions are provided in the section.

“Acts” and “Taxpayer information” are as defined in section 851A.

The subsection provides a definition of:

“processing” which sets out all the operations that Revenue carry out on data.

and “profiling” as a form of processing which includes automated profiling.

“Tax” includes any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

#### Data Protection

(2)

The appropriate data protection safeguards in respect of taxpayer information under which Revenue operates are put on a statutory footing.

#### Purposes of processing and profiling

(3)

Revenue may process or profile taxpayer information for the purposes specified in the subsection. Article 22 of the GDPR sets out that automated decision making, including profiling, of personal data must be authorised by law. This subsection acts to authorise the processing, including profiling, which can be by automated means, of taxpayer information where it is necessary to do so (“where required”) for the specific purposes of carrying out Revenue’s functions and obligations as set out in detail in the 5 sub-paragraphs of subsection 3.

#### Right of access by data subject

(4)

Sub-paragraph (a) provides for a right to confirmation whether the taxpayer information of which the individual is the subject has been processed and to access that information.

Sub-paragraph (b) provides for a right to confirmation whether the taxpayer information of which the individual is the subject has been profiled, the right to information on the

basis of that profiling and to access the outcome of that profiling.

As envisaged by Article 23 of the GDPR, these rights are made subject to appropriate restrictions that is, where such confirmation or access would or is likely to cause prejudice to one or more of the circumstances specified in subsection (5).

Restrictions of right of access

(5)

Confirmation or access under subsection (4) may be denied where it “would, or is likely to, cause prejudice to”;

(a) the administration, assessment, collection and recovery of tax;

(b) any enquiry or investigation into a liability or liabilities in relation to tax under the Acts or a liability to foreign tax within the meaning of section 912A.

Section 912A permits the use of Revenue information powers to obtain information for tax authorities in other territories for the purposes of complying with the provisions of the Convention on Mutual Administrative Assistance in Tax Matters.

(c) the investigation or prevention of an offence under the Acts;

(d) the administration of customs controls.

(e) of subsection (5) provides for the right to be restricted in the circumstance where the information was given in confidence or on the understanding that it would be treated as confidential.

(f) of subsection (5) provides that confirmation and access is restricted where it would be contrary to any other express provisions imposed by the Acts or any other enactments.

**Refusals of access**

(6)

Where requests for access or confirmation are refused under subsection (5) such refusals must be in writing and must set out the grounds for refusal.

### **852 Inspectors of taxes**

The Revenue Commissioners may appoint inspectors of taxes who must obey the instructions and directions of the Revenue Commissioners. (1)

The Revenue Commissioners may revoke an appointment under this section. (2)

Inspectors of taxes appointed by the Minister for Finance before 27 May, 1986 are deemed to have been appointed by the Revenue Commissioners. (3)

### **853 Governor and directors of Bank of Ireland**

This section is deleted by section 38(1)(c) of the Finance Act 2012, subject to the commencement of section 38 by order of the Minister for Finance.

### **854 Appointment of persons for purposes of assessment of certain public offices**

This section was deleted by section 131 and Schedule 5 (paragraph 2(b)) of the Finance Act 2012.

### **855 Declaration to be made by Commissioners**

This section was deleted by section 131 and Schedule 5 (paragraph 2(b)) of the Finance Act 2012.



### **856 Disqualification of Commissioners in cases of personal interest**

A Commissioner is debarred from involving himself or herself in any income tax appeal, proceedings or matter in which he/she has an interest either on his/ her own behalf or on behalf of another person. (1)

A penalty of €60 applies to a Commissioner who fails to withdraw from a case in which he/she has such an interest. (2)

For the purposes of corporation tax, an Appeal Commissioner is debarred from taking part in an appeal where he/she has an interest in his/her own right or in the right of any other person, in any matter under the appeal. (3)

### **857 Declarations on taking office**

A person appointed to any of the following offices, namely, Appeal Commissioner, Clerk to the Appeal Commissioners, inspector of taxes or Collector-General, must make the relevant declaration contained in *Part 1 of Schedule 27*. (1)

The declaration must be made before a peace commissioner. (2)

A person who performs his/her duties before making the appropriate declaration is liable to a fine of €125. (3)

### **858 Evidence of authorisation**

#### **Summary**

This section provides for a specific identity card, which is acceptable as evidence of a Revenue officer's authorisation for the purposes of specified provisions. These specified provisions are those that are shown on the particular officer's identity card. In addition, the production of the identity card satisfies any statutory requirement in those provisions that such an officer must, on request, produce his/her authorisation.

#### **Details**

##### ***Definitions***

The term “the Acts” is the legislation relating to customs and excise duties, income tax, corporation tax, capital gains tax, value-added tax, capital acquisitions tax, stamp duty and local property tax and includes the European Communities (Intrastat) Regulations. (1)

An “authorised officer” is a Revenue officer who is authorised, nominated or appointed under any provision of the Acts to exercise or perform any function (including powers and duties) under any of the specified provisions.

The “identity card” of an authorised officer is a card issued by the Revenue Commissioners which —

- states that the officer is an officer of the Revenue Commissioners authorised to perform functions in relation to specified legislation shown on the card,
- bears the officer's photograph and signature,
- bears a hologram showing the logo of the Revenue Commissioners,
- bears a facsimile signature of a Revenue Commissioner, and
- states the specified provisions in respect of which the officer is authorised.

The “specified provisions” are either or both the provisions of the Acts under which the authorised officer —

- is authorised and which are specified on his/her identity card, and
- exercises or performs functions, powers or duties under the legislation relating to duties of customs and excise.

### ***Evidence of authorization***

Where an authorised officer, in the exercise or performance of any functions under any of the specified provisions, is requested to produce or show his/her authorisation for the purposes of that provision, the production by the authorised officer of his/her identify card is to be taken as evidence of authorisation under that provision and also satisfies any obligation under that provision which requires the authorised officer to produce such authorisation on request. (2)

### ***Commencement***

The section comes into operation on a day appointed by order by the Minister for Finance. (3) Such an order was made by the Minister for Finance on 26 June, 1997, bringing this section into operation as on and from 1 July, 1998 (S.I. No. 212 of 1998).

## **859 Anonymity of authorised officers in relation to certain matters**

### **Summary**

This section provides for anonymity for Revenue officers involved in any body (namely, the Criminal Assets Bureau) established to identify the assets of persons which derive or are suspected to derive, directly or indirectly, from criminal activity and to deprive or deny such persons of the assets or the benefit of such assets. In particular, the section secures that, when excising his/her powers and duties on behalf of such a body, a Revenue official is not required to identify himself or herself and is to exercise or perform written duties in the name of the body and not in his/her own name.

### **Details**

#### ***Definitions***

An “authorised officer” is an officer of the Revenue Commissioners nominated by them to be a member of the staff of the body. (1)

The meaning of “the body” is linked back to the definition of that term in **section 58** (that is, it is a body established by or under statute or by the Government, the purpose or one of the principal purposes of which is the identification of the assets of persons which derive or are suspected to derive, directly or indirectly, from criminal activity, the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the those purposes). The Criminal Assets Bureau has been established for these purposes under the Criminal Assets Bureau Act, 1996.

The term “proceedings” includes any hearing before the Appeal Commissioners.

The term “the Revenue Acts” covers the legislation governing customs and excise duties, income tax, corporation tax, capital gains tax, value-added tax, capital acquisitions tax, stamp duty, residential property tax, vehicle registration tax and local property tax.

#### ***Protection of identity of authorised officers***

Notwithstanding any requirements made by or under any enactment or any other requirement in administrative and operational procedures, including internal procedures, all reasonable care is to be taken to ensure that the identity of an authorised officer is not to be (2)

revealed.

Without prejudice to the generality of the above, the section provides for the following specific anonymity rules for authorised officers acting in pursuance of the functions of the Criminal Assets Bureau — (3)

- when exercising his/her powers or duties under the Revenue Acts, an authorised officer is not to be required to show any identification (authorisations or warrants of appointment) and is to be accompanied by a member of the Garda Síochána who is to identify himself or herself as such and confirm that he/she is accompanied by an authorised officer;
- where an authorised officer exercises or performs in writing any powers or duties under the Revenue Acts or any other enactment relating to Revenue, that exercise or performance is to be done in the name of the Criminal Assets Bureau and not in the name of the individual authorised officer involved;
- in any proceedings arising out of the exercise or performance of his/her duties under the Revenue Acts documents are not to reveal the identity of any authorised officer, and the identity of the authorised officer other than as an authorised officer is not to be revealed to anyone other than the judge or Appeal Commissioner in charge of the proceedings;
- where an authorised officer is to give evidence in any proceedings, that evidence is to be given in the hearing but not in the sight of any person where the judge or Appeal Commissioner is satisfied that there are reasonable grounds in the public interest for the evidence to be so given.

### **860 Administration of oaths**

A Peace Commissioner may administer an oath to be taken by any officer or person in any matter relating to income tax, corporation tax or capital gains tax. (1)

An Appeal Commissioner may administer an oath to be taken before the Appeal Commissioners by an officer or other person in any matter relating to income tax or corporation tax. (2)

### **861 Documents to be in accordance with form prescribed by Revenue Commissioners**

Every document required to be used in assessing, charging, collecting and levying income tax, corporation tax or capital gains tax must be in the form prescribed by the Revenue Commissioners. (1)

A tax return (which includes any statement, declaration or list) relating to income tax, corporation tax or capital gains tax must be made on a form prescribed by the Revenue Commissioners. (2)

### **862 Exercise of powers, etc of Minister for Finance under Tax Acts**

Anything required to be done under the Tax Acts or the Capital Gains Tax Acts by the Minister for Finance may be executed by the Secretary General, a Second Secretary General or an Assistant Secretary of the Department of Finance.

### **863 Loss, destruction or damage of assessments and other documents**

Where an assessment or return in respect of income tax, corporation tax or capital gains tax has been lost, destroyed or so damaged as to be illegible, the Revenue Commissioners, the Collector-General, an inspector or other officer may do all such acts as they might have done if the assessment had not been made or the return furnished. (1)

Where any person charged to income tax, corporation tax or capital gains tax by virtue of the above provision can prove that they have paid the requisite tax for the year or the accounting period involved, credit must be given for that payment either by reducing the amount charged or by repayment. (2)

### 864 Making of claims, etc

In relation to income tax, corporation tax and capital gains tax, all claims for a deduction, allowance or exemption, repayment of tax or relief of a kind for which no right of appeal exists must be made in such manner and form as the Revenue Commissioners may prescribe and are to be determined by the Revenue Commissioners or such other officer of the Revenue Commissioners as they may authorise. (1)

Where a person is unhappy with a determination received under this section, they person may appeal the determination by notice in writing to the Appeal Commissioners. The appeal must be made within 30 days after the date of the notice of the determination. The appeal is heard and determined in the manner provided for in *Part 40A*. (1A)

Where a resident company (or a non-resident company within the charge to corporation tax) receives an annual payment net of income tax, it may offset the income tax withheld against corporation tax liability for the accounting period in which the payment is made. This relief must be specifically claimed. In addition, in so far as an exemption from income tax conferred by the Corporation Tax Acts calls for a repayment of tax, the exemption must be claimed. (2)

With effect from 1 January 2011 and subsequent years, any person who- (3)

- makes a false claim,
- delivers a false claim, or
- assists in or induces a false claim,

will be liable to a penalty of €3,000.

### 864A Electronic Claims

#### Summary

This section provides enabling powers for the Revenue Commissioners to introduce facilities, including automated facilities, for PAYE taxpayers to make electronic (including telephone) claims for reliefs which are to be used in the operation of the PAYE system or in relation to repayments of tax paid under that system.

The particular type of claims that can be made in accordance with the section must be specified by the Revenue Commissioners. In general, these claims will be in respect of all the main personal tax credits and reliefs, including notifications and notices in relation to the taxpayers circumstances e.g. change in personal circumstances or details and, in the case of married couples or civil partners, in relation to their preferred taxation option, i.e. single treatment, joint assessment or separate assessment.

In the case of automated telephone claims, claims will be restricted to low risk tax credits e.g. age allowance, trade union subscriptions and service charges.

The electronic system permits PAYE taxpayers to view their tax details and to request balancing statements.

## Details

### Definitions

“electronic communications” means communications by electrical, digital, magnetic, optical, electromagnetic, biometric or photonic technology and related technologies and includes telegraphy apparatus. (1)(a)

“telegraphy apparatus” covers all forms of telephone used to convey either or both spoken messages and information, e.g. direct contact, touch tone, voice recognition or mobile phone (including text messaging). (1)(b)

The meanings of “information” and “public telecommunications service” are clarified for the purposes of the definition of “telegraph apparatus”. “Information” has the same meaning as in the Electronic Commerce Act 2000, that is, it includes data, all forms of writing and other text, images (including maps and cartographic material), sound, codes, computer programmes, software, databases and speech.

Unless the Revenue Commissioners otherwise direct, the section applies to claims (as elaborated below) in relation to reliefs which are to be used in- (1)(c)

- the operation of the PAYE system for the current year, or
- in relation to tax deducted under PAYE for an earlier year.

While self-employed individuals with PAYE income may avail of the facility in relation to the current year they are excluded from using it in relation to back years. In that instance they are within the Self Assessment system and are subject to all that system’s procedures regarding return filing compliance and audit.

The definition of “claim” includes claims for repayment on account of unemployment and various applications, notifications, notices etc. that PAYE taxpayers may have to give to Revenue in connection with their tax affairs, including in the case of married couples in relation to the basis of assessment. (1)(d)

Notwithstanding any other enactment (e.g. section 2 of the Electronic Commerce Act 2000) the phrase “in writing” does not include representing or reproducing words in visible form using electronic means. (1)(e)

Notwithstanding any requirement that claims to relief to which the section applies must be in writing etc, such of those claims that the Revenue Commissioners specify may, subject to terms and conditions specified by the Commissioners, be made by approved electronic communications. (2)

The Revenue Commissioners are to make known, in whatever manner they think fit, any terms and conditions laid down by them for the purposes of the section. (3)

Where the Revenue Commissioners lay down terms and conditions for the making of claims under the section then electronic claims must be made in accordance with those terms and conditions. (4)

Terms and conditions laid down by the Revenue Commissioners for the purposes of the section cannot alter the statutory requirements regarding time limits for claims or contents of claim. However, they may indicate how the contents of a claim are to be met when it is not in writing e.g. retention of supporting documentation in case claim is selected for a desk examination. (5)

Two presumptions in relation to electronic claims are provided for: (6)

- (a) unless and until the contrary is proved, a claim is to be taken as having been made by the person purporting to have made it, and
- (b) the claim will be treated as having been made at the time the Revenue

Commissioners acknowledge it.

Electronic claims can be enquired into under the new *section 886A*. (7)

Where an electronic claim results in the issue to the claimant of a notice of determination of tax credits and standard rate cut-off point, the inspector is to be deemed to have made a determination in the matter under the Income Tax Regulations. (8)

*Section 917M* applies in respect of proceedings in relation to electronic claims in the same way that it applies in respect of proceedings in relation to *Chapter 6 of Part 38*. (9)

Officials of the Revenue Commissioners acting under their authority may exercise the powers and functions of the Commissioners under the section. (10)

## 865 Repayment of tax

### Summary

*Section 865* provides for a general right to repayment of tax overpaid, subject to a 4-year claim limitation period.

### Details

#### Definitions

The terms “Acts”, “chargeable period”, “correlative adjustment”, “tax” and “valid claim” are defined both for the purposes of the section and *section 865A*. (1)(a)

#### Valid Claim

For the purposes of *subsection (3)*, a claim to repayment will be regarded as a valid claim where: (1)(b)

- (i) a statement or return which the taxpayer is required to furnish under the Acts, contains all the information which Revenue would reasonably require to determine the amount, if any, of the repayment and the repayment arises out of an assessment made, or that would have been made, at the time the statement or return is delivered, on foot of the statement or return.
- (ii) such a statement or return is either not required or it does not contain all the necessary information, when all that information is furnished, and
- (iii) a correlative adjustment is concerned, when the amount of the adjustment is agreed by the two States.

#### Right to repayment

Subject to the provisions of the section, where a taxpayer overpays tax which, for whatever reason including a mistake or error in a return or statement made for the purposes of an assessment, he was not obliged to pay, then the taxpayer is entitled to repayment of it. (2)

Where the taxpayer is making a claim for repayment of tax because of an error or a mistake, then they must amend the tax return, in accordance with *section 959V*, to correct that error or mistake. (2A)

Where the taxpayer must amend a tax return to correct an error or mistake for a period before *Part 41A* commenced, then *section 959V* is applied with certain modification, e.g. references to returns and self-assessments are taken to just be references to returns as self-assessments did not exist. (2B)

A repayment of tax under the section will only be due when a valid claim is received. (3)

However, the Revenue Commissioners may, in the absence of a valid claim, repay tax deducted under PAYE in a case where they are satisfied that tax has been overpaid. [This (3A)

does not apply in the case of Self Assessment taxpayers with PAYE income as they continue to have to make a claim for any overpaid tax]. Under this derogation the Revenue Commissioners may not make a repayment at a time at which a claim for the repayment would not be allowed i.e. after 4 years from the end of the chargeable period to which the repayment relates.

### ***Time Limits***

In general, claims for repayment of tax in relation to any chargeable period beginning on or after 1 January 2003 must be made within 4 years after the end of the chargeable period to which the claim relates. A similar time limit applies to claims made on or after 1 January 2005 in relation to earlier periods. (4)

However, if a right to repayment arises under another provision of the Acts and — (5)

- (a) that provision provides for a shorter time limit for repayment than the 4-year limit, then that shorter time limit applies to the claim, and
- (b) that provision provides for a longer time limit than the 4-year limit, then the 4-year limit applies.

**Section 959V** provides for certain timeframes within which a taxpayer can amend a return and self assessment and these are relevant in the context of claims for repayment arising from errors or mistakes in the original return or self assessment.

Except as provided for by the Acts, including **sections 865** and **865A**, the Revenue Commissioners may not make a repayment of tax or pay interest on such a repayment. This ensures that any common law right to repayment or interest does not apply. (6)

Where a person is unhappy with a decision made by Revenue in respect of a claim, the person may appeal the decision by notice in writing to the Appeal Commissioners. The appeal must be made within 30 days after the date of the notice of the decision. The appeal is heard and determined in the manner provided for in **Part 40A**. (7)

The Revenue Commissioners may repay tax directly to a specified bank account nominated by the taxpayer. (8)

The Revenue Commissioners can review any claim, subsequent to it having been repaid. They can use the powers and rights given to them in **Chapter 5 of Part 41A (section 954 or 955** for earlier periods) or **section 960Q** to examine claims made and raise assessments or determinations and seek repayment of any amounts paid to the taxpayer. (9)

The Revenue Commissioners may repay tax to a successor company or companies, where a valid claim is made, in respect of tax overpaid by a transferor company following a merger or division undertaken in accordance with the Companies Act 2014. Where there is more than one successor company, any repayment of tax shall be apportioned on a just and reasonable basis. The amount of any repayment of tax to a successor company or companies shall not exceed the total amount that would have been repayable to a transferor company. This subsection applies from 1 June 2015. (10)

## **865A Interest on Repayments**

### **Summary**

The section provides for a general scheme of interest on repayments of income tax, corporation tax or capital gains tax. In accordance with Finance Act 2003 (Commencement of section 17) Order 2003 (S.I. No. 508 of 2003), the section applies to repayments of those taxes made on or after 1 November 2003.

## Details

### ***Repayments due to mistaken assumption by Revenue***

Where the repayment due arises from a mistaken assumption by Revenue in the application of the law, then interest will be paid from the end of the chargeable period or, if later, when the tax was paid, until the repayment is made. Interest will not apply, however, for any period where the repayment is withheld in accordance with **section 960H** because returns are outstanding. (1)

### ***Other repayments***

In the case of all other repayments, including repayments of preliminary tax, interest will be paid from 93 days after a claim becomes a valid claim until the repayment is made. Interest will not apply, however, for any period where the repayment is withheld in accordance with **section 960H** because returns are outstanding. (2)

### ***Rate of interest***

Interest will be paid under the section at the rate of 0.011% per day (or part of a day) or such other rate as the Minister for Finance may prescribe by order. Such orders must be laid before the Dáil and may be annulled by a Resolution of the Dáil within 21 sitting days. (3)

Interest will not be paid under the section if it is less than €10. Interest will be paid without deduction of tax and will not be taxable. (4)

Interest will not be payable under the section in relation to a repayment to the extent that the repayment attracts interest under another provision of the Tax Acts or the Capital Gains Tax Acts. (5)

## **865B No offset where repayment prohibited**

### Summary

Subject to one exception, this section confirms that, where a repayment of tax cannot be made to a person because a claim is lodged outside of the relevant time limit, offset against any other tax liabilities of the person is prohibited. This rule applies across all the direct taxes (and related charges and levies), stamp duty, gift tax, inheritance tax, excise duties, value-added tax and local property tax and applies regardless of when the tax is or was paid. The section also confirms that there is no right of offset outside of that provided for under the various tax codes.

The exception referred to above is outlined in the detailed notes below.

## Details

### ***Definitions***

The definition of “Acts” covers statutes relating to excise; the Tax Acts; the Capital Gains Tax Acts; **Parts 18A, 18C and 18D**; the Capital Acquisitions Tax Consolidation Act 2003 as amended or extended; the Stamp Duties Consolidation Act 1999 as amended or extended; the VAT Consolidation Act 2010 as amended or extended; the Finance (Local Property Tax) Act 2012 and any instruments made under any of those statutes or enactments. (1)

“relevant period” is defined in relation to a repayment and is, in general, the accounting period or tax year to which the repayment relates or in which a relevant date, act, event or taxable period, which gives rise to the repayment, falls.



“repayment” includes a refund.

“tax” is defined widely to include the various taxes, duties, levies and charges (as covered by the definition of Acts) and includes any interest, surcharge or penalty relating to the tax, duty, levy or charge. Also included is any sum relating to a withdrawal of a relief or an exemption and sums required to be withheld and remitted to Revenue. Finally, amounts paid on account of tax (e.g. including payment in excess of liability) are included.

“taxable period” has the same meaning as in section 2 of the VAT Consolidation Act 2010.

### ***No offset where repayment denied due to time limit***

Subject to the exception outlined below, where a repayment of tax cannot be made to a person because a claim is lodged outside of the relevant time limit, offset against any other tax liabilities of the person is prohibited. This provision applies to repayments that are prohibited by virtue of any time limit contained in: (2)

- **section 865,**
- section 105B of the Finance Act 2001,
- section 99 of the VAT Consolidation Act 2010,
- section 159A of the Stamp Duties Consolidation Act 1999,
- section 57 of the Capital Acquisitions Tax Consolidation Act 2003, or
- any other provision of any of the Acts.

### ***Exception to general rule***

There is one exception to the general rule (outlined above) on the prohibition of offsets.

The exception applies where tax is due and payable for a tax year or accounting period by virtue of action taken by Revenue, to assess or recover the tax, at a time that is 4 years or more after the end of the year or period involved. In such a case, an amount of tax which cannot be repaid because of the application of a time limit, but which relates to the same tax year or accounting period as the tax liability Revenue is pursuing, is available for offset. This is subject to the condition that the amount available for offset cannot exceed the amount of tax that becomes due and payable for the relevant tax year or accounting period as a result of the assessing or recovery action so taken by Revenue. (3)& (4)

### ***No offset except as provided by the Acts***

The section also provides that there is no right of offset except as provided under the Acts relating to the various taxes, duties, levies and charges. (5)

## **866 Rules as to delivery of statements**

Any person delivering a statement of profits on which any income tax, corporation tax or capital gains tax is chargeable must do so in accordance with **Schedule 28**. That Schedule lists the information to be included in statements of income, lists and tax return declarations.

## **867 Amendment of statutory forms**

The Revenue Commissioners may make such changes to the declarations and forms referred to in **Schedules 27** and **28** as they consider necessary.

## **868 Execution of warrants**

Warrants issued in relation to income tax, corporation tax and capital gains tax must be executed by the persons to whom they are directed. (1)

Members of the Garda Síochána must aid in the execution of the Tax Acts and the Capital Gains Tax Acts. (2)

### **869 Delivery, service and evidence of notices and forms**

In relation to income tax, corporation tax and capital gains tax, a notice, form or other document to be given, sent, served on or delivered to a person may be either delivered to the person or sent (including by post) or left — (1)

- in the case of a company (any body corporate), at the company's registered office or place of business,
- at the person's usual or last known place of abode or place of business, or
- where the person is an individual, at his/her place of employment.

A notice in relation to income tax, corporation tax or capital gains tax which is required to be signed and given by the Revenue Commissioners may be signed and given by a Revenue officer authorised for that purpose and such a notice signed by an authorised officer is as valid as if signed by a Revenue Commissioner. (2)

*Prima facie* evidence of any notice given or served in relation to income tax, corporation tax or capital gains tax may be given in any proceedings by — (3)

- the production of a copy of the notice, or
- the production of a document purporting to reproduce details of the notice held in an electronic, photographic or other record maintained by the Revenue Commissioners.

It is not necessary to prove the position of the person or persons who gave or served the notice or, where the notice is signed, to prove the signature or signature, or the authority of that person or those persons, who signed the notice, to give or serve such notice.

Notices to be served on the Appeal Commissioners are valid if given or delivered to or served on their Clerk. (4)

The above rules apply irrespective of any other provisions of the Tax Acts or the Capital Gains Tax Acts. (5)

### **870 Effect of want of form, error, etc on assessments, charges, warrants and other proceedings**

In relation to income tax, corporation tax and capital gains tax, an assessment, charge, warrant or other proceeding will not be quashed or deemed to be void for want of form or be affected by reason of a mistake, defect or omission if it in substance conforms with the intent and meaning of the law. (1)

For the purposes of income tax, corporation tax or capital gains tax, the correctness of an assessment or a charge made on the assessment in relation to income tax, corporation tax or capital gains tax cannot be called into question because of — (2)

- a mistake in the taxpayer's name or surname,
- a mistake in the description of any profits or property,
- a mistake in the amount of tax charged, or
- any difference between the notice and the certificate of charge or assessment.

A notice of charge must be served on the person intended to be charged. The notice and certificate must contain in substance and effect the particulars of the charge and all such charges must be heard and determined by the Appeal Commissioners. (3)

### **871 Power to combine certain returns and assessments**

Any return, assessment or other document relating to chargeable gains or capital gains tax may be combined with one relating to income or income tax or, as the case may be, with one relating to profits or corporation tax.

### **872 Use of information relating to other taxes and duties**

Any information acquired by the Revenue Commissioners in relation to any tax or duty under their care or management may be used by them in connection with any other tax or duty for which they are responsible. (1)

In addition, the Revenue Commissioners or any of their officers may, for the purposes of assessment and collection of income tax, corporation tax or capital gains tax, use or produce in evidence any returns, correspondence, schedules, accounts or other information to which the Revenue Commissioners or their officers have had access in relation to any other tax or duty for which they are responsible. (2)

### **873 Proof that a person is a Commissioner or officer**

In any judicial proceedings relating to income tax or corporation tax it is prima facie proof of the fact that any person was a Commissioner or officer, if proof is given that at the time when any matter in controversy, in such proceedings, arose, that person was reputed to be or had acted as a Commissioner or officer.

### **874 Limitation of penalties on officers employed in execution of Tax Acts and Capital Gains Tax Acts**

A Commissioner, sheriff, country registrar, inspector, clerk or Collector-General acting in connection with income tax, corporation tax or capital gains tax is not to be liable to any penalty other than that provided for by the law relating to such taxes. (1)

Where, in relation to income tax, corporation tax or capital gains tax, any civil or criminal proceedings are taken against any officer involved in the seizure or detention of goods and the courts hold, on conviction, that there was probable cause for the seizure, the plaintiff will not be entitled to damages other than the goods seized or their value or costs and the officer charged will not be liable to any punishment. (2)

### **874A Prescribing of forms etc.**

Under various taxation provisions (particularly those relating to income tax, corporation tax and capital gains tax), certain forms used in the assessing and collection etc. of tax are required to be prescribed, authorised or approved by the Revenue Commissioners, that is, the board of the Revenue Commissioners.

This section provides that these functions may also be performed by a single Revenue Commissioner or by an authorised officer at the grade of Assistant Secretary or higher. (2)

Nothing in the section impacts on section 12 of the Interpretation Act 2005. Section 12 relates to forms that are prescribed in or under legislation or other enactment and permits deviations from those forms so long as the deviation does not materially affect the substance of the form or is not misleading. This flexibility is thus preserved. (3)

### **875 Exemption of appraisements and valuations from stamp duty**

This section was repealed with effect from 25 March 1999 by section 197 of, and Schedule 6 to, the Finance Act 1999.

