



# Tax matters – May 2011

## Upcoming deadlines

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### Tax deadlines

6 May	Latest date for expenditure on patent rights and know-how in order to make an election to disclaim capital allowances on specified intangible assets in favour of relief under s768 and s755 TCA 1997.
7 June	Deadline for notification to Revenue of details of pension funds where value exceeded the €2.3 million cap on 7 December 2010 (see below).
30 June	Deadline for payment of Non Principal Private Residence (NPPR) charge for 2011 – the 2011 charge is based upon the ownership and status of the property on 31 March 2011.
30 September	CAT pay and file deadline for gifts and inheritances with a valuation date in the 12 month period ending 31 August 2011.

## Latest news...

The Government's "jobs initiative" is to be announced on Tuesday, 10 May by Minister for Finance, Michael Noonan



# Share schemes

Tax Briefing 02/11 was issued recently by Revenue and covers the following topics with regard to share-based remuneration:

## **Notional pay**

Subject to the ‘grandfathering’ arrangement for pre 1 January 2011 written agreements, and the transitional arrangements discussed in our April 2011 Tax Alert, share awards made on or after 1 January 2011 have been brought into the PAYE collection system.

The net value of the shares awarded should be treated as notional pay at the time the shares are given to the employee. The income tax, PRSI and Universal Social Charge (USC), i.e. employment taxes must be remitted by the employer in full on the relevant monthly P30 return,

even where this payment exceeds the employee's pay for the month. Any shortfall should be recouped from the employee no later than 31 March of the following tax year otherwise the employee will be treated as having received a further benefit.

## **Vesting of shares v settlement**

Certain share awards, for example Restricted Stock Units (RSU), have a vesting period, with the charge to tax typically arising at the date of vesting of the shares i.e. the date the beneficial ownership passes to the individual.

However, there may be a further period between vesting and the actual delivery or settlement of the shares. To give individuals a chance to sell shares to fund the employment taxes, Revenue is prepared to

postpone collection of the employment taxes until the date the shares are settled, provided this is not more than 60 days after the vesting date. The 60-day extension does not apply where the actual settlement date occurs within a shorter period.

Employment taxes should be remitted with the P30 for the month following the month in which the settlement date or the 60-day extension falls. This is subject to all remittances being made by the last P30 filing date.

In cases where shares have vested and an employee is ceasing employment with a company, employment taxes should be paid at the time of cessation of employment, if this occurs before the settlement date.

The chargeable date for tax purposes remains the date of vesting. The date of valuation for tax purposes and the foreign currency conversion date will continue to be the vesting date.

## **Valuation of shares in private companies**

Where shares in private companies are awarded to employees, the employer must make a ‘best estimate’ of the amount of notional pay to be charged to employment taxes. An employer will be regarded as having made a best estimate where a genuine attempt has been made to calculate the taxable benefit based on all of the information available to the employer at the time the shares are awarded.

Revenue confirmed that where a bona fide 'best estimate' is used and it can be shown that all reasonable efforts were made to determine the taxable benefit, the employer will not be required to make any adjustments after the end of the year. In the event of a Revenue audit, the employer should be able to:

- demonstrate that all relevant information was evaluated; and
- show the reasons for choosing the particular valuation method(s) used and detailed workings of the valuation.

### Share options USC and Relevant Tax on Share Options (RTSO)

Gains arising on the exercise of share options continue to

come within the self-assessment regime for the individual. The income tax, known as 'Relevant Tax on Share Options' (RTSO) and USC is payable within 30 days of the date of exercise, and must be accompanied by a Form RTSO1. This replaces the usual preliminary tax payment deadline.

Individuals who exercise share options are chargeable persons and therefore must submit a self assessment tax return by 31 October following the year in which the options are exercised. Details of the option gains must be included on the return and a credit is claimed for the RTSO already paid in calculating the final tax liability for the year.

### 10% USC rate

The 10% rate will not apply to gains on share options.

### PRSI

While the individual must account for income tax and USC on share option gains, it is the employers' responsibility to account for employer and employee PRSI, where the individual is still in employment with the employer at the date of exercise. The employer then has until 31 March in the following year to recoup any shortfall of employee PRSI from the individual.

A number of transitional measures have been put in place, pending developments for 2012 of the RTSO payment mechanism, to accommodate the employee portion of PRSI.

These measures were introduced to cover situations where recovery of employee contributions by the employer is not possible, for example where the individual has ceased employment.



- the employer may elect to pay the employer portion of PRSI only;
- a PRSI payroll subclass charging 10.75% employer and 0% employee PRSI will apply;
- when an employer uses this subclass, they will be required to notify the Social Welfare
- the individual will have a liability to pay his or her portion of the PRSI Class A charge to Social Welfare.

Legislation in relation to these new arrangements will be included in the next Social Welfare Bill.

Relevant contributions will not be awarded to the social insurance record of the

employee until both the employer and employee liabilities have been paid.

#### Approved profit sharing schemes

##### Salary forgone

Salary forgone is not chargeable to USC or PRSI at the time that it is forgone. Instead, USC and PRSI is chargeable on the Initial Market Value (IMV) of the shares that are appropriated in lieu of salary forgone. However, where employers chose to do so, they may deduct and pay USC and PRSI when salary is forgone. Shares cannot be appropriated in advance of salary forgone to fund those shares.

##### Responsibility for deduction and payment of USC and PRSI

The employer is liable in the

first instance for the deduction and payment of USC and PRSI. This should be done when funds are being given to the trustees to purchase shares. The chargeable value is the IMV of the shares that are to be appropriated to the scheme participants.

##### Limit on appropriated shares

It is not intended that the requirement to fund the payment of USC and PRSI should impact the current annual limit on the value of shares that can be appropriated of €12,700. Employees/employers can pay USC and PRSI out of other non-share net earnings if they wish at the time that shares are being appropriated, or salary forgone, as the case may be.

#### SAYE schemes

##### Payment of USC

While gains on the exercise of SAYE options are exempt from income tax, the employer is liable to deduct and pay USC through the payroll system. Where an employee ceases employment the USC will be payable by the individual under the self-assessment system.

##### PRSI

Employer PRSI is due on the exercise of the SAYE options. Employee PRSI will be payable by the individual through the PRSI Special Collections Unit, or under the self assessment system, depending on their personal circumstances.

# iXBRL

HM Revenue and Customs (HMRC) have announced that from 1 April 2011 for any accounting period ending after 31 March 2010, all company tax returns must be filed online with accompanying financial statements and computations in iXBRL format (inline eXtensible Business Reporting Language)

It is expected that Irish Revenue will also introduce this requirement in 2012.

## What is iXBRL?

iXBRL is a new electronic format for business information, which HMRC expects to provide benefits in the preparation, analysis and communication of business and financial data. With iXBRL format you have an XML document which has standard bar codes. These bar

codes or “tags” convert the financial statements and computations into a standard machine readable template. iXBRL is becoming a global standard for financial reporting. Nearly all companies will be required to file financial statements and tax computations using iXBRL.

## What are anticipated costs?

The costs of meeting this requirement will include the cost of the software, time taken to “tag” data and quality control processes. The time taken will depend on the complexity of the financial statements, e.g. the number of notes in the financial statements.

## What should companies do to prepare?

Currently UK tax returns are required to be filed within 12

months of the year end. Some financial statements may be required to be submitted to the Companies House six or nine months after their year end, so a window of at least three months should be available for tagging until the returns and iXBRL financial statements are due for submission to HMRC.

## How can Grant Thornton help?

There are a number of solutions available such as outsourcing or some companies may seek to convert the data themselves using Word or another desktop publishing package.

Our UK colleagues have been working closely with HMRC and software developers. We have our own solutions for iXBRL financial statements and tax computations that could address this problem for you.

# Mandatory e-filing

Mandatory electronic payments and filing, using Revenue's Online Service (ROS), is part of Revenue's strategy to establish the use of electronic channels as the normal way of conducting tax business.

ROS is an internet facility which provides a quick and secure facility to pay tax liabilities, file tax returns, access tax details and claim repayments. Taxpayers can benefit from an extension to existing deadlines for paying tax and filing returns where they 'pay and file' online using ROS.

The existing time limits have been extended to the 23rd of the month for Corporation Tax, Relevant Contracts Tax, VAT and employer PAYE/PRSI, and to 15 November for income tax. You may recently have received a letter from

Revenue notifying you that from 1 June 2011 all payments and returns due must be electronically filed using ROS.

## Who is required to pay and file electronically?

**Phase 1** - Revenue's mandatory electronic payments and returns programme commenced with Phase 1 on 1 January 2009. Phase 1 included all taxpayers whose tax affairs are dealt with by the Large Cases Division and all Government departments.

**Phase 2** - came into effect from 1 January 2010. Phase 2 included all companies with a turnover of more than €7.3 million and with more than 50 employees and all public bodies.

**Phase 3** - the categories of taxpayer who will be required

to pay and file returns electronically from **1 June 2011** are:

- all companies;
- all trusts;
- all partnerships;
- self employed individuals filing a return of payments to third parties (Form 46G);
- self employed individuals subject to the high earners restriction (Form RR1, Form 11);
- self employed individuals benefiting from or acquiring Foreign Life Policies, Offshore Funds or other Offshore Products; and
- self employed individuals claiming a range of property based incentives (Residential Property and Industrial Buildings Allowances).

In addition, all stamp duty returns and payments due on or after 1 June 2011 must be filed electronically.

**Phase 3** – the categories of taxpayers who will be required to pay and file returns electronically from **1 October 2011** are employers with more than 10 employees.

As mentioned above, those required to pay and file electronically under Phase 3, will be contacted directly by Revenue, advising them of the obligation that will apply from 1 June or 1 October next, as the case may be, and of the steps they need to take to facilitate and ensure compliance from the appropriate date.

### Revenue's response to consultation process on mandatory e-filing – Phase 3

The Revenue published a consultation document on mandatory e-filing on 7 July 2010. There were 12 respondents to the consultation document including Grant Thornton, the Association of Chartered Certified Accountants Ireland, Chartered Accountants Ireland, the Irish Taxation Institute, and the Small Firms Association. Some of the issues raised by respondents in the consultation process include:

#### Capacity issues

In the response document, Revenue states that any regulations made will allow for the exclusion of persons with 'genuine capacity difficulties' in relation to on-line filing and payment; however this has not currently been defined.

#### Irish branches of foreign companies

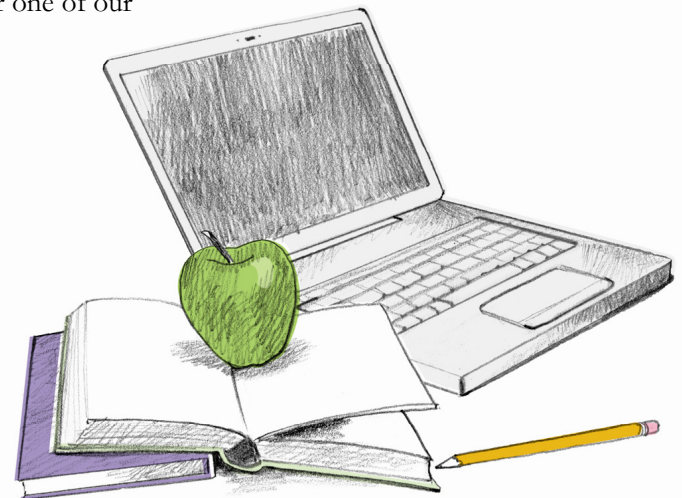
Revenue clarify in the document that the extension of mandatory e-filing under Phase 3 refers to all companies liable to corporation tax in the State i.e. companies resident in the State and non-resident companies who trade in the State through a branch or agency.

#### Non Irish bank accounts

Clarification was sought by a number of respondents regarding the requirement to make online payments and receive online refunds from/to non-Irish bank accounts. Revenue's response to this was that payments from/to foreign bank accounts are dependent on the implementation of the EU Single European Payments Area (SEPA) project to harmonise international banking arrangements. Revenue

have stated that this is not a matter within their control which would seem to indicate that they will require such companies to make payments online and therefore open Irish bank accounts.

If you need assistance with your ROS registration or ROS filings or payments, contact your usual Grant Thornton representative or one of our tax specialists.



# Miscellaneous

## Standard fund threshold

The Finance Act 2011 reduced the upper limit for tax relieved pension funds for individuals, the “Standard Fund Threshold” (SFT), from €5.4 million to €2.3 million. A penal rate of tax of around 70% applies to the excess above the limit.

Individuals have until 7 June 2011 to agree a higher Personal Fund Threshold (PFT) with the Revenue if the value of their pension benefits already exceeded the €2.3 million limit at 7 December 2010. All approved pension arrangements need to be included – RACs, AVCs, Public Sector pensions etc.

Individuals that had already agreed a higher PFT under the original 2005 legislation can still use that higher limit.

In valuing Defined Benefit (DB) pension plans, the Act provides that the same multiplier must be used both to value the pension for threshold purposes and also to value the pension at retirement. The standard multiplier is to be 20 times the annual pension promise.

## Retirement lump sums – pensions

With effect from 1 January 2011, the maximum lifetime retirement lump sum is €200,000. Where a lump sum is paid to an individual on or after that date, the tax free amount must be determined by having regard to any earlier retirement lump sums paid on or after 7 December 2005.

Amounts in excess of this limit (‘the excess lump sum’) are subject to tax in two stages:

1. €200,000 to €575,000: taxed under Schedule D, Case IV at the standard rate of tax, with no reliefs, allowances or deductions available for offset against the liability; and
2. €575,000 +: taxed at the individuals’ marginal rate under Schedule E.

Where the pension administrator deducts tax under (1) above, a return must be made within 3 months of the end of the month in which the excess lump sum is paid, and pay over the tax to Revenue by Electronic Funds Transfer (EFT). A new Form 790AA is now available for this purpose. Any portion of the excess lump sum that falls under (2) above, should be included on the Form P30 and P35, and a Form

P60 should also be issued to the individual taxpayer.

## Taxation of ex-gratia lump sums

In calculating the tax due on any ex-gratia lump sum paid to an employee/director, it is the employers’ responsibility to make sure that the tax due is calculated correctly.

Documentary evidence should be retained by the employer to support the calculation of any taxable/tax free ex-gratia payments made.

With effect from 1 January 2011, the employer must take into account any prior payments received by the individual, both taxable and tax free, when calculating the tax

due on an ex-gratia payment made after this date.

Documentary evidence, for example a signed declaration by the individual to confirm whether they have received an ex-gratia lump sum from a previous employer, should be retained by the employer. The requirement to retain records is currently six years from the end of the relevant tax year.

#### **2011 preliminary tax - USC**

Revenue have confirmed in a recent eBrief that where an individual wishes to pay preliminary tax on the basis of 100% of the previous year's liability, his or her preliminary tax payment for 2011 must be based on the final liability for the year 2010 as if the USC had been payable and as if the income and health levies had not been payable for that year.

The 90% rule (based on the 2011 estimated tax liability) and the 105% rule (based on the 2009 tax liability – direct debit option only) remain unchanged.

#### **Revenue on-site visits – operation of USC**

Revenue are currently making onsite visits, with little or no notice, to perform checks on current payrolls, with the specific focus on the operation of USC.



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