

Summary of Pay & File system for Income Tax and CGT under Part 41A of the TCA 1997

Part 41A-01-03

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Introduction

This manual summarises the main obligations of a taxpayer under the new self assessment system which was introduced by Part 41A of the TCA 1997. To assist in understanding the changes brought about by Part 41A, new obligations introduced by the Part are specifically identified. The manual also sets out, in general terms, the implications for a taxpayer of failing to comply with any of those obligations.

An individual's obligations in relation to paying and filing for income tax also cover PRSI and USC.

1 Obligation to file a tax return

(substantially unchanged from Part 41)

1.1 Obligation to file a return upon receiving notice

Under section 877 every person who is chargeable under the income tax acts is required, upon receiving a notice from Revenue, to file a statement of the amounts of profits and gains chargeable for the period specified in the notice.

Under section 879, every person is required, upon receiving a notice from Revenue, to file a return of income in the prescribed form. Section 879(4) provides that if a person files a tax return in the prescribed form, they will be deemed to have received notice requiring that they file that return. Therefore, all of the provisions that deal with filing incorrect returns will apply to a return voluntarily filed as to a return filed upon receipt of notice.

Section 913 provides that sections 877 and 879 apply for the purposes of CGT as they do income tax.

The Form 12, Form 11 and Form CG1 are all prescribed forms for the purposes of section 879. Therefore, a person who receives a notice under section 879 should file the appropriate one of these three returns.

1.2 Obligation to file a return on a self assessment basis

Section 959I puts section 877 and section 879 onto a self assessment basis. It states that a chargeable person¹ must

- file a tax return,
- in the prescribed form,
- by the specified return date,
- for a chargeable period,

notwithstanding that the chargeable person did not receive a notice to file a statement or return in accordance with section 877 or 879.

¹ See manual 41A-01-01 for details of who is a chargeable person under Part 41A.

Section 959J clarifies that for income tax and capital gains tax purposes, the return must contain certain specific information. For income tax purposes, the prescribed form for a chargeable person is the Form 11 and it contains all the information required. Where an individual is chargeable to capital gains tax and does not have any income chargeable to tax, the prescribed form is the Form CG1.

The specified return date for income tax and capital gains tax is 31 October after the year of assessment under section 959A. While extensions for ROS users have been granted in prior years to mid November, these are administrative measures and are not contained in legislation.

Where an agent files a tax return on behalf of a taxpayer, then section 959L provides that the Acts apply as if the taxpayer had filed their own return.

1.3 Failure to file a return on a self assessment basis

Section 959O treats a failure to make a return required by section 959I as if it were a failure to deliver a return on foot of a notice requiring the return. This allows a Revenue officer to take the same action as if a notice to file a return had not been complied with. The same penalties apply regardless of whether the failure related to a return required under self-assessment or required under a specific notice.

Penalties under sections 1052 and 1054 may be applicable.

A surcharge under section 1084² may be applicable.

2 Obligation to file a self-assessment

(New to Part 41A)

Under section 959R every return, with certain specific exceptions, must include a self assessment.

Section 959S provides that an individual who has an income tax or a capital gains tax liability for a tax year is not required to make a self-assessment if he or she files a paper tax return on or before 31 August³ in the year following the tax year in question. In these circumstances, a Revenue officer makes the self-assessment on the individual's behalf.

In the case of a married couple or civil partners who are separately assessed, a Revenue officer cannot make a self-assessment on behalf of an individual until such time as his or her spouse or civil partner files a return.

Individuals who are required to file electronic returns in accordance with section 917EA must make a self-assessment, regardless of whether they file their return by the 31 August deadline or, if applicable, a later deadline.

² Manual 47-06-01 refers.

³ Revenue has extended this date to 30 September 2017 for the 2016 Form 11.

Section 959T provides that a person who files a tax return on behalf of a chargeable person must also make the self-assessment, and this is deemed to have been made by the chargeable person.

2.1 Failing to make or amend a self-assessment

Under section 959X⁴, a person who is required to

- make a self-assessment, or
- amend a self-assessment

but fails to do so, is liable for a penalty of €250 or €100 respectively

These penalties are collected under Chapter 3A of Part 47.

3 Obligation to pay tax

(substantially unchanged from Part 41)

Every individual who is a chargeable person has an obligation to pay preliminary income tax and that preliminary tax is treated as a payment on account.

3.1 Income tax

Preliminary tax, under section 959AO(1), must be paid by 31 October in the year of assessment. As with return filing dates, heretofore there has been an administrative ROS extension to mid-November each year.

Generally, the balance of tax, under section 959AO(2) must be paid when the tax return for the year of assessment is being filed. However, if the preliminary tax paid is less than:

- 90% of the income tax payable for the year, or
- 100% of the income tax payable for the preceding year, or
- 105% of the income tax payable for the pre-preceding year where payment is by Direct Debits (under section 959AP)

then the due date for the balance of tax is 31 October in the year of assessment. Interest (under section 1080) applies, to the difference between the total tax payable for the year and the amount of preliminary tax paid, from that date.

3.2 Capital Gains Tax

There is no preliminary tax for CGT. Section 959AQ sets out the CGT payment dates.

⁴ See manual 41A-04-02 for details of what must be included in a self-assessment and for guidance on how to deal with situations where a partially completed self-assessment is included.

- CGT due on gains made in the initial period (defined by section 959AM as between 1 January and 30 November) must be paid by 15 December that year.
- The balance of CGT due for the year is due by 31 January the following year.

4 Interaction between withholding taxes and preliminary tax requirements⁵

When looking at the interaction between withholding taxes suffered and preliminary tax requirements, it is important to determine whether the withholding tax is treated as a tax credit (deducted from tax chargeable in arriving at tax payable) or as tax paid directly to the Collector General (deducted from tax payable in arriving at the balance of tax due for the period). Below are some common examples of withholding taxes and how they are treated.

4.1 Dividend Withholding Tax (DWT)

Where a person is within the charge to Income Tax for a tax year, DWT is, by virtue of section 172J of the TCA 1997, available to be set against the amount of Income Tax chargeable on the person for the year involved. It is given as a credit against the amount of Income Tax chargeable on a person in arriving at the amount of tax payable by the person for the tax year.

4.2 Professional Services Withholding Tax (PSWT)

Where a person is within the charge to Income Tax for a tax year or to Corporation Tax for an accounting period, PSWT is, by virtue of section 526 of the TCA 1997, available to be set against the amount of Income Tax or Corporation Tax chargeable on the person for the year or period involved. It is, again, given as a credit against the amount of Income Tax or Corporation Tax chargeable on a person in arriving at the amount of tax payable by the person for the tax year or accounting period involved.

4.3 Pay as You Earn (PAYE)

Where a person is within the charge to Income Tax for a year, PAYE is, by virtue of section 997(1), available as a credit against the amount of tax chargeable in the period.

4.4 Deposit Interest Retention Tax (DIRT)

Where a person is within the charge to Income Tax for a year, DIRT is, by virtue of section 59(ii), available as a credit in determining the amount of tax payable for the period.

⁵ The material included in this section is an adaptation of that first published as e-brief no. 68/12 and e-brief 48/12.

4.5 Relevant Contracts Tax (RCT)

Where a person is within the charge to Income Tax for a year, RCT is, by virtue of section 530P(1) treated as a payment on account. That is, RCT is deductible from tax payable, rather than being a tax credit deductible from tax chargeable in arriving at tax payable.

4.6 Example – 90% rule

Individual makes up accounts to 31 December 2014. The income tax chargeable for that year of assessment (that is, before credits and amounts paid directly to the Collector General) is €18,000. During the year the individual had PAYE of €11,000 and RCT of €2,000 deducted.

Income Tax chargeable for 2014	18,000
Credit for PAYE suffered in year	<u>(11,000)</u>
Income Tax payable 2014	<u>7,000</u>
Minimum payable to avail of 90% rule	6,300
RCT already paid directly to the CGs for the basis period (i.e. year ended 31 December 2014)	<u>(2,000)</u>
Balance payable to CG to meet 90% PT obligation	4,300

4.7 Example – 100 % rule

Individual makes up accounts to 31 December 2014. The income tax chargeable for the 2013 year of assessment (that is, before credits and amounts paid directly to the Collector General) is €20,000. During the year 2013 the individual had PSWT of €9,000 deducted and during 2014, RCT of €5,000 deducted.

Income Tax chargeable for 2013	20,000
Credit for PSWT suffered in year (i.e. year ended 31 December 2013)	<u>(9,000)</u>
Income Tax payable 2013	11,000
Minimum payable to avail of 100% rule	11,000
RCT already paid directly to the CGs for the basis period (i.e. year ended 31 December 2014)	<u>(5,000)</u>
Balance payable to CG to meet 100% PT obligation	6,000