



July 2014 eNews

RELIEF FOR INTEREST IN PARTNERSHIPS

Relief for interest on loans taken out to invest in a partnership (s253 TCA 1997) will be withdrawn over 4 years while no relief will be available for new loans taken out from Budget Day, 15 October 2013.

Interest relief for existing loans is to be phased out over 2014 - (75%), 2015 - (50%) and 2016 - (25%) with no relief available after 1 January 2017.



Revenue confirmed that where a loan is issued post 15 October 2013 but it replaces an existing qualifying loan and the replacement loan does not exceed the balance and term of the existing loan, tax relief will still be permitted in line with the phased out relief until 1 January 2017.

COMPANY LAW CHANGES

The Companies Bill 2012 started its process of passing through the Seanad at the start of June and it passed Committee Stage on 17 June 2014. 189 proposed amendments had been tabled including Senator Fergal Quinn's request for the term 'Accountant' to be protected by legislation following lobbying by the Irish Auditing and Accounting Supervisory Authority (IAASA). Of these 189 proposed amendments - 170 were accepted.

This will consolidate most of the Companies Act 1963 to 2013 with a few small exceptions.



The types of companies then possible will be:

- LTD - Company limited by shares;
- DAC - Designated Activity Company;
- PLC - Public Limited Company;
- CLG - Company limited by Guarantee;
- ULC - Unlimited Company with a share Capital;
- PUC - Public Unlimited Company with a share capital;
- PULC - Public Unlimited Company without a share capital;
- External Companies;
- Unregistered Companies and Joint Stock Companies.

There will be an 18 month transition period during which all existing private companies limited by shares will be treated as a DAC unless they file an application to convert to a LTD.

A few provisions of interest from the legislation as currently drafted (which may change prior to finalisation):

- Audit exemption will now be extended to a Group Situation, so in order to avail of audit exemption, the company must be a small company or be part of a group which taken together falls below the threshold requirements for a small company.
- Audit exemption for dormant companies that are members of a group may be possible where certain conditions are satisfied.
- The audit exemption will be extended to guarantee companies (e.g. charities, not for profit, property management companies) once the same conditions are satisfied as for a company limited by shares. Members holding more than 10% of voting rights can object.
- Minimum number of Directors will be reduced to one (from two) for a LTD but it must have a separate Company Secretary who cannot be the sole Director.
- Minimum age for Directors will be 18
- a LTD will have a one page constitution which replaces the Memorandum and Articles of Association.
- a DAC has a memorandum in their constitution which states the objects for which the Company is incorporated. The constitution document includes a memorandum and articles of association.



- A DAC must hold an AGM, a LTD can dispense with the requirement to hold an AGM.
- A company will be required to maintain written minutes of directors meetings

We will update further on this when the legislation is enacted.

EMPLOYERS OBLIGATION TO MAINTAIN A REGISTER OF EMPLOYEES

Revenue have issued guidance to Employers on the requirements for a company to keep, maintain and produce a Register of Employees at the normal place of employment of each employee or at the employer's main place of business.



Failure to maintain it can result in the Company and the Company Secretary being liable to a penalty of €4,000 and €3,000 respectively.

This Employer Notification outlines that –

- a) for the purposes of the PAYE system, an employer has a statutory obligation to keep and maintain a *Register of Employees*;
- b) on being requested to do so by a Revenue officer and within the time specified by that officer, an employer has a statutory obligation to produce that employer's *Register of Employees* (or a certified copy of it) or an extract from it to any Revenue officer;
- c) an employer who does not keep and maintain a *Register of Employees* is liable to a penalty of €4,000 (and where that employer is a company, the secretary of that company is liable to a separate penalty of €3,000);
- d) where an employer fails to comply with a requirement of an authorised officer - in the exercise of that officer's powers or duties under Section 903 Taxes Consolidation Act 1997 (Power of inspection: PAYE) - to produce any records which that officer requires for the purposes of his or her enquiry, that employer shall be liable to a penalty of €4,000.

Note: The obligation on an employer to keep and maintain, for PAYE purposes, a *Register of Employees* is separate and distinct from an employer's obligation to register with Revenue for the purposes of the PAYE system.

THE CLOSE COMPANY SURCHARGE

Even before the current rates of corporation tax (12.5% on trading profits and 25% on passive income) were introduced, there was always a disparity between relatively lower rates of corporation tax on companies and the highest marginal income tax rates applying to income withdrawn from these companies by the owners in the form of dividends or salaries.

In the eyes of legislators it was therefore considered that business owners would prefer to "shelter" profits in their companies rather than pay it out to shareholders. To counteract this, the idea of imposing an additional surcharge on undistributed income of such companies was introduced.

The basic rules still apply but with an increasing trend to incorporation by professionals of their business, coupled with greater attention from Revenue, it is perhaps becoming more relevant now than ever before.

A Summary

Firstly, the surcharge will only apply to undistributed income of a close company. A close company is defined as one which is under the control of five or fewer participators - generally defined as a person having an interest in the capital or income of the company.

As the term control is generally regarded as being able to control between 5 persons, it can be readily seen that the vast majority of companies in Ireland today are in fact close companies.

There are two distinct surcharges imposed by legislation:

(i) **Trading companies not carrying on professional or related service activities - Section 440 TCA 1997**

Companies in this category are not subject to the surcharge on undistributed trading profits. If, however, they have miscellaneous deposit or rental income (subject to tax at the passive rate of 25%) the after-tax income will be subject to a 20% surcharge if the reserves arising are not distributed to shareholders within 18 months of their year end.



For many trading companies engaged in routine trading in goods and most services, this will be a non issue. In the case of rental companies, the effective tax rate may be increased from 25% to 40%.

For accounting periods ending after 1 January 2013, no surcharge is due when the undistributed profits are less than €2,000.

Finally, where a company is prohibited by company law from making a distribution through a lack of distributable reserves there will be no surcharge exposure even if current year profits arise.

(ii) Professional company surcharge - Section 441 TCA 1997

This is becoming much more topical than heretofore with professionals such as doctors and accountants now incorporating for the first time.

Unlike the general surcharge rules set out above, Section 441 applies a 15% surcharge to 50% of undistributed trading profits accruing in a particular accounting period. Effectively it can increase the tax rate from 12.5% to just over 19%.

A 'professional company' includes establishments such as accountants and architects who are regulated and need a "professional" qualification to carry out their duties appropriately.

However, in the view of Revenue this type of company also includes "Management Consultants" and "Journalists", who many would view as being able to carry on their duties through a company without a qualification.

With increasing Revenue scrutiny and a degree of uncertainty as to the parameters of the scope of this legislation, great care is required by any shareholders in addressing this area.

This is perhaps not helped by a certain Revenue perception that various professionals may have incorporated in recent times not just for bona fide commercial reasons such as the protection of limited liability that a company affords, but also because of tax planning reasons including what many would regard as perfectly legitimate pension planning reasons.

TAXATION PAY & FILE SUMMARY



Income Tax	
Manual 2013 return and payment	31 October 2014
PAYE	
P30 for June 2014	14 July 2014
Relevant Payments Tax	
Monthly return and payment	23 July 2014
Corporation Tax	
Filing date for Corporation Tax returns for accounting periods ending in 31 October 2013	21 July 2014
Payment of Corporation Tax balance for accounting periods ending in 31 October 2013	21 July 2014
Preliminary Tax for accounting periods ending in 31 August 2014	21 July 2014
Form 46G for accounting periods ending in 31 October 2014	31 July 2014

Note: *Extended date for certain taxes for customers who both file and pay electronically (via ROS)*

Don't hesitate to contact me or a member of our team if you would like to discuss any of the issues raised or on any of our services.



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This newswire is intended to provide a general guide to the subject matter and is necessarily prepared in a condensed form. Advice should be sought before acting on the information contained in it.



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