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# Points to Note for the Corporate Tax 2016 Filing Season and Year-End Compliance

## Introduction

As busy practitioners, we need to step back every now and again and consider some of the basic compliance issues that face us and our clients. This article is intended as an aide-mémoire on some key points to consider as we come closer to the December year-end filing deadline.

## Preliminary Tax

Before we begin the preparation of any corporation tax return we must advise our clients on the preliminary tax requirements before their financial year-end.

### Small companies: pay and file dates

Preliminary tax falls due no later than the 23rd day of the month preceding the end of the chargeable period. The payment may be the lower of:

- 100% of the prior-period[1] final corporation tax liability[2] or
- 90% of the current-period estimated final corporation tax liability.

The balance of corporation tax falls due, with the filing of the corporation tax return, no later than the 23rd day of the ninth month following the end of the chargeable period.

A small company for tax purposes is one whose prior-period final corporation tax liability did not exceed €200,000.[3]

### Other companies: pay and file dates

The first preliminary tax payment falls due no later than the 23rd day of the sixth month from the start of the chargeable period. The payment may be the lower of:

- 50% of the prior-period final corporation tax liability or
- 45% of the current-period estimated final corporation tax liability.

The second preliminary tax payment falls due no later than the 23rd day of the month preceding the end of the chargeable period. Such payment must bring the total preliminary tax payment on account to a minimum of 90% of the tax payable for the current chargeable period.

The balance of corporation tax falls due, with the filing of the corporation tax return, no later than the 23rd day of the ninth month following the end of the chargeable period.

### Start-up companies

Start-up companies with a final corporation tax liability of €200,000 or less for their first accounting period are not required to pay preliminary tax in respect of that first accounting period and are instead required to pay their final corporation tax liability for that chargeable period at the same time as they are required to submit their corporation tax return, i.e. the 23rd day of the ninth month following the end of the chargeable period.

## Updates to 2016 Form CT1

In comparison to the 2015 Form CT1, there are five new pages in the 2016 CT1 – an additional 10 pages compared to the 2013 return.

The additions and changes are:

- Panel 1.17 to claim exemption from tax under s626B TCA 1997; (see article *CGT Compliance and the Pitfalls to Bear in Mind* by Lorraine Mulligan in this issue)
- Panel 2.5 (industrial buildings) extended to make claims under the Living City Initiative;
- Pages 12–14 updated for profits from qualifying assets, to include panels for the Living City Initiative, the Knowledge Development Box (KBD), group relief, the carry-back of losses and KDB protective claims;
- Panel 2.30 for petroleum production tax;
- Panel 3.6 for Living City Initiative claims under Case V;
- Panel 9.3 updated to include additional information for non-trade charges claims; and
- Page 30 providing for losses, charges or relief in respect of KDB-qualifying assets.

A couple of items have been removed:

- greyhound stud fees, under other Irish income received, and
- all references to rezoned lands.

Also, Eircodes have been introduced at each address panel.

1 If the prior chargeable period is not one of 12 months, adjust accordingly.

2 Final corporation tax liability is the company's tax liability including income tax surcharges and is calculated before credits for payments on account or withholding taxes (DIRT, PSWT etc.). Revenue eBrief No. 28/2008 indicates that income tax payable can be excluded for the small-company preliminary tax limit.

3 €200,000 is the 12-month limit; therefore adjust accordingly if the prior chargeable period is not one of 12 months.

## CT1 Disclosure: Common Errors

The following is a list of some of the Form CT1 disclosure items that this author has found can be missed or entered incorrectly and that can lead to aspect queries, Revenue audits etc. and, ultimately, time and cost for you and your clients:

- reporting of directors' loan account balances and whether they are debtors or creditors of the company;
- return of directors' emoluments etc. and whether this agrees with the annual P35 return and the directors' remuneration note per the financial statements;
- incorrect completion of accounts extracts and whether iXBRL filing applies;
- completion of accounts extract applies to trading companies; only trading entries should be input;[4]
- details relating to foreign investments (life policies, deposit accounts, offshore funds, offshore products);
- s434(3A) TCA 1997 election – see commentary on close companies below;
- completion of claim for payment of excess R&D tax credit;
- distribution details – whether the relevant DWT declarations and returns have been filed; see commentary on close companies below; and
- details of property-based incentive claims.

## iXBRL

Companies have a mandatory requirement to file iXBRL financial statements together with the corporate tax return; however, certain companies are exempt from filing iXBRL financial statements. Companies can avail of this exemption if they meet **all three** of the following criteria:

- aggregate assets do not exceed €4.4m,
- turnover does not exceed €8.8m and
- average number of employees does not exceed 50.

Practitioners will be aware that these criteria apply to the assessable period and that reliance cannot be placed on prior-year financial statements. For example, hotels whose prior-year financials satisfied the iXBRL exemption criteria may have since had to employ additional staff, resulting in their employee numbers exceeding 50 for the assessable period.

Also excluded are inactive companies that have no income and no expenses and have balance sheet movement of less than €500. Revenue has stated that annual Companies Registration Office filing fees and audit fees can be ignored when determining whether a company is inactive.

Revenue concession provides for an additional three months from the due date of the corporate tax return for iXBRL filings. The concession applies to accounting periods ending on or after 1 December 2015. Keep an eye on any Revenue correspondence (eBriefs etc.) that make reference to changes in either the FAQs or guidance manual.

Since the introduction of iXBRL filing, Revenue has mandated that full tagging now includes the detailed profit and loss account, as the format of the profit and loss account (as required by the Companies Act) does not provide the level of detail required. Readers will be aware that additional time and costs are likely to be incurred and should be factored into the corporate tax filing process.

Readers should refer to the comprehensive iXBRL guidance available in the Companies and Charities section of the Revenue website.

## Form 46G (Company): Third-Party Return

Mandatory online filing of Form 46G was introduced in 2012, with the result that all taxpayers who are required to file online have an automatic obligation to complete the Form 46G, regardless of whether a nil declaration is appropriate.

4 *Tax Briefing*, Issue 53, August 2003, and Issue 54, December 2003.

Businesses are required to declare payments made by them to third parties for services provided throughout the assessable period. A nil declaration may be completed where the net (of VAT) cost is less than €6,000.

The "46G spreadsheet" and instructions may be obtained by emailing 46Gspreadsheet@revenue.ie. Alternatively, you can use the Revenue Online Service (ROS) offline or online facility – the approach will depend on the number of entries required for this data input process.

Non-compliance with Form 46G filing obligations may result in the refusal of tax clearance and/or withholding of tax refunds and is liable to a fixed penalty of €3,000.[5]

## Mandatory eFiling: Payments

It is a common misconception that, to satisfy mandatory efiling requirements, all payments must be made via ROS. Part 38, Chapter 6, TCA 1997 provides for "electronic means to be used to pay or repay tax". This includes electronic bank transfers, direct debits etc.

If using bank transfers (etc.) to make electronic payments, you will need to ensure that the payment reaches the Revenue account no later than the filing deadline. This is in contrast to arranging the payment using ROS, which may be completed on the due date, with the payment reaching Revenue's account within the normal working days after the filing.

## Failure To Meet Compliance Obligations

If a company fails to meet its preliminary tax obligations – i.e. it makes late or insufficient payments – the interest (at 0.0219% per day) is calculated on 100% of the final corporation tax liability deemed to fall due on the first preliminary tax payment due date.

**Table 1: Preliminary tax due dates.**

| | |
|---|---|
| **Small companies** | 23rd day of the day of the month preceding the end of the chargeable period |
| **Other companies** | 55% due on the 23rd day of the sixth month from start of the chargeable period and<br>45% due on the 23rd day of the month preceding the end of the chargeable period |

Section 959AS TCA 1997 provides for mitigation of interest where preliminary tax has been underpaid due to tax arising on a chargeable gain occurring after the preliminary tax due dates.

Practitioners should be mindful that a disposal of a capital asset, e.g. real estate, may trigger a balancing charge that is subject to corporation tax. Therefore, depending on the amounts involved, a balancing charge may result in company's failing to meet its preliminary tax obligations.

Practitioners will also be aware that, although a company may have filed its corporate tax return and paid the due taxes (either preliminary or final) on time, late filing surcharges may apply for non-compliance with iXBRL and/or local property tax (LPT) obligations:

**Table 2: Surcharges and loss relief restrictions for late, incomplete or incorrect returns.**

| | Surcharge on final corporation tax liability | Loss/group relief restriction |
|---|---|---|
| Filed within two months from due date | 5%, capped at €12,695 | 25%, capped at €31,740 |
| Filed later than two months from due date | 10%, capped at €63,458 | 50%, capped at €158,715 |

5 TCA 1997 s889.

- Where a company's iXBRL obligations are not met, the late filing provisions (surcharge and restriction of loss/group relief) will apply irrespective of timely CT1 filings and tax payments.
- Where a company's LPT obligations are not met, a 10% surcharge is added to the company's final corporation tax liability. Once the LPT is brought up to date, the surcharge will be capped at the LPT liability.

## Close Companies

A significant majority of companies are closely held companies, and for these the importance of the close company provisions as set out in Part 13 TCA 1997 cannot be underestimated. Two of the main provisions that practitioners face regularly are the obligations on companies to pay income tax on an overdrawn director's account and the surcharge provisions.

### Overdrawn director's account

Income tax on the regrossed overdrawn account, as at the end of the accounting period, must be paid as part of the corporation tax return. However, a Revenue concession where the loan is repaid before the return filing date can be relied on, as set out in eBrief No. 56/2007. Revenue will not allow this concessional treatment in the case of "bed and breakfast" type arrangements.

Also, there will be benefit-in-kind implications that should have been addressed by the company in its operation of PAYE/PRSI/USC.

### Close company surcharge

Dividends must be declared[6] to avoid close company surcharges that apply to passive income (rents, interest income etc.) and professional close companies. The dividend must be paid within the chargeable period or no later than 18 months thereafter.

### Election on payment of dividend

Section 434(3A) TCA 1997 provides that where a closely held company pays a dividend to another closely held company, the companies may jointly elect that the dividend not be treated as a distribution liable to the close company surcharge of 20%. The election must be made by the corporation tax return filing date. It is important to note that if such an election is made, the paying company cannot take the dividend into account in determining the surcharge payable by it.

### Holding-company regime

Given recent changes in the economic environment, holding companies should consider whether they are entitled to receive dividends (arising from passive income) from trading subsidiaries without further close company surcharge implications. Section 434 TCA 1997 excludes from the surcharge certain distributions from franked investment income.

If a subsidiary pays a dividend to its parent (to avoid a close company surcharge) and the parent company would be exempt from capital gains tax on a disposal of shares in that subsidiary under s626B TCA 1997, then that dividend should not be subject to close company surcharge provisions in the hands of the parent company.

You will need to consider whether the business of the subsidiary (and/or the group[7]) consists wholly or mainly of the carrying on of a trade. Revenue has confirmed that "wholly or mainly" means greater than 50%.[8] Tests include the proportions of net trading profits and net trading assets, trading turnover as a proportion of gross receipts and the use of employees' time.

6 The dividend return and dividend withholding tax are due no later than the 14th day of the month following the month in which the distribution is made.

7 TCA 1997 s626B(2)(c).

8 *Tax Briefing*, Issue 66, July 2007.

### Revenue declarations and intragroup dividends

As you will be aware, dividend withholding tax (DWT) declarations, returns and payments due thereon are due for submission no later than the 14th day of the month following the month in which the declaration is made.

In practice, such declarations and returns in relation to intragroup dividends were often not submitted, particularly as there was no tax payment due with the DWT return.

However, Revenue has increased its compliance requirements in this regard, and many of you may have received correspondence requesting that all DWT declarations (and returns) be filed in accordance with the DWT information submitted on the Form CT1.

## Election Time Limits

### Losses

Many companies will have suffered losses in recent years. A loss claim must be made within two years of the end of the chargeable period in which the loss arises.

### R&D tax credit

The R&D tax credit is proving to be a valuable relief. A claim for the credit must be made within 12 months of the end of the chargeable period for which the credit is claimed.

### Country-by-Country Reporting (CbCr)

Finance Act 2015 introduced CbCr into Irish tax legislation and apply to Multi-National Corporations (MNCs) with annual consolidated group revenue of €750m or more in the preceding fiscal year.

The CbCr must be filed separately from the tax return and within 12 months of the fiscal year-end, i.e. by 31 December 2017 for the filing of the FY2016 report for MNCs with a calendar year end.

Further information regarding CbCr and the resulting reporting requirements can be found in the article by Mike Giddings & George Thompson in this issue.

**Table 3: Main deadlines for companies with 31 December 2017 year-end.**

| | Small company | Large company |
|---|---|---|
| First preliminary tax instalment | 23 November 2017 | 23 June 2017 |
| Second preliminary tax instalment | n/a | 23 November 2017 |
| Dividend declaration[9] | 30 June 2018 | 30 June 2018 |
| Corporation tax return | 23 September 2018 | 23 September 2018 |
| iXBRL | 23 September 2018<br><br>Extended by concession to 23 December 2018 | 23 September 2018<br><br>Extended by concession to 23 December 2018 |
| Form 46G | 30 September 2018 | 30 September 2018 |
| R&D tax credit claim | 31 December 2018 | 31 December 2018 |
| Two-year loss relief claim | 31 December 2019 | 31 December 2019 |
| Country-by-Country notification requirement | n/a | 31 December 2017 |

9 To avoid a close company surcharge payable as part of the 2017 corporation tax liability. The surcharge relates to distributable income earned in the year ended on 31 December 2016.

## Summary of Deadlines

Busy practitioners now have a number of compliance deadlines to consider with respect to a single corporate tax compliance cycle. The table below sets out the main payment, filing and election dates for both large and small companies with a year-end of 31 December 2017.

## Conclusion

The term "back to basics" may be a cliché, but it is important that we take a step back in looking at our compliance process to ensure that we are addressing the basic compliance requirements and have the processes in place to capture the relevant action points in a timely manner.

Read more on **taxfind** The 2016 Complete Tax Round-up, Seminar Paper, 2016