

## **Who must file a tax return and self assessment under full self assessment?**

### **Part 41A-01-01**

This document should be read in conjunction with sections 959A and 959B of the Taxes Consolidation Act 1997 (TCA).

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## Introduction

A chargeable person must comply with the full self-assessment regime provided for in Part 41A of the Taxes Consolidation Act 1997 (TCA).

### 1. Who is a chargeable person?

Under section 959A TCA, a chargeable person for self-assessment purposes is a person who is chargeable to tax on that person's own account or on another person's account in respect of a chargeable period.

Section 959B, which contains a number of exceptions to the general rule in section 959A, provides **inter alia** that an individual is not a chargeable person for a tax year where, for that year, she or he is in receipt of:

- PAYE income only, or
- PAYE income and income from non-PAYE sources (for example, trading income, rents, dividends, deposit interest), where the total non-PAYE income assessable to tax –
  - does not exceed €5,000 (€3,174 for 2015 and prior years), and
  - is taken into account in determining the individual's tax credits and standard rate cut-off point, or
  - is taxed at source (for example, deposit interest subject to DIRT)<sup>1</sup>.

For the purposes of section 959B(1)(a), Revenue may, in considering whether non-PAYE income should be taxed under the PAYE system, take account of an individual's gross income from non-PAYE sources. In this regard, an individual whose gross non-PAYE income from all sources exceeds €30,000 (€50,000 for 2015 and prior years) is regarded as a chargeable person notwithstanding that his or her assessable income from non-PAYE sources does not exceed €5,000 (€3,174 for 2015 and prior years).

This exception to the general rule does not apply to company directors or to their jointly assessed spouses or civil partners, other than where a company meets the following conditions during the three years ending on 31 December in the tax year for which the exception is to apply –

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<sup>1</sup> Under s261 TCA

- it was not entitled to any assets other than cash on hands or money on deposit not exceeding €130
- it did not carry on a trade, business or other activity, including the making of investments, and
- it did not pay any charges on income<sup>2</sup>.

For tax years prior to 2019, these conditions must have been met by the company for the three years ending on 5 April in the tax year for which the exception is to apply.

Please refer to paragraph 1.4 in relation to certain non-proprietary directors.

**Note:** An individual whose non-PAYE income is nil (for example, because an allowance reduces her/his taxable profits to nil) is a chargeable person, as nil profits cannot be taxed through the PAYE system.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

### 1.1 What is taken into account in applying the income threshold of €5,000?

As noted above, section 959B(1)(a) TCA provides that an individual who has PAYE and non-PAYE income is not a chargeable person for a tax year if the non-PAYE income does not exceed €5,000 (€3,174 for 2015 and prior years).

Section 3 TCA defines 'total income' as "total income from all sources as estimated in accordance with the Income Tax Acts". Items such as payments under deeds of covenants<sup>3</sup> are deductions in computing total income.

When considering whether the €5,000 threshold is met, the income from each source of non-PAYE income - which, based on the definition of total income, is the amount assessable to tax in respect of each such source - is calculated. For the purposes of applying the threshold, no account is taken of any of the deductions that are made in computing total income. Therefore, for each source of non-PAYE income it is necessary to determine:

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<sup>2</sup> Within the meaning of s243 TCA

<sup>3</sup> See section 792 TCA

- i. the profits or gains for a year of assessment, then
- ii. the profits or gains which are to be charged to tax (capital allowances are usually taken into account at this point) and then
- iii. the profits which are assessed to tax (losses forward are usually claimed at this point).

An individual whose aggregate assessable profits from each source of non-PAYE income does not exceed €5,000, where those profits are taxed either under the PAYE system or at source under section 261 TCA, is not a chargeable person for the tax year in question.

### 1.2 What is taken into account in examining the gross income threshold of €30,000?

The gross income from non-PAYE sources is taken to mean the total profits or gains for a year of assessment (as calculated at point i. in paragraph 1.1 – that is, before capital allowances and losses) for all such sources.

### 1.3 Excluded income

Payments from the Department of Employment Affairs and Social Protection and legally enforceable maintenance payments received are not taken into account for the purposes of either income threshold.

### 1.4 Non-proprietary directors

As noted in paragraph 1.1, directors and their jointly assessed spouses or civil partners are generally chargeable persons for self-assessment purposes, except in the circumstances outlined in that paragraph.

Non-proprietary directors –

- who are not otherwise chargeable persons, and
- all of whose income, including fees, benefits, distributions, etc., is subject to tax directly or indirectly under PAYE.

are not required to file an annual return of income under self-assessment for any tax year in which they meet these conditions. This approach is subject to review.

A “proprietary director” is a director of a company who is the beneficial owner of, or is able either directly or indirectly to control, more than 15% of the ordinary share capital of the company. A non-proprietary director is a director other than a proprietary director.

## 2. Having regard to previous years

Section 959B(1) TCA provides that, in deciding whether non-PAYE income is to be taken into account in determining tax credits and the standard rate cut-off point for a tax year for PAYE purposes, Revenue may have regard to the amount of such income for the year in question or previous years. If an individual is a chargeable person in one year in relation to a source or sources of income, then regardless of the amount of that income in subsequent years, that individual will continue to be a chargeable person so long as those sources of income continue to exist.

## 3. Jointly assessed cases

In the case of married couples or civil partners who are jointly assessed, the income thresholds are applied to the joint non-PAYE income of both spouses or civil partners. In the case of married couples or civil partners who opt for separate assessment or single treatment, the thresholds are applied separately to each spouse or civil partner.