

# GUIDELINES ON TAX CONSEQUENCES OF RECEIVERSHIP AND MORTGAGEE IN POSSESSION (MIP)

## Part 04-00-01

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## 1. Introduction

The appointment of a receiver is one of the ways by which a lender can enforce a mortgage or charge. There are various types of receivers. For example, there is a fixed charge receiver who is appointed under a mortgage in respect of a particular asset, e.g. an investment property. In contrast, a floating charge receiver is a receiver who takes control of a person's assets generally, or of certain categories of assets (for example, debtors or stock).

A receiver's main purpose is to realise the assets over which he/she has been appointed for the benefit of the charge holder. While a receiver does not have a duty to trade or to try to save the company or business, in practice he/she will often continue to trade, rent property etc. pending a sale of the property or the relevant assets. For example, a receiver may take over a business on foot of fixed and floating charges and continue trading as a receiver/manager.

A receiver may also be appointed by court order where, for example, the lender does not have a power to appoint a receiver under the mortgage deed. A receiver appointed by the court is deemed an officer of the court and owes duties to the court. There are special tax rules concerning the tax treatment of a court appointed receiver (section 1049 Taxes Consolidation Act 1997).

These guidelines deal with receivers and mortgagees in possession (MIPs), other than court appointed receivers.

The appointment of a receiver does not result in a change in the legal ownership of the assets of the borrower. However, the receiver will for all practical purposes have full control over the trade/rental activities associated with the assets he/she is appointed over.

As a result of the increase in the level of personal and corporate receiverships and property reposessions, there has been an increase in requests for clarification of the tax requirements and obligations on receivers and MIPs. In response, Revenue has prepared these guidelines, setting out our interpretation of the current legislative position, to assist all concerned in understanding and meeting their statutory obligations. It is a matter for each person affected to take their own legal advice in relation to the application of the guidelines.



## 2. Tax Registrations

Other than in **Paragraph 3.4**, all legislative references in this Part are to the Taxes Consolidation Act 1997.

### **Receivers**

Receivers should obtain a new tax reference number for each receivership, unless there is no tax payment or filing obligation. This number should be used by the receiver for:

- returning income tax on Form 1 in accordance with section 52;
- returning CGT as income tax on Form 1;
- registering as a Principal contractor or subcontractor under the RCT regime;
- registering as an employer in respect of retained employees of the borrower.

The requirement to obtain a new tax reference number for each receivership does not apply, however, where a mortgagee appoints the same individual as receiver over assets of the same borrower. In these circumstances, a single tax reference number for the receivership will suffice.

Additionally, if a co-ownership or partnership was issued with one tax reference number, then it is sufficient for a receiver to have one tax reference number covering this co-ownership/partnership.

A receiver who supplies goods or services which are deemed to be supplied by the accountable person (section 22(3) or 28(4) of the Value Added Tax Consolidation Act 2010 (VATCA)) is obliged to register for VAT within 14 days of making the supply (section 65(4) of the VATCA).

### **Mortgagees in Possession (MIPS)**

MIPs can use one tax reference number for all activities undertaken as a MIP, and for returning rental income, including that earned by receivers, under section 96(3).



### 3. Tax Payment and Filing Requirements

#### 3.1 Direct Taxes – Irish Rental Income

The existing legislation (section 96(3)) provides that tax on net rental income from property in receivership, or from property where the mortgagee has taken possession, is chargeable on the mortgagee. This includes tax on any balancing charge arising or on “section 23” type relief clawed back on a sale of property. This means that the mortgagee (not the receiver) has to make a return in respect of, and pay the tax liability on, such income.

For each individual letting, rental profit should be calculated as if the borrower was still in possession. This has a number of consequences, including the need to take into account in the calculation the borrower’s–

- other income;
- losses and allowances, current or brought forward;
- tax credits, if the borrower is an individual;
- group relief from within the borrower’s group, if the borrower is a member of a corporate group (provided all relevant returns are filed and elections made on time.<sup>1</sup>)

However, it should be noted that unconnected receivership losses, or losses etc. from other activities of the mortgagee, cannot shelter such rental profits.

This rental income should be returned as rental income on Form CT1 using the tax reference number allocated to the mortgagee (see **Paragraph 2 – Tax Registrations**) for income from property over which the mortgagee has taken possession or over which the mortgagee has appointed a receiver. Where the borrower is not a company, the mortgagee’s liability should be regressed at 25% for the purposes of computing the amount of income to be included on Form CT1<sup>2</sup>. The payment dates will follow normal Corporation Tax payment dates<sup>3</sup>.

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<sup>1</sup> Section 429 states that the consent is required in such format as Revenue may require. Currently, this is through completion of the relevant boxes in Form CT1 which are required to be completed and submitted by the surrendering and claimant companies, rather than the receiver.

<sup>2</sup> For example, a mortgagee has a liability of €400, as computed in accordance with section 96(3), (i.e. Case V profits of €1,000 which are subject to income tax @ 40%). For tax return purposes, the liability of €400 is regressed at 25% to give the amount of income to be included on Form CT1 (i.e. €400 @ 25% = €1,600).

<sup>3</sup> Please refer to <http://www.revenue.ie/en/tax/ct/payment.html>

Rental income and expenses in relation to property in receivership or where the mortgagee is in possession should not be included in the tax return of the borrower. A consequence of this is that, where the letting of the property in receivership gives rise to a loss, the loss is not available to the borrower to utilize against other rental income. Any such loss is, however, available to the mortgagee in question when calculating its liabilities under section 96(3) in respect of the rental property of that borrower only.

At the same time as the CT1 is filed by the mortgagee through ROS in respect of receivership and MIP rental income, a backup schedule containing the following information should be filed electronically by the mortgagee (by emailing [lcdfsb@revenue.ie](mailto:lcdfsb@revenue.ie)) in support of the CT1:

1. Address(es) of the specific properties concerned
2. LPT Property ID(s) where available
3. Gross rent receivable from each letting
4. Taxable rent on each letting
5. Tax rate applied to each letting
6. Tax liability on each letting

The schedule should include details of all rental income irrespective of whether or not a liability arises in respect of the income.

The schedule is being requested at the same time as submission of the CT1 on the basis that it would be easier to compile the schedule while tax returns are being completed. There is no set format in which the schedule should be submitted. Providing the requisite information is submitted, mortgagees are free to extract that information from their systems in whatever manner best suits them.

Apart from the requirements to file the CT1 and provide the supporting schedule, section 890 imposes an obligation on a person, in their capacity as a receiver, to provide details of income received by them. Form 8-2 is the appropriate form on which such income is to be returned and is available on the Revenue website. This form should be filed using the tax reference number for the particular receivership.

Revenue recognises that, in certain instances, there may be difficulties in obtaining the information required to prepare an accurate rental computation. However, Revenue will not seek to challenge a computation provided reasonable endeavours are undertaken in the calculation of tax due and all assumptions underpinning the calculation are clearly set out and retained by the mortgagee.



In the normal course, it would be unusual for an overpayment of tax to arise in respect of a mortgagee's liability under section 96(3). However, in circumstances where an overpayment does arise, for example, where preliminary tax is overpaid or where the mortgagee subsequently reduces its liability to take account of previously unclaimed expenditure incurred by a receiver or additional information provided by the borrower (e.g. unused Case V losses), a refund of the tax overpaid will be made to the mortgagee on receipt of a valid repayment claim.

Where preliminary tax is overpaid, a completed CT1 and backup schedule would generally be regarded as a valid repayment claim. Where the repayment results from matters which are not reflected in a previously submitted CT1 and backup schedule, full details of the amendment should be provided in support of the repayment claim.

In all cases, a valid repayment claim should be made within the relevant time period (currently 4 years). While Revenue is not in a position to match mortgagee and borrower tax returns (assuming that the latter have been received) for the purpose of identifying tax overpaid under section 96(3), it is prepared to provide information to mortgagees in the circumstances set out in **Paragraph 5** below.

## 3.2 Direct Taxes – Other Income

Corporation tax due by a company in receivership or where the mortgagee has taken possession (other than in respect of rental income referred to above and capital gains referred to below) should be returned and paid by the company.

In relation to other income assessable under Schedule D earned by entities (including individuals) not liable to Corporation Tax, Revenue's position is that the existing legislation (section 52) treats the receiver as the person liable for income tax on that income, profits or gains as calculated in accordance with Part 4 of the TCA 1997. This liability extends to all income the receiver receives, whether entitled to or not, in respect of any particular receivership, other than the release of a specified debt that is deemed income under section 87B, or income in respect of which a mortgagee is liable under section 96(3), i.e. rents arising in respect of the period commencing on or after the date on which the receiver is appointed.

Income tax applies to such income at the standard rate, currently 20%, and is provided as a credit against the borrower's tax liability on the borrower's income, profits or gains for that year.



The receiver should return this income on Form 1, under the relevant receivership number. The Form 1 should be completed on a calendar year basis and filed by the following 31<sup>st</sup> October of each year in which a liability arises.

Normal income tax, including preliminary tax, payment rules apply to these liabilities.

As with the position on rental income, Revenue recognises that in certain instances, a receiver may have difficulty in obtaining the information required to prepare an accurate computation in relation to income which does not fall within section 96(3). Again, Revenue will not seek to challenge a computation provided reasonable endeavours are made in calculating the tax due and all assumptions underpinning the computation are clearly set out and retained by the receiver.

The obligations on a receiver under section 890 referred to in **Paragraph 3.1** in relation to rental income falling within section 96(3) equally apply as respects other income.

### 3.3 Direct Taxes – Capital Gains

Section 571 provides that any “referable capital gains tax” or “referable corporation tax” arising on a disposal is chargeable on, and payable by, the “accountable person”, which includes a receiver or a mortgagee in possession.

As referable capital gains tax and referable corporation tax are recoverable by way of an assessment to income tax under Case IV of Schedule D, normal income tax payment rules apply, including those relating to the payment of preliminary tax.

Referable capital gains tax and referable corporation tax are to be calculated in accordance with the provisions set out in sections 571(2) and 571(3) respectively. In instances where a receiver has entered into a sale contract which is closed by a mortgagee, the mortgagee is the accountable person. The tax due is recoverable by way of an assessment to income tax, under Case IV of Schedule D, on the accountable person on a ring-fenced basis.

All relevant factors, including other disposals by the borrower, any reliefs or deductions (including unused losses), Group Relief<sup>4</sup>, personal exemptions etc.

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<sup>4</sup> Section 429 states that the consent is required in such format as Revenue may require. Currently, this is through completion of the relevant boxes in Form CT1, which are required to be completed and submitted by the surrendering and claimant companies, rather than the receiver.

to which the borrower may be entitled, must be taken into account in the calculation.

To that end, it is necessary, therefore, in order to accurately calculate the referable tax, that the borrower files any outstanding tax returns and claims for reliefs or deductions up to and including the accounting period in which a disposal by an accountable person takes place.

In addition, the accountable person must file all necessary tax returns in relation to liabilities arising as accountable person. Any referable capital gains tax or referable corporation tax arising should be returned on Form 1 as Case IV income by:

- the receiver, using the tax reference number of the relevant receivership, or
- the mortgagee, where the mortgagee is the accountable person, using the tax reference number allocated to the mortgagee, (see **Paragraph 2 – Tax Registrations**).

Accountable persons should, in respect of every accountable period in which properties are disposed of, file electronically by the Form 1 filing date (to [lcdfsb@revenue.ie](mailto:lcdfsb@revenue.ie)) a schedule containing the following information:

1. Address(es) of the specific property concerned
2. LPT Property ID(s) where available
3. Date of Disposal
4. Market Value
5. Deductible Costs
6. Details of any loss relief etc. claimed
7. Chargeable Gain
8. Tax liability

The schedule should also include details of all property disposed of during the period in question, irrespective of whether or not a liability to tax arises. The schedule is being requested at the same time as submission of the Form 1 on the basis that it would be easier to compile the schedule while tax returns are being completed. There is no set format in which the schedule should be submitted. Providing the requisite information is submitted, lenders are free to extract that information from their systems in whatever manner best suits them.

As is the case with rental and other income, Revenue recognises that in certain instances, accountable persons may experience difficulties in obtaining the





information outlined above (including a tax return completed by the borrower) required to prepare an accurate tax computation. However, Revenue will not seek to challenge a computation once reasonable endeavours are undertaken in the calculation of tax due and all assumptions underpinning the computation are clearly set out and retained by the accountable person. Any refunds of referable capital gains tax or referable corporation tax paid by an accountable person that may be due will be made to the accountable person once entitlement to a refund has been established. This will normally require (other than in circumstances where preliminary tax is overpaid) that the borrower has filed all outstanding tax returns up to and including the accounting period in which the disposal took place and that all other tax obligations of the borrower and the accountable person that may affect entitlement to the refund have been met.

Should refunds of capital gains tax or corporation tax on other disposals made by a borrower arise, these would be repaid to the borrower.

### 3.4 VAT

***These guidelines should be read in conjunction with the VAT leaflet titled “Transfer of Business” as the VAT treatment of disposals of property coming within the Transfer of Business provisions is significantly different to these guidelines as regards the capital goods scheme obligations, VAT deductibility on costs of sale, the joint option for taxation and the question of who is accountable for VAT.***

***These guidelines relate to transactions where the Transfer of Business provisions do not apply.***

***All legislative references in Paragraph 3.4 are to the Value Added Tax Consolidation Act 2010.***

#### 3.4.a Disposal of an asset of an accountable person

An asset of an accountable person disposed of by a receiver or a MIP, towards the settlement of a debt of that person, is deemed to have been disposed of by the accountable person (section 22(3)). Where the asset is disposed of by a receiver and VAT is due in relation to that supply, the receiver is obliged to submit the VAT return under the receiver’s VAT number for the receivership in question and to remit the tax due (section 76(2)). Where the asset is disposed of by the MIP, and VAT is due in relation to that supply, the MIP is obliged to submit the VAT return under the MIP’s VAT number obtained for MIP-related issues and remit the tax due.



### **3.4.b Supply of services (including lettings) while carrying on the business of an accountable person**

Services that are supplied by a receiver or a MIP, carrying on the business of an accountable person or using the assets of an accountable person towards the satisfaction of a debt of that person, are deemed to be supplied by the accountable person (section 28(4)). These services include services such as those provided in the course of operating a bar or hotel and the provision of lettings which the accountable person has opted to tax. Where a letting was not previously taxable but the receiver or a MIP opts to tax the letting using a landlord's option to tax (section 97(1)(a)(i)), the owner of the property is deemed to have supplied that letting and to have exercised the option to tax (section 28(5)). In each situation, the receiver/MIP, as the case may be, is obliged to submit the return under the respective receiver/MIP VAT number and to remit the tax due (section 76(2)).

### **3.4.c Deductibility**

VAT incurred by a receiver/MIP on goods or services supplied to and used by him or her for the purposes of taxable supplies under **paragraphs 3.4.a or 3.4.b** above should, subject to the normal restrictions, be claimed in the VAT return that the receiver/MIP is required to make in respect of the disposal of the goods, the supply of services, any capital goods scheme adjustment or any deductibility adjustment.

Revenue will allow deductibility for a receiver in respect of VAT input costs incurred by such receiver in respect of a taxable sale or taxable letting of property by the MIP or vice versa. Whoever makes the supply must account for VAT on such supply.

In circumstances where the MIP is obliged to incur costs in completing the development of a property prior to it being handed to a receiver for sale and it is known from the outset that the sale will be completed by the receiver, Revenue will allow deductibility to the MIP, subject to the normal restrictions.

A receiver and MIP cannot both get deductibility for the same expenditure. Only the entity who incurs the costs is entitled to deductibility.



### 3.4.d Deductibility adjustments – Transitional Properties

Where a property was developed or acquired pre-1 July 2008 (transitional rules section 95(1)) and there was an entitlement to deductibility in relation to that development or acquisition and a receiver/MIP makes an exempt letting of that property, a deductibility adjustment may be necessary (section 95(4)(c)). The receiver/MIP who makes such letting is obliged to include the amount of the adjustment in the VAT return under the receiver/MIP's number as if it were tax due and is obliged to pay the tax due (section 76(2)(a)). Where subsequently, such property is the subject of a VATable disposal by the receiver/MIP, or would be a VATable disposal but for the Transfer of Business provisions, the receiver/MIP who makes the disposal may be entitled to a VAT credit under the capital goods scheme (section 64(6)(a)).

Where a receiver/MIP lets a residential property, the 1/20th annual capital goods scheme adjustment may apply in circumstances where the borrower is a property developer who, had the borrower let the property, would be subject to the treatment outlined in Tax Briefing 69 "VAT treatment of property developers renting out residential properties".

### 3.4.e Capital Goods Scheme (sections 63 & 64 of VATCA)

The capital goods scheme (CGS) is a mechanism for regulating deductibility over the VAT life of a property. For VAT purposes, a capital good is a developed property and includes refurbishment (Section 2). The scheme operates by ensuring that deductibility for a property reflects the use to which the property is put over its VAT life. The VAT life of a property is 20 years (or intervals) in the case of an acquired or developed property, or 10 years (or intervals) in the case of a refurbished property.

If the property is sold during the VAT life, or the use of the property during any of the intervals in the VAT life of the property does not reflect the deductibility in the initial interval, an adjustment may be required under the CGS. This adjustment may be negative or positive resulting in either a liability to tax or an increase in deductibility. The capital good owner can exercise some control over the occurrence of CGS liability by availing of options to tax otherwise exempt sales or lettings. A capital good owner is obliged to maintain a capital good record in respect of each capital good (section 64(12)).

Where a receiver is appointed in respect of a property or a business, that receiver effectively 'steps into the shoes' of the capital good owner for the duration of the receivership (section 64(12A))<sup>5</sup>. The capital good owner is



obliged to pass the capital good record to the receiver who is, in turn, obliged to maintain the record and to pass it on to a purchaser. Where the receiver's appointment ends, the record should be passed back to the borrower unless another receiver is appointed or the mortgagee takes possession, in which case the record should be passed to the receiver or mortgagee who takes possession.

Where a receiver has "stepped into the shoes" of the capital good owner and, as a result of the disposal of the capital good or a change in its taxable use, an adjustment under the capital goods scheme is necessary, the receiver is obliged to calculate the adjustment. Where that adjustment gives rise to a tax liability under the scheme, the receiver is obliged to include the amount of the adjustment in the VAT return under the receiver's number as if it were tax due, and pay the tax due (section 76(2)(a)(i) and (ii)). Where that adjustment gives rise to an increase in deductibility, the receiver should include the amount of the adjustment in the VAT return and is entitled to receive the benefit of that increased deductibility by reducing the amount of VAT payable in the period, or by refund, provided all other tax obligations are met.

The occurrence of a CGS liability may be influenced by the actions of the receiver. Subject to the provisions of the relevant sections of the VATCA, the following options may be relevant:

- (a) joint option to tax an otherwise exempt sale (section 94(7)),
- (b) a landlord's option to tax an exempt letting (section 97),
- (c) the transfer of a business rule (section 20(2)(c)).

A receiver cannot opt to tax a sale of a property to a person who is connected (section 97(3) of the VATCA) to either the owner or the receiver (section 94(7)(d) of the VATCA).

The first sale of residential property, which was developed by the owner, or a person connected with the owner within the meaning of section 97(3), on which that owner was entitled to deductibility is always a taxable sale and, where that property is sold by a receiver, the receiver is obliged to account for VAT (sections 22(3), 76(2) and 94(7)(e)).

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<sup>5</sup> The provisions of section 64(12A) apply w.e.f. 27 March 2013 to receivers appointed on or after that date and w.e.f. 1 May 2014 to all receivers regardless of the date of appointment. Prior to the relevant effective dates, the position in relation to CGS adjustments in receivership situations is as follows:

- CGS adjustment arising from disposal of a capital good – liability falls on the receiver but any increased deductibility remains with the borrower;
- CGS adjustment arising from a change in the taxable use of the capital good – liability falls on the borrower and any increased deductibility remains with the borrower.

### **3.4.f Capital Goods Record**

It is recognised that, in certain instances, a receiver/MIP may have difficulty in obtaining information required to prepare an accurate CGS computation. However, Revenue will not seek to challenge the CGS computation provided reasonable endeavors are undertaken in obtaining all the information and all assumptions are reasonable and clearly set out in the calculation and are retained by the receiver/MIP.

### **3.4.g VAT Group**

Where a receiver is appointed to a company which was, prior to receivership, registered as a member of a group, the receiver may apply for a corresponding group registration. However, group registration will be granted only in circumstances where all of the conditions outlined in section 15 are satisfied.

### **3.4.h Waiver Cancellation Amounts**

Where a receiver or a MIP disposes of the last property covered by a waiver of exemption, the landlord's waiver of exemption is treated as if it were cancelled on the date of disposal (section 96(12)(c)). The waiver cancellation amount, if any, remains the responsibility of the borrower.

## **3.5 RCT**

Tax legislation provides no exemption from the operation of Relevant Contracts Tax (RCT) in the case of receivership or where there is a MIP. Revenue considers that all aspects of the RCT legislation, including deduction by the principal contractor and the offset by Revenue of RCT against outstanding taxes, must be applied as normal, notwithstanding the fact that a receiver has been appointed to a business or the mortgagee is in possession.

### **Where the receiver acts as a Principal**

A receiver who is appointed to a business in the construction, meat processing or forestry sectors, who engages a subcontractor to carry out relevant operations, is a principal contractor for RCT purposes. A MIP who engages a subcontractor may also be a principal contractor depending on the circumstances. A receiver/MIP (who is a principal under the legislation) is, therefore, obliged to operate the RCT system on relevant payments made to the subcontractor in the same way as any other principal contractor. This



includes registering with Revenue as a principal contractor and obtaining a 'deduction authorisation' in relation to all relevant payments made. If there is any doubt as to whether a particular contract is a relevant operation for RCT purposes, the receiver/MIP should contact the local Revenue office dealing with the borrower's tax affairs.

Appointments over separate borrowers will be examined separately, i.e. the appointment of Mr X as receiver over a construction company will not automatically deem all Mr X appointments to be within the RCT regime – each appointment will be examined separately.

In cases where a receiver/MIP is carrying out construction work to meet health and safety or planning guidelines, each case would have to be examined and judged on its own facts and merits. Factors to be considered would include the type and range of works being carried out, whether this work was being carried out in conjunction with other work or as part of wider construction work and what was the ultimate intention with regard to the property. Where there is doubt as to the position regarding cases which involve health and safety or planning guidelines requirements, details should be submitted to the relevant local Revenue office.

### **Where the receiver acts as a Subcontractor**

Any RCT deducted from a subcontracting business in receivership and remitted to Revenue will be offset against outstanding taxes of the business in the order statutorily provided for, with any balance being repaid to the receiver provided all of the business' tax obligations are met. Section 530V(4) distinguishes between RCT deducted on foot of a contract entered into by a business prior to receivership and new contracts entered into by the receiver (in his capacity as receiver). If the contract giving rise to the RCT deduction was entered into by the receiver following the receiver's appointment, the RCT deducted is offset only against liabilities of the post-appointment period, with any balance being repaid to the receiver. Payments which are made to a receiver in respect of relevant contracts entered into prior to appointment are credited to the period prior to the appointment. (See e-Brief 3/11)

Where a receiver is acting as a subcontractor in a relevant contract entered into after his/her appointment and the receiver obtains a new RCT reference number in respect of the receivership, the RCT system automatically grants a deduction rate of 20%, as a three year compliance history does not exist for the new receivership RCT registration. However, the requirement to have a three year compliance history can be disregarded, and the rate changed to 0%, if the receiver has met all the other conditions for the 0% rate and the risk to Revenue is minimal.



### 3.6 PREM

A receiver who intends retaining employees of the borrower for more than a month should obtain, in the name of the borrower in receivership, a new employer tax reference number from month 2 and return PAYE/PRSI/USC in respect of such wage payments under this new number. This will facilitate the efficient administration by Revenue of receivership cases.

#### **Redundancy/Arrears of pay**

Where employees are not retained by the receiver on appointment, redundancy payments and arrears of pay must always be returned under the borrower's employer tax reference number. Receivers are reminded of the following rules relating to the application of PAYE/PRSI/USC:

Redundancy payments or arrears of pay made after the date of cessation of employment and before the following 1 January, and not included in Form P45, should be dealt with for tax purposes in the following way:

- if a tax credit certificate is held by the borrower, the receiver must deduct tax on the redundancy payments or arrears by reference to the former employee's tax credits and standard rate cut-off point as if the payment is being made on the date the employee ceased to be employed by the borrower.
- if no tax credit certificate is held by the borrower, the receiver must apply the emergency basis of tax deduction to the redundancy payments or arrears.

Where a former employee receives a payment of arrears of pay in the year(s) following the year of cessation of employment, the receiver must apply the emergency basis of tax deduction to the arrears.

Redundancy payments and arrears of pay, with related liabilities, should be included on the Forms P35 under the borrower's original employer number. In addition, P45s, including supplementary P45s, should also be issued under the original employer number.



## 4. Information to be provided upon appointment

Within 7 days of appointment, a receiver over corporate assets should forward the following information to Revenue, as appropriate, using the secure online facility MyEnquires (please use the facility within MyEnquiries to input the following Collector General's Division email address: [insolvency@revenue.ie](mailto:insolvency@revenue.ie) along with the tax reference number of the borrower, if known):

- Name and contact details of receiver
- Name and contact details of borrower
- Tax reference of borrower (if known)
- CRO number of borrower
- Deed of Appointment, specifically highlighting date of appointment
- Copy of the Debenture/loan agreement under which appointment was made
- Details of assets appointed over, in as much detail as possible e.g. folio numbers, bank details etc.
- The nature of the appointment over each asset – Fixed or Floating
- Whether the entity is continuing to trade outside of the receivership
- Whether the receiver will continue to trade and the entity under which this trade will be carried on (CRO and tax reference number)

Details which are forwarded to [insolvency@revenue.ie](mailto:insolvency@revenue.ie) through MyEnquiries, are available on-line to other Revenue Divisions, thereby eliminating the need for receivers to provide multiple copies of documentation.

In circumstances where the information provided is incomplete, the relevant Revenue District will pursue the outstanding information before processing any request for information submitted by a receiver.

For receivers over non-corporates, the above information, as appropriate, should be submitted prior to requests to Revenue for information to assist with the tax aspects of the receivership (see **Paragraph 5**).



## 5. Revenue sharing taxpayer information with a Receiver

Section 851A(8) provides that a Revenue officer may disclose taxpayer information to another person in certain specified circumstances including-

“(h) taxpayer information which may reasonably be regarded as necessary for the purposes of determining any tax, interest, penalty or other amount that is or may become payable by another person or any refund or tax credit to which the other person is or may become entitled, .....,”

Revenue is of the view that, where a receiver requests taxpayer information for any of the purposes reflected above, it may share that information with receivers for those specific purposes only.

In view of this, Revenue issued e-Brief 16/12 entitled “Disclosure of Information to Mortgagees in Possession (MIPs), Asset Receivers and other Receivers to enable them to meet their obligations under Value-added Tax legislation”. The e-Brief advised practitioners of a new instruction in the Revenue VAT Tax and Duty Manual relating to information disclosure. While this instruction details VAT information commonly requested, and the type of information that may be disclosed by Revenue, it has become standard practice, on foot of the ebrief, for a receiver, upon appointment, to issue standard letters to Revenue requesting this information. It was never the intention that Revenue would become the first port of call for receivers in seeking to obtain information to enable them to determine if the transactions in any of the properties over which they have been appointed would give rise to a VAT charge. This kind of unfocussed blanket approach to seeking information has the detrimental effect of limiting the time available to Revenue to assist in cases where details are genuinely not available elsewhere.

This should be borne in mind when requesting taxpayer information and as much background data as possible must be provided by a receiver to facilitate Revenue in researching the query. For example, with respect to requests for details as to base cost, enhancement expenditure, whether section 23 type relief has been claimed on the property and whether it has been treated as investment property or trading stock, provision of the approximate date of purchase or enhancement should be provided, together with the then vendor’s details. A receiver should set out clearly what information is required, and what they understand the tax position to be. While Revenue will endeavour to respond to queries promptly, given the nature of the exercise, it can take time.

On the general question of access to Revenue held information, Revenue would caution against any expectation that the information it possesses can be

made available other than for the limited purposes provided for under section 851A(8)(h), or that the information will provide the solution to all of the receiver-related information gaps. The information Revenue holds is largely dependent on tax returns submitted under the self-assessment system and certain other sources and may not be held in a form, or to the level of disaggregation, that would necessarily be useful for the particular purpose envisaged.

Nonetheless, within these limitations, Revenue is prepared to share available information for the sole purpose of assisting in the determination of tax liabilities. This facility will be provided where the information cannot otherwise be accessed by the receiver from the borrower or from other sources and where the information can be furnished following reasonable efforts at retrieval. In requesting information from Revenue, receivers/MIPs must confirm in the letter of application that all other avenues have been pursued and provide details of these previous efforts to establish the information.

Personal information, including PPSNs and personal tax allowances, can never be disclosed by Revenue. Neither can information relating to assets over which the receiver has not been appointed. This may result in Revenue being unable to provide details of, for example, rental tax losses forward unless the receiver has been appointed over all properties of the entity

All requests for information need to be forwarded to the District dealing with the borrower's tax affairs.

## 6. Capital Gains Tax Clearance Certificates (CG50As)

In the case of a receiver/MIP appointed to an asset charged by a company or an individual, the application for a tax clearance certificate (Form CG 50A) should be made by the receiver or the MIP, as the case may be, on the disposal of specified assets to third parties where the consideration exceeds certain limits, currently €500,000. Applications should be made to the following Revenue districts:

<b><i>Disposal by:</i></b>	<b><i>Relevant District</i></b>	<b><i>Tax Reference Number</i></b>
Receiver over corporate assets	District dealing with corporate	Company tax reference number
Receiver over assets of an individual	District dealing with individual	Individual's PPSN /tax reference number
Receiver over co-owner asset	District dealing with Receiver	PPSN/tax registration of all co-owners to be listed on a schedule
MIP	Large Cases Division <sup>6</sup>	MIP's tax reference number

The vendor details on the application Form should be completed as "[receiver/MIP name] - as receiver/MIP over assets of [borrowers name]" and signed by the receiver/MIP in their capacity as such.

The vendor, for the residence test purposes, is the borrower, not the receiver/MIP. However, for MIP applications to LCD using the tax reference number of the mortgagee as MIP, Revenue will permit that the residence test may be determined by reference to the mortgagee's residence position.

In instances where a CG50A has issued to a receiver, but the contract is being closed by a MIP, while technically a new CG50A should be sought, Revenue will accept the CG50A issued to the receiver.

<sup>6</sup> Agreed arrangements are in place whereby mortgagees apply for CG50As to Large Cases Division.

## 7. Reasonable Endeavours

For the purposes of these guidelines, “reasonable endeavours” means all the steps that a reasonable person would take in the circumstances. This means that the person must take all reasonable steps within their powers which are capable of producing the desired results. These would be the steps the person would take if acting in their own interests and desiring to achieve that result, acting honestly, reasonably and making a positive effort to perform the relevant obligation.

Taking section 96(3) as an example, if the following steps were undertaken, Revenue would be satisfied that the reasonable endeavours test is met:

**Income** - the amount of rent receivable under a letting agreement should normally be available to the receiver or lender. Where a computation of rental income is prepared on the basis of the rent received, the receiver/lender should be satisfied that the amount received equates to the rent receivable under the agreement. Where there is a discrepancy, the lender must try to ascertain the reason(s) for the discrepancy. For example, have the terms of the agreement been altered and, if so, in what circumstances, or has the tenant just ceased paying the full rent provided for in the agreement. In all cases, the computation should be prepared on the basis of the rent receivable (subject to any claim under section 101).

**Property owned by a partnership or co-ownership:** Before making any assumptions in relation to the extent of a borrower’s interest in such property, the lender should check if the required information is available from its own records or from other records to which it might have access.

**Joint borrowers:** As in the case of property owned by a partnership or co-ownership, the lender should check all avenues available to it before making any assumptions in relation to the borrower’s interest in a property.

**Group relief:** When claiming group relief, the lender should, in addition to obtaining the necessary confirmations in relation to group structure etc. satisfy itself that the losses have in fact been surrendered by the group member.

**Deductible expenditure:** In general, it should be possible for lenders to identify and calculate the amount of any deductible expenditure when computing the rental income from property in receivership. Difficulties in this area relate mainly to the deduction under section 97(2)(e) for interest on loans:

*Purpose of the loan:* Interest on a loan is deductible only to the extent that it is used to purchase, improve or repair the rental property in question. It follows, for example, that a deduction for interest is not due merely because a loan is secured on property. Therefore, before making a deduction, the lender must satisfy itself in relation to the purpose of the loan. In this regard, it would normally be expected that the lender would be in a position to confirm from records in its possession that the loan (or a replacement or amalgamated loan (**Part 4.8.6** of the Income Tax, Capital Gains Tax and Corporation Tax Manual refers) was used for the purposes set out in section 97(2)(e).

*PRTB registration requirements:* For the purposes of section 96(3) computations, a lender must be able to show that the relevant registration requirements have been met in respect of all tenancies which existed in relation to the property in the chargeable period for which a deduction for interest is made. The checks required in this regard might include having sight of the tenant's copy of the registration confirmation letter or making direct contact with the PRTB. (The inclusion of a property on the PRTB's published register is not necessarily proof that the registration requirements have been met in relation to a tenancy for a particular period.)

If there are individual situations where additional clarity is required on how best to meet 'reasonable endeavours', a submission should be made to the relevant District where the return is being filed.

## **8. Filing a Stamp Duty Return on ROS when property is being sold through a receiver/Mortgagee in Possession (MIP)**

### **Receivers**

If property is being sold through a receiver and the receiver is a party to the instrument-

- On the '*Instrument Category*' screen, tick the box to indicate that the receiver is acting in a fiduciary capacity for the vendor;
- On the '*Instrument Party Details*' screen—
  - input the tax reference number of the mortgagor/borrower into the 'vendor' field;
  - select the fiduciary capacity from the drop down menu;
  - input the name of the receiver; and
  - click on the "Add Vendor Fiduciary Capacity" button.

Valid tax reference numbers in respect of each party to an instrument are needed in order to file a stamp duty return. However, Revenue recognises that practical difficulties can arise where mortgagors/borrowers who are individuals do not co-

operate with the requirement to provide a valid tax reference number to a receiver. Receivers may, where every other possible avenue to obtain a valid tax reference number has been exhausted, input as the vendor's tax reference number, the tax reference number obtained from Revenue in respect of the particular receivership. However, it should be noted that the names that will appear on the stamp certificate are the names attached to the receiver and to the vendor in Revenue's systems.

### **Mortgagees in possession (MIP)**

If property is being sold by a MIP, the MIP is the actual vendor and not acting in a fiduciary capacity. Therefore, the MIP's own tax reference number should be input in the e-stamping return in the 'vendor' field.