

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

**Finance Act 2020 edition**

## **Part 48 Miscellaneous and Supplemental**

**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.

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## PART 48 MISCELLANEOUS AND SUPPLEMENTAL

### Overview

This Part contains a number of provisions which —

- are incidental or supplementary to the principal provisions of this Act relating to income tax, corporation tax or capital gains tax, and
- impact on the operation or administration of the tax code relating to those taxes (for example, disclosure of information to the Ombudsman (*section 1093*), tax clearance (*sections 1094* and *1095*) and the electronic storage of tax records (*section 1096B*)).

### 1087 Charge and deduction of income tax not charged or deducted before passing of annual act

#### Summary

While an increase in a rate of tax applies from the beginning of a tax year, such increase cannot generally apply until it is authorised by law. This is usually on the passing of the annual Finance Bill into law. In cases where the increased rate of tax is to apply before the passing of the Finance Bill, the authorisation for same is by way of a “financial resolution” under the provisions of the Provisional Collection of Taxes Act, 1927. However, in some instances, a financial resolution may not be in place to cover payments made before the passing of the Finance Bill.

Under various provisions of the Tax Acts, tax at the standard rate must be deducted by the payer on payment of interest, dividends and other annual payments. If at the time of payment, the rate of tax (which may be nil) deducted under the law in force at the time of payment is less than the rate of tax which should have been deducted had the revised law applied at the time of payment, the difference may be recouped by way of an assessment under Case IV of Schedule D.

#### Details

Where in any year of assessment, the tax deducted at source on the payment of interest, dividends or other annual payments is less than the tax which would have been deducted had the payments been made after the passing of the Finance Bill, then — (1)

- the “lost tax” (that is, the difference between the tax actually deducted and the tax which would have been deducted had the revised law for that year been in force at the time of payment) may be recovered by means of a Schedule D, Case IV assessment, and
- when requested to do so by Revenue, the payer must supply —
  - the names and addresses of the persons to whom such payments have been made, and
  - the amount of those payments.

Where the tax deducted at source is less than the tax which, following the passing of legislation increasing the rate of tax, should have been deducted, the payer may either — (2)

- recoup the difference in tax from future payments, or
- seek to recover the additional tax paid direct from the recipient.

This section does not apply to distributions. (3)

### **1088 Restriction on deductions in computing profits**

This section provides for —

- a general prohibition on deductions in calculating profits or gains for tax purposes except where a deduction is expressly authorised by the Income Tax Acts, (1)(a)
- a general prohibition on a deduction for annuities or other annual payments made for which the payer has already obtained relief (the exclusion of interest from this provision coupled with its exclusion from *section 81(2)(l)* ensures that business interest is allowable as a deduction in computing business profits or income), and (1)(b)
- a general prohibition on deductions in computing profits or gains from both businesses and offices and employments for a reduction in capital employed or for losses sustained (specific relief for losses sustained in a trade, profession or employment is provided for by *Part 12*). (2)

### **1089 Status of interest on certain unpaid taxes and duties**

Interest payable on unpaid Stamp Duty, VAT, Relevant Contracts Tax and PAYE tax deducted by employers but not remitted is — (1)

- payable without deduction of tax, and
- not allowable in computing any income, profits or gains for tax purposes.

Interest payable on unpaid Wealth Tax and Capital Acquisitions Tax is not allowable in computing any income, profits or gains for tax purposes. (2)

### **1090 Income tax assessment to be conclusive of total income**

Where an assessment for any year of assessment has become final and conclusive —

- that assessment is also final and conclusive for the purposes of estimating total income from all sources for the purposes of the Income Tax Acts, and
- no relief – on the grounds of diminution of income or loss – is to be allowed unless a claim had previously been made for such allowance or adjustment under the specific provisions of the Income Tax Acts relating to such relief (*Part 12* contains the provisions relating to loss relief).

### **1091 Annexation of statements to interest warrants, etc**

#### **Summary**

Every warrant, cheque or other order in respect of any payment of interest from which the paying company is entitled to deduct income tax must be accompanied by a statement showing details of the gross payment, the amount and the rate of tax and the net amount paid.

#### **Details**

In this section, “company” means a company within the meaning of the Companies Act, 1963 and a company created by letters patent or by statute. (1)

Every warrant, cheque or other order in respect of any payment of interest from which the paying company is entitled to deduct income tax must be accompanied by a statement showing — (2)

- details of the gross payment,
- the rate and amount of tax, and
- the net amount actually paid.

The section does not apply to distributions within the meaning of the Corporation Tax

Acts.

The penalty for failure to comply with this section is €200 per contravention subject to a maximum of €2,000 in respect of any one payment of interest. (3)

### **1092 Disclosure of certain information to rating authorities, etc**

#### **Summary**

This section has as its object the provisions of a means of checking a person's title to rates relief under the Rating on Agricultural Land (Relief) Acts, 1939 to 1980. The Revenue Commissioners may give details of the occupiers of lands and the rateable valuation of such lands to a rating authority or to an officer of the Department of the Environment and Local Government.

#### **Details**

This section applies to any claim for relief under the Rates on Agricultural Land (Relief) Acts, 1939 to 1980 (or any subsequent enactment together with which those Acts may be cited). (1)

The Revenue Commissioners are authorised to supply to a rating authority or an authorised officer of the Department of the Environment and Local Government such information from tax records relating to the occupation and rateable valuation of farm land held by an individuals as may be necessary to establish title to agricultural rates relief. (2)

“occupation” has the same meaning as in *section 654* and a “rating authority” has the same meaning as in *section 898*. (3)

### **1093 Disclosure of information to Ombudsman**

This section secures that any obligation as to secrecy or restriction on the disclosure or production of information or documents obtained by or given to the Revenue Commissioners for tax purposes is not to apply so as to preclude the disclosure by the Revenue Commissioners of information (including documents) to the Ombudsman for the purposes of the Ombudsman Act, 1980.

### **1093A Disclosure of certain information to Minister for Enterprise, Trade and Employment, etc.**

This section permits Revenue to transfer, to the Minister for Enterprise, Trade and Employment and a new office for employment rights compliance to be set up under the partnership agreement “Towards 2016”, information regarding the employers and earned incomes of individuals. Information extracted from declarations made by contractors and subcontractors under Regulation 3 of the Relevant Contracts Tax legislation may also be transferred to both the Minister and the new body. The information transferred may only be used by the Minister and the body in the exercise of their powers and functions in relation to employment rights compliance and may not be transferred to any other person (other than each other) for any other purpose. The Minister and the body transfer information in relation to employers and earnings of individuals to Revenue.

### **1094 Tax clearance certificates in relation to certain licences**

## Summary

This section sets out the circumstances in which a tax clearance certificate is to be issued by the Collector-General for the purposes of obtaining various licences. The person who is the beneficial holder of the licence must apply for the tax clearance certificate. This usually is the person to be named on the licence but, where the licence is held in the name of a nominee, the application must be made by the person on whose behalf the nominee holds the licence.

In order to qualify for the tax clearance certificate, the person applying for the certificate and certain other persons connected with that person must have complied with all the obligations provided for in the Acts, and any instruments made under the Acts, governing income tax, corporation tax, capital gains tax and VAT in relation to —

- the payment of taxes, interest and penalties, and
- the delivery of returns.

The section also provides for appeals against a refusal of the Collector-General to issue a tax clearance certificate.

## Details

### *Definitions*

“the Acts” are defined in a list of statutes and instruments made thereunder which cover (I) the taxes, levies, duties and charges under the care and management of the Revenue Commissioners. The Acts concerned are —

- the Customs Acts,
- the statutes relating to excise duties and the management of those duties,
- the Tax Acts,
- ***Parts 18A, 18B, 18C and 18D,***
- the Capital Gains Tax Acts,
- the Value-Added Tax Acts,
- the Finance (Local Property Tax) Act 2012,
- the statutes relating to stamp duty and to the management of that duty,
- the Capital Acquisitions Tax Consolidation Act 2003, and the enactments amending or extending that Act.

“beneficial holder of a licence” is the person who carries on the activities to which the licence refers.

“licence” is a licence, permit or authorisation under various statutory provisions. These are —

- liquor licence (wholesale and retail),
- bookmaker’s licence, remote bookmaker’s licence, remote betting intermediary’s licence,
- gaming licence,
- hydrocarbon (other sorts) vendor’s licence,
- hydrocarbon (light oil) vendor’s licence,
- a liquefied petroleum gas (LPG) vendor’s licence,

- moneylender’s licence (under section 93 of the Consumer Credit Act, 1995),
- mortgage intermediary’s licence (under section 116 of the Consumer Credit Act, 1995),
- credit intermediary’s licence (under section 144 of the Consumer Credit Act, 1995),
- intoxicating liquor licence (under section 62 of the National Cultural Institutions Act, 1997),
- intoxicating liquor licence (under section 2 of the Intoxicating Liquor (National Concert Hall) Act, 1983),
- permit to operate amusement machines in public places,
- various intoxicating liquor licences,
- intoxicating liquor licence (under section 1 of the Intoxicating Liquor (National Conference Centre) Act 2010).

“market value”, in relation to any property, is the amount the property might reasonably be expected to fetch on an open-market sale on the date the property is to be valued.

“specified date” is the date of commencement of a licence sought under the various provisions referred to in the definition of “licence”.

“tax clearance certificate” is to be construed in accordance with **subsection (2)**.

#### ***Issue of tax clearance certificate***

The Collector-General is to issue a tax clearance certificate for the purposes of the grant of a licence to a person where — **(2)**

- that person, and any partnership of which the person is or was a partner in respect of the period of membership in the partnership,
- in a case where that person is a partnership, each partner,
- in a case where that partner is a company, each person who is either the beneficial owner of, or able directly or indirectly to control, more than 50 per cent of the ordinary share capital of the company,

has or have complied with all the obligations imposed on that person by the Acts in relation to —

- the payment or remittance of the taxes, interest and penalties required to be paid or remitted under the Acts, and
- the delivery of returns.

#### ***Power to refuse tax clearance certificate***

The Collector-General is empowered to refuse a tax clearance certificate where there has been a transfer of a licence between certain connected persons (within the meaning of **section 10**) unless the transferor has complied with the necessary conditions. However, this provision does not apply to a transfer of licence effected before 24 April, 1992 or effected after that date where a contract for the sale or lease of the premises to which the licence relates was signed before that date. **(3), (3A) & (4)**

#### ***Application for tax clearance certificate***

The application for a tax clearance certificate is to be made to the Collector-General in a form prescribed by the Revenue Commissioners or in such other manner as they may allow (to allow for an application by electronic means). **(5)**

Where the Collector-General refuses to issue a tax clearance certificate to a person, the Collector-General is to notify the applicant in writing as soon as is practicable that the application was not successful. The applicant must also be informed as to why the application was unsuccessful. **(6)**

***Appeal against refusal to grant tax clearance certificate***

A person has a right of appeal in the event of a tax clearance certificate being refused by the Collector-General. (7)(a)

Any person aggrieved by such refusal may, by notice in writing appeal to the Appeal Commissioners. An appeal must be made within 30 days after the date of the notice of the refusal. The Appeal Commissioners will hear and determine an appeal in the manner provided for in Part 40A of this Act. However, no right of appeal exists by virtue of this section in relation to any amount of tax or interest due under the Acts.

The notice of appeal is to be in writing and is valid only if — (7)(b)

- it specifies the matter or matters with which the person is aggrieved, and the grounds in detail of his appeal as respects each such matter, and
- any amount under the Acts which is due to be remitted or paid, and which is not in dispute, is duly remitted or paid.

***Issue of tax clearance certificate in electronic format***

A tax clearance certificate may be issued by the Collector-General in electronic format and may, with the applicant’s written agreement, be published in a secure electronic medium (for example, a website) where it can be accessed by persons authorised to do so by the applicant. (8)

The duration of the tax clearance certificate will be stated on it. (9)

**1095 Tax clearance certificates: general scheme**

**Summary**

This section provides for a generally applicable tax clearance procedure to cover applications for tax clearance for whatever purpose *other than those required under* —

- (a) **section 1094** (in relation to certain licences), or
- (b) (i) **section 847A** (in relation to sports bodies within that section),
  - (ii) the Standards in Public Office Act, 2001, or
  - (iii) the Free Legal Aid Board Regulations.

A tax clearance certificate will be issued on application where the applicant and certain other specified persons connected with the applicant are in compliance with their obligations under the Acts and any instruments made under the Acts governing income tax, corporation tax, capital gains tax and VAT in relation to —

- the payment of taxes, interest and penalties, and
- the delivery of returns.

Appeals are provided for against a refusal of the Collector-General to issue a tax clearance certificate.



## Details

### *Definitions*

“the Acts” are defined in a list of statutes and instruments made thereunder which cover (1) the taxes, levies, duties and charges under the care and management of the Revenue Commissioners. The Acts concerned are —

- the Customs Acts,
- the statutes relating to excise duties and the management of those duties,
- the Tax Acts,
- **Parts 18A, 18B, 18C and 18D,**
- the Capital Gains Tax Acts,
- the Value-Added Tax Acts,
- the Finance (Local Property Tax) Act 2012,
  
- the statutes relating to stamp duty and to the management of that duty,
  
- the Capital Acquisitions Tax Consolidation Act 2003, and the enactments amending or extending that Act.

“licence” is given the same meaning as in **section 1094**.

“tax clearance certificate” is to be construed in accordance with **subsection (3)**.

### *Application of section*

The provisions of this section apply to every application made to the Collector-General (2) for a tax clearance certificate **except** applications for a tax clearance certificate made —

(a) in relation to a licence (**section 1094**), or

(b) under the requirements of —

- (i) **section 847A** (which concerns donations to certain approved sports bodies),
- (ii) the Standards in Public Office Act, 2001, or
- (iii) Regulation 6 of the Criminal Justice (Legal Aid) (Tax Clearance Certificate) Regulations of 1999.

### *Issue of tax clearance certificate*

Subject to this section, the Collector-General is to issue a tax clearance certificate on (3) application where the applicant is in compliance with his or her obligations under the Acts in relation to —

- the payment or remittance of the taxes, interest and penalties required to be paid or remitted under the Acts, and
- the delivery of and returns to be made under the Acts.

A tax clearance certificate is not to be issued to a person unless both that person and (4) certain specified other persons are in compliance with the obligations imposed by the Acts. In addition to the person applying for the tax clearance certificate, the persons concerned are —

- any partnership of which the person is or was a member, in respect of the period of membership of the partnership,
- where the applicant is a partnership, each partner, and
- where the applicant is a company, every person who owns or is able to control, directly or indirectly, more than 50 per cent of the ordinary share capital of the company.

A tax clearance certificate is not to be issued to an applicant where the business activity (5) carried on by the applicant was previously carried on by, or was previously carried on as part of a business activity carried on by, another person who is connected (within the meaning of *section 10*) with the applicant in certain circumstances, unless that other person is also in compliance with the obligations as regards payment of tax and delivery of returns. The persons who are to be considered as connected are —

- any company connected with the applicant,
- where the applicant is a partnership and the business was previously carried on by a company in which a partner or partners of that partnership are or were able, directly or indirectly, either on their own or with a connected person able to control more than 50 per cent of the ordinary share capital of the company, that company, or
- where the applicant is a company and the business was previously carried on by a partnership and a partner or partners of that partnership are or were able, directly or indirectly, either on their own or with a connected person able to control more than 50 per cent of the ordinary share capital of the company, that partner or partners.

The provisions of *subsections (5) to (9) of section 1094* apply to an application for a tax clearance certificate under this section. (6)

### **1096 Assessment of Electricity Supply Board**

This section clarifies that, for tax purposes, the Electricity Supply Board is not, and never was, the State or a branch of the Government of the State.

### **1096A Construction of references to oaths, etc**

#### **Summary**

This section concerns the making of an affirmation as an alternative to an oath. References in the Tax Acts and the Capital Gains Tax Acts to an oath will be construed as including an affirmation, thereby enabling persons to affirm instead of taking an oath.

#### **Details**

The section construes references to an oath in the Tax Acts and the Capital Gains Tax Acts as including references to an affirmation in the case of person allowed by law to affirm instead of to swear. (1)

The word “law” is defined as including the Oaths Act, 1988. That Act and every other enactment that permits an oath to be taken or an affirmation to be made is to apply to an oath to be taken or an affirmation to be made under the Tax Acts or the Capital Gains Tax Acts. (2)

### **1096B Evidence of computer stored records in court proceedings, etc.**

## Summary

This section enables the Revenue Commissioners to scan and store electronically images of existing and future tax returns and other records (under all tax heads) and to use an authenticated copy record of them where required in court proceedings to prove facts that are stated on those records. A copy record produced for use in court proceedings must be accompanied by a signed certificate stating that the proper procedures were followed in making and storing the record concerned. If the court is not satisfied with the procedures it can rule that a copy record is inadmissible as evidence.

## Details

### *Definitions*

“copy record” is any copy of an original record or a copy of that copy made as referred (1) to in **subsection (2)**. The copy must be accompanied by a certificate (see **subsection (4)**) and the original record, or copy thereof, must be in the possession of the Revenue Commissioners.

“original record” is any document, record or record of an entry in a document or record or information relating to tax made or stored by way of any storage equipment by, and in the possession of, the Revenue Commissioners.

“provable record” is an original record or a copy record and – where an original record or copy record is stored in any storage equipment – includes the production/reproduction of the record in a legible form.

“storage equipment” is any device used for storing information.

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

### *Copying and storage of records*

The Revenue Commissioners may make a legible copy, or store information necessary (2) for making a legible copy, of any original record or any copy record where those records are deteriorating, inconvenient to store or where the method of keeping them has become technically obsolete. The Commissioners may then destroy the original or copy records.

### *Copy deemed to be original*

The legible copy made of the record, or the information stored, in accordance with (3) **subsection (2)** is deemed to be an original record for the purposes of this section.

### *Certification re copying of records*

In any proceedings, a certificate signed by an officer of the Revenue Commissioners (4) & (5) stating that a copy record has been made in accordance with **subsection (2)** shall be evidence of the fact and a document purporting to be such a certificate shall be deemed to be such a certificate and to be so signed, unless the contrary is shown.

A provable record is to be admissible in evidence in any proceedings and shall also be (6) evidence of anything recorded in it unless the contrary is shown or unless the court is not satisfied with the procedures used to make it.

In any proceedings a signed certificate by an officer of the Revenue Commissioners that (7) a thorough but unsuccessful search has been made for a record of an event, is evidence that the event did not happen unless the contrary is shown or unless the court is not satisfied that it did not happen.

***Delegation***

Any powers conferred on the Revenue Commissioners by the section can – subject to (8) their direction and control – be exercised by an officer of the Revenue Commissioners.