

TAXES (OFFSET of REPAYMENTS) REGULATIONS 2002

S.I. No. 471 of 2002

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The Revenue Commissioners, in exercise of the powers conferred on them by section 1006A of the Taxes Consolidation Act 1997 (No. 39 of 1997), make the following regulations:

PART 1

General

- Citation. 1. These Regulations may be cited as the Taxes (Offset of Repayments) Regulations 2002.
- Interpretation. 2. (1) In these Regulations, unless the context otherwise requires—
- “Acts”, “claim”, “liability”, “overpayment” and “tax” have each the same meaning as they have, respectively, in the principal section;
- “Collector-General” means the person appointed under section 851 of the Principal Act;
- “estimate” means an estimate of tax made in accordance with the provisions of—
- (a) section 989 of the Principal Act,
 - (b) Regulation 13 of the Income Tax (Relevant Contracts) Regulations 2000 (S.I. No. 71 of 2000), or
 - (c) section 22 of the Value-Added Tax Act 1972 (No. 22 of 1972);
- “current estimate”, in relation to any particular time, means an estimate in respect of either an income tax month or a taxable period, as the case may be, the due date for which is immediately prior to that time or the income tax month or taxable period immediately preceding that month or period;
- “due date”, in relation to a liability, means the date on which the liability is due and payable under the appropriate provision of the Acts and, in relation to an estimate, the date on which the period for the payment of the tax for the income tax month or taxable period, as the case may be, expires;
- “liability at enforcement” means a liability which, at the time at which the repayment is to be made in respect of the claim or overpayment —

- (a) was certified in a certificate issued, and not withdrawn, under section 962 of the Principal Act,
- (b) was the subject of proceedings initiated, and not withdrawn, as a debt due to the Minister for Finance, in any court of competent jurisdiction, or
- (c) was entered as a specified amount in a notice of attachment issued, and not revoked, under section 1002 of the Principal Act;

“Principal Act” means the Taxes Consolidation Act 1997 (No. 39 of 1997);

“principal section” means section 1006A of the Principal Act;

“taxhead” means-

- (a) tax deductible under Chapter 2 of Part 18 of the Principal Act and any regulations made under it,
- (b) income tax deductible under Chapter 4 of Part 42 of the Principal Act and any regulations made under it,
- (c) corporation tax,
- (d) an amount to be collected as income tax by the Collector-General in accordance with the provisions of the European Communities (Mutual Assistance for the Recovery of Claims relating to Certain Levies, Duties, Taxes and Other Measures) Regulations 2002 (S.I. No. 462 of 2002),
- (e) income tax (other than that referred to in paragraphs (b) and (d) of this definition),
- (f) capital gains tax,
- (g) value-added tax,
- (h) inheritance tax and gift tax,
- (i) stamp duties,
- (j) residential property tax,
- (k) vehicle registration tax, or

- (l) excise duties,

as the case may be.

(2) In these Regulations —

- (a) a reference to a Regulation is to a Regulation of these Regulations, unless it appears that reference to some other provision is intended;
- (b) a reference to a paragraph is to the paragraph of the provision in which the reference occurs, unless it appears that reference to some other provision is intended.

(3) Subject to paragraph (1), a word or expression that is used in these Regulations and is also used in any provision of the Acts has, except where the context otherwise requires, the same meaning in these Regulations as it has in that provision.

PART 2

Offsetting

Order of priority of offset against liabilities.

3. Subject to Regulations 4, 5, 6 and 7, the amount of any repayment in respect of a claim or overpayment made by any person, which is, by virtue of subsection (2) of the principal section, to be set against any liability of that person, shall be set against —

- (a) firstly, any liability, other than a current estimate or a liability at enforcement, in the following sequence:
 - (i) a liability arising under the same taxhead in respect of which the claim or overpayment is made,
 - (ii) a liability arising under the Value-Added Tax Act 1972 and the enactments amending or extending that Act,
 - (iii) a liability arising under Chapter 4 of Part 42 of the Principal Act and the regulations made under it,
 - (iv) a liability arising under Chapter 2 of Part 18 of the Principal Act and the regulations made under it,

- (v) a liability arising under the Corporation Tax Acts,
 - (vi) a liability arising under any provision (other than Chapter 4 of Part 42 of the Principal Act) of the Income Tax Acts,
 - (vii) a liability arising under the Capital Gains Tax Acts,
 - (viii) a liability arising under Part VI of the Finance Act 1983 (No. 15 of 1983) and the enactments amending or extending that Part,
 - (ix) a liability arising under the Capital Acquisitions Tax Act 1976 (No. 8 of 1976) and the enactments amending or extending that Act,
 - (x) a liability arising under the Stamp Duties Consolidation Act 1999 (No. 31 of 1999) and the enactments amending or extending that Act,
 - (xi) a liability arising under Chapter IV of Part II of the Finance Act 1992 (No. 9 of 1992),
 - (xii) a liability arising under the statutes relating to the duties of excise and to the management of those duties,
- (b) secondly, any liability, being a liability at enforcement, in the sequence set out in paragraph (a), and
- (c) finally, against any amount referred to in paragraph (d) of the definition of “taxhead”.

Special arrangements regarding corporation tax, income tax and capital gains tax.

4. Notwithstanding Regulation 3 but subject to Regulations 5, 6 and 7, in any case where a repayment in respect of a claim or overpayment made by any person, is under a taxhead referred to in paragraph (c), (e) or (f) of the definition of “taxhead”, the amount of the repayment, which is, by virtue of subsection (2) of the principal section, to be set against any liability of that person, shall be set against —

- (a) firstly, any liability, other than a current estimate or a liability at enforcement, in the following sequence:
 - (i) a liability arising under the same taxhead in respect of which the claim or overpayment is

made,

- (ii) a liability arising under the Corporation Tax Acts,
 - (iii) a liability arising under any provision (other than Chapter 4 of Part 42 of the Principal Act) of the Income Tax Acts,
 - (iv) a liability arising under the Capital Gains Tax Acts,
 - (v) a liability arising under the Value-Added Tax Act 1972 and the enactments amending or extending that Act,
 - (vi) a liability arising under Chapter 4 of Part 42 of the Principal Act and the regulations made under it,
 - (vii) a liability arising under Chapter 2 of Part 18 of the Principal Act and the regulations made under it,
 - (viii) a liability arising under Part VI of the Finance Act 1983 and the enactments amending or extending that Part,
 - (ix) a liability arising under the Capital Acquisitions Tax Act 1976 and the enactments amending or extending that Act,
 - (x) a liability arising under the Stamp Duties Consolidation Act 1999 and the enactments amending or extending that Act,
 - (xi) a liability arising under Chapter IV of Part II of the Finance Act 1992,
 - (xii) a liability arising under the statutes relating to the duties of excise and to the management of those duties,
- (b) secondly, any liability, being a liability at enforcement, in the sequence set out in paragraph (a), and
- (c) finally, against any amount referred to in paragraph (d) of the definition of “taxhead”.

Chronological
order of priority of

5. For the purposes of Regulation 3 or 4, where, at any time, a repayment is to be set against more than one liability arising

liabilities.	under a taxhead, it shall be set against any liability due for an earlier period or event in priority to a later period or event, as the case may be.
Nomination of liabilities by taxpayer.	6. Notwithstanding Regulation 3 or 4, a person may, at any time but not later than 30 days after the issue of a notice to him or her under subsection (2A) of the principal section, by notice in writing to the Collector-General request that the repayment concerned be set against liabilities (other than any amount referred to in paragraph (d) of the definition of “taxhead”) in an order nominated by the person and the Collector-General shall arrange accordingly.
Offset of interest.	7. For the purposes of these Regulations, interest due and payable in relation to any liability to tax in respect of any period or event shall be deemed to be due and payable at the same time as the tax in respect of that period or event, as the case may be.

PART 3

Miscellaneous

Revocation.	8. The Taxes (Offset of Repayments) Regulations 2001 (S.I. No. 399 of 2001) are revoked.
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GIVEN under my hand,

2 October 2002.

**Michael O’Grady,
Revenue Commissioner.**

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations are being made under subsection (3) of section 1006A (inserted by the Finance Act, 2000 and amended by the Finance Acts of 2001 and 2002) of the Taxes Consolidation Act, 1997. That section empowers the Revenue Commissioners to offset repayments due to a person against outstanding liabilities of the person.

They replace the existing regulations (Taxes (Offset of Repayments) Regulations, 2001 (S.I. No. 399 of 2001)) which set out an order of priority for such offsets.

Under the repealed regulations, liabilities were divided into 2 priority categories as follows:

- (1) liabilities other than current estimates and liabilities at enforcement, and
- (2) liabilities at enforcement.

Within each category, but subject to one special case, a repayment was set off in the following sequence-

- (a) the taxhead giving rise to the repayment,
- (b) value-added tax,
- (c) employers PAYE,
- (d) relevant contracts tax,
- (e) corporation tax,
- (f) income tax, other than at (c),
- (g) capital gains tax,
- (h) residential property tax,
- (i) inheritance / gift taxes,
- (j) stamp duties,
- (k) vehicle registration tax, and
- (l) excise duties.

The special case is where the repayment arises in the corporation tax, income tax, capital gains tax grouping. In such a case liabilities within that same grouping are dealt with first before reverting to the order referred to above.

A third category of liability is now being introduced, that is, amounts which the Collector-General is to collect in accordance with the provisions of the European Communities (Mutual Assistance for the Recovery of Claims relating to Certain Levies, Duties, Taxes and Other Measures) Regulations 2002 (S.I. No.462 of 2002)). A repayment may be set off against a liability in this category, when there are no outstanding liabilities in the other two categories.

The taxpayer will have the option to request the Collector-General, at any time but not later than 30 days after the issue of the notice of offset, to vary the offset as nominated by him/her. However, this right does not extend to liabilities in the new category referred to in the preceding paragraph.

Within a taxhead a claim or overpayment will be offset against older liabilities before younger ones.

For the purpose of offsetting against interest owed by the taxpayer, the “age” of the interest is determined by the “age” of the tax, etc. giving rise to it.