

Registration of tenancies with Residential Tenancies Board (interest deduction rental income)

Part 04-08-10

This document should be read in conjunction with section 97(2) and 97(2I) of the Taxes Consolidation Act 1997

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1. Introduction

Entitlement to a deduction for interest paid on borrowed money employed in the purchase, improvement or repair of a rented residential property (section 97(2)(e) TCA 1997) is conditional on compliance with the registration requirements of the Residential Tenancies Act 2004 (the Act) in respect of all tenancies which exist in relation to the property in the year of assessment or accounting period in question.

This condition applies to interest paid by individuals during the year of assessment 2006 and subsequent years and by companies for accounting periods beginning on or after 1 January 2006. The statutory basis for the registration of tenancies is contained in Part 7 of the Act.

2. Persons who are required to register

The Act applies to the vast majority of private rented dwellings situated in the State. Dwellings outside the State are outside the scope of the Act.

Landlords are generally required to register details of their residential tenancies with the Residential Tenancies Board (RTB – previously the Private Residential Tenancies Board), including, for example, where the tenancy relates to a self-contained residential unit in the landlord's own residence. However, the requirement to register a tenancy does not apply where the landlord and tenant are sharing the same self-contained unit. Section 3 of the Act lists the types of dwellings that are excluded and in respect of which there is no requirement to register tenancies. The main exclusions include –

- Business premises
- Former rent controlled dwellings occupied by the original tenant or by his/her spouse
- A dwelling occupied under a shared ownership lease
- A tenancy where the landlord and tenant share the same self-contained unit
- A dwelling in which the spouse, parent or child of the landlord is resident and where there is no written lease or tenancy agreement
- Holiday lettings
- A dwelling let by, or to, a public authority

The onus is on a landlord to ascertain whether he or she is excluded from the requirement to register tenancies.

3. Registration requirements

Landlords are required to register details of **all** of their tenancies within one month of the commencement of those tenancies. Once a tenancy is registered, it remains a registered tenancy for as long as the tenancy remains in existence. Once the tenancy is terminated, any new tenancy created in respect of the dwelling must be registered with the RTB. Under the provisions of Part 4 of the Act, if the tenancy has not previously been terminated it will be deemed to be terminated when it has lasted 4 years and a new tenancy will then be deemed to commence. This new tenancy must be registered with the RTB and the appropriate registration fee paid.

Landlords can register tenancies by completing the RTB1 form online at the [Residential Tenancies Board website](#) or can request a paper RTB1 Tenancy Registration Application Form by contacting the Board at 0818 30 30 37.

Section 136 of the Act sets out the particulars that must be entered on the RTB1. The RTB may return an incorrectly completed or incomplete RTB1 to a landlord and refuse to register a tenancy until the form has been correctly completed. Landlords are urged to read the 'Frequently asked Questions' section on the RTB's website, in particular the material on the tenant's PPSN. The Act states that the PPSN of the tenant(s) must be provided unless it cannot be ascertained by reasonable enquiry. Where a landlord is unable to provide the required PPSN, he or she must declare on the form that every reasonable effort was made to obtain it. The RTB will register a tenancy once this declaration has been made.

4. Revenue requirements

The registration requirements outlined in section 3 above must be met for **all** of a landlord's tenancies. If all of the tenancies in a dwelling are not registered for a particular year, all interest relief in respect of that dwelling will be lost for the year. There is no provision for apportionment where only some of the tenancies are registered.

The registration requirements must be complied with in respect of all tenancies in a particular dwelling in the chargeable period for which the interest deduction is claimed. If a tenancy commences at some time within the last month of the chargeable period, the registration requirements will be regarded as met if the tenancy is registered within a month of commencement even though the month may finish in the next chargeable period.

An interest deduction is claimed under the normal self-assessment system. A landlord is required to state in the annual return of income that he or she has complied with the registration requirements. Revenue regards the

registration requirements for a particular chargeable period as met if they are met by the return filing date for that period. Evidence of registration need not be submitted with the return of income but should be retained for inspection in the event of an audit.

For Revenue audit purposes, written confirmation of the registration of a tenancy from the RTB will be accepted as evidence of compliance with the registration requirements for that tenancy. In the case of an exempt dwelling, the onus will be on the landlord to show that he/she is not required to comply with the registration requirements. Landlords claiming interest relief in respect of properties situated outside of the State must be able to show that the interest paid relates to that property.

If it is discovered that a landlord has failed to comply with the registration requirements for a chargeable period, any interest relief that has been claimed will be withdrawn. Such a withdrawal of interest relief may result in an underpayment of tax and expose the landlord to interest and penalties.

4.1 Late Registration

While new tenancies should be registered within one month of their commencement, provision is also made in the Act for late registration at double the normal registration fee. An acknowledgement from the RTB confirming registration in the case of a late registration will be accepted by Revenue as evidence of compliance with part 7 of the Act. However, a person claiming an interest deduction on their annual tax return must be in a position to indicate compliance with the Part 7 requirements at the time of making the return.

Interest relief that has been denied for a particular chargeable period because a tenancy was not registered by the return filing date for that period can subsequently be restored if the landlord avails of the late registration facility, subject to the usual 4 year time limit on claims for repayment of tax.

5. Use of management companies

5.1 Provisions of Act

The Act is primarily concerned with the obligations of landlords and the protection of tenants' rights in residential tenancy situations. It does not cater specifically for the use of management companies, other than where a management company is the company in which functions are vested with respect to the management of an apartment complex. The use of an agent authorised by the landlord to act on his or her behalf is, however, envisaged.

The Act defines a tenant as the person who is entitled to the occupation of a dwelling. A management company cannot, therefore, be a tenant as it does not actually occupy the dwelling. A tenancy includes a sub-tenancy and thus the sub-tenancy between the management company and the ultimate tenant is covered. The person who is entitled to receive the rent is the owner of the dwelling, whether or not he or she has authorised an agent to act on his or her behalf.

5.2 Revenue View

Under section 97(21) TCA 1997 the evidence required to show compliance with the requirements of Part 7 of the Act for interest deduction purposes is a written communication from the RTB **to the person chargeable** (i.e. the person assessable in respect of the rental income) confirming registration of a tenancy.

Revenue regards the owner of the dwelling as having the obligation to register all of the tenancies created in respect of his or her particular property. A management company may, as the owner's agent, deal with the actual registration process. However, where the management company fails to ensure that the registration requirements are met, it is of course the owner, and not the management company, that will suffer the loss of an interest deduction.

This obligation on the owner of the dwelling applies even where the owner lets the dwelling to a management company that, in turn, lets the dwelling to the tenants. The Revenue view is that the use of a management company does not remove the obligation on an owner to register tenancies of his or her dwellings entered into by the management company. As the person who will be claiming an interest deduction, the owner will not be entitled to such a deduction if he or she merely registers, as a tenancy, the lease arrangements with a management company.

6. Student accommodation

As stated in section 2, a dwelling let by, or to, a public authority is excluded from the registration requirements of the Act. A "public authority" includes a recognised educational institution. Where student accommodation is owned by an educational institution, there is no requirement for that educational institution to register the tenancies with the students. The exemption applies whether the accommodation is let directly by the educational institution or through a management company.

Certain student accommodation may qualify for 'section 23' type tax relief in respect of its provision. Where such accommodation is owned by private persons, those persons must register the tenancies with the students, unless

they let the accommodation **directly** to a third level college for onward letting to students. Tenancies in dwellings that are let directly to students, or to a management company, **must** be registered. As the obligation to register a tenancy is triggered by the commencement of a tenancy it is not necessary to register the lease between the investor and the management company. As outlined in section 5.1, the tenant is the person who is entitled to occupy the dwelling, i.e., the student. Where a management company on-leases the property to students, either the owner or the management company must register those tenancies. However, as outlined in section 5.2, it is the owner who is ultimately responsible for registration and that will suffer the loss of an interest deduction.

7. Exchange of data between Revenue and RTB

Data Available to Revenue

When a landlord registers a tenancy, the data that the RTB requires is as follows:

- Address of tenancy
- Capacity. i.e., number of rooms, beds
- Description
- Rent payable
- Frequency of payment
- Date tenancy commenced
- Details of landlord including PPSN
- If landlord is a company then registered company details
- Agent details if relevant

Revenue is entitled to this information on a case-by-case basis by supplying the “identification number” of the landlord in question. An “identification number” is the PPSN in the case of an individual landlord or in the case of a company, its Company Registration Number. If an agent has registered on behalf of a landlord, the landlord’s name and the agent’s “identification number” are required.

To date, Revenue has made several requests to the RTB for information on registrations. This information has been useful in the following situations:

- Cross-referencing the number of registered tenancies with the RTB with the number of rental properties on Form 11 returns
- Determining a landlord’s entitlement to claiming mortgage interest relief on rental property loan interest from 2006 onward
- Confirming quality of data in DEASP Rent Subsidy files
- Identifying undeclared rental properties
- Cross-referencing information provided by tenants on Rent 1 forms

The following material is either exempt from or not required to be published under the Freedom of Information Act 1997.

[...]

8. RTB Contact details and further information

Information about the Act and the registration requirements is available at www.rtb.ie. **Enquiries about the registration requirements should be addressed to the RTB and not to Revenue.** The RTB can be contacted at:

Residential Tenancies Board
PO Box 47
Clonakilty
Co. Cork

Tel: 0818 303037

E-mail: registrations@rtb.ie

Website: www.rtb.ie