

# **Professional Services Withholding Tax (PSWT)**

## **General Instructions**

### **Part 18 Chapter 1 Taxes Consolidation Act 1997**

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## Introduction

The purpose of this manual is to explain the operation of Professional Services Withholding Tax (PSWT). Chapter 1 of Part 18 of the Taxes Consolidation Act 1997 (TCA 1997) provides for the deduction at source of tax at the standard rate of income tax from “relevant payments” for “professional services” made to “specified persons” by “accountable persons”. This tax is known as Professional Services Withholding Tax (PSWT).

## PART 1: General matters

### 1.1 Accountable persons

A list of accountable persons is set out in Schedule 13 to the TCA 1997.

In general, accountable persons are public bodies, government agencies, semi-State companies etc. Accountable persons include the following:

- Government Departments and Offices
- Local authorities
- The Health Service Executive
- Authorised Health Insurers
- Commercial and non-commercial semi-State bodies and their subsidiaries.

However not all such bodies may be accountable persons for the purposes of PSWT legislation therefore any bodies, unsure of their status as accountable persons should liaise with their local Revenue district to determine their position and districts dealing with such bodies should ensure that the body is listed on Schedule 13 TCA 1997. Accountable persons must be registered for PSWT and are obliged to deduct PSWT at the standard rate of income tax from payments for those professional services to which section 520 TCA 1997 applies.

A body which is a subsidiary of an accountable person listed on Schedule 13, or which is a body while not owned 51% by one accountable person is under the control of more than one accountable person i.e. a joint venture, is also an accountable person and must be registered for PSWT. A company is a subsidiary<sup>1</sup> (as defined by section 7 of the Companies Act 2014) of another company if the subsidiary is resident in the State.

Authorised health insurers are accountable persons and payments made by them to registered medical or dental practitioners are relevant payments for PSWT purposes.

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<sup>1</sup> Subsidiary for these purposes means a 51% subsidiary

Payments made by them to the employees of medical or dental practitioners, who provide the medical or dental service on behalf of the medical/dental practice are also relevant payments for PSWT purposes.

The provision of a Tax Clearance Certificate by a specified person does not negate the obligation on the accountable person to deduct PSWT.

## 1.2 Professional services

Section 520 TCA 1997 lists certain services which come within the meaning of professional services. The list is not exhaustive but includes:

- services of a medical, dental, pharmaceutical, optical, aural or veterinary nature,
- services of an architectural, engineering, quantity surveying or surveying nature, and related services,
- services of accountancy, auditing or finance and services of financial, economic, marketing, advertising or other consultancies,
- services of a solicitor or barrister and other legal services,
- geological services.

A summary of the Revenue position in relation to the application of PSWT to various services is set out in the [Appendix](#).

It should be noted that a service, which is not professional in nature, may be subject to PSWT where it forms part of a wider contract for professional services. For example, a printing service is not regarded as a professional service for the purpose of the PSWT legislation. However, where a printing service is provided as part of a wider design or consultancy service, payment for the entire service, including the printing element, comes within the scope of PSWT. This applies even when elements of the service are separately invoiced.

Revenue does not regard the following services as professional services for the purposes of PSWT:

- teaching, training or lecturing services,
- translation services including services of an interpreter,
- proof-reading services,
- services of stenographers,
- setting and assessing oral, aural or written examinations,
- contract cleaning services,

- maintenance and repair work.

### 1.3 Specified person

A specified person for PSWT purposes is the service provider to whom a relevant payment is made and can be an individual, a company or a partnership.

Where a relevant payment is made to a partnership then each person who is a partner in the partnership is a specified person. For administrative purposes, the accountable person can make a relevant payment to a partnership. However, where a relevant payment is made to a partnership the precedent partner in turn apportions both the payment and the PSWT deducted between the partners.

Specified persons can claim a credit of PSWT relating to a tax year/accounting period by completing the relevant section of their tax return for that year/period. Where such claims result in an overpayment of tax, the excess is, subject to any other outstanding tax liabilities of the specified person, available to be refunded by Revenue provided that the claim is made within relevant time limits.

### 1.4 Relevant payment

A relevant payment is a payment made by an accountable person in respect of a professional service.

It is important to note that the professional service need not have been provided to the accountable person in order for it to be a relevant payment.

The following are examples of situations where PSWT applies to a payment for a professional service even though the service was not provided to the accountable person.

- The Health Service Executive pays a doctor for services provided to a medical cardholder even though the medical service has been provided to the patient.
- Payments made by authorised health insurers to registered medical practitioner are relevant payments even though the service has been provided to the patient.

There may also be situations where an accountable person makes a payment for professional services but that payment is not subject to PSWT. This can occur where an employee incurs the expense of a professional service and under the terms of their employment they are entitled to a refund of those expenses. Where in such cases for administrative purposes the employer makes the payment directly to the service provider, rather than as a refund to the employee, the payment is not subject to PSWT. For example, when a Garda is transferred they may engage auctioneers,

solicitors etc. Rather than pay these fees and seek a refund from the Department of Justice as their employer, the Department of Justice pays the professional fees directly to the service provider involved. While the expenditure is incurred by the Garda and paid on his behalf by the department, it is not subject to PSWT.

However, where the payment arises because the employer (who is an accountable person) engaged the service provider to provide professional services to its employees, then such a payment is subject to PSWT, for example where a doctor is hired by a Government department to examine an employee. The Government department has engaged the doctor and has incurred the expense which is therefore within the scope of PSWT.

Accountable persons must operate withholding tax on all relevant payments unless the payments have been specifically excluded as outlined in section 1.4.1 below. This continues to be the case where the payment is made to a non-resident specified person. However Revenue accepts that PSWT need not apply to a relevant payment made by a foreign branch/agency of an Irish resident accountable person where all of the following apply:

- the payment is made abroad by the foreign branch/agency,
- the payment is for professional services provided abroad to the foreign branch/agency, and
- the person providing the professional service is resident abroad.

For administrative purposes, Revenue accepts, that payments by a company which is an accountable person, to a connected company, which is also an accountable person do not come within the scope of PSWT, where the payment is made:

- to a subsidiary of the company
- by a subsidiary to its parent company, or
- by one subsidiary to another subsidiary of a common parent company.<sup>2</sup>

#### **1.4.1 Excluded payments**

The following payments are specifically excluded from the definition of relevant payments in section 520 TCA 1997 and therefore are not payments that are subject to PSWT:

- Payments that come within the scope of PAYE.

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<sup>2</sup> Subsidiary for these purposes means a 51% subsidiary

- Payments that come within the scope of Relevant Contracts Tax (RCT).
- Payments made by an accountable person to a charity that is exempt from tax. Where an accountable person is making a payment to a charity, the payer should obtain confirmation in writing from the payee that they are in fact covered by this exclusion.
- Payments by one accountable person to another accountable person in certain circumstances (see section 520 TCA 1997). These include:
  - payments made by one accountable person to another accountable person in re-imbursement of payment for professional services, and
  - payments made by one accountable person to another accountable person where, under the Tax Acts, the income of the accountable person receiving the payment is exempt from income tax or corporation tax.

Where payments between accountable persons fall within the second category above, the payer should obtain confirmation in writing from the payee that they are in fact covered by this exclusion.

### 1.4.2 Treatment of VAT, Stamp Duty and certain other fees

VAT charged by the specified person should be excluded when calculating the amount of PSWT that is to be deducted. In addition, the following fees paid by the specified person to the appropriate authorities should also be excluded from the calculation of PSWT to be deducted, where they are invoiced to the accountable person:

- Stamp Duties
- Land Registry fees
- Deed of Registration fees
- Company Office fees
- Court fees

### 1.4.3 Treatment of expenses

Where PSWT applies to a relevant payment, it applies to the entire payment, including any element in respect of the reimbursement of expenses incurred by the specified person. This continues to be the position where expense items are isolated for separate payment or where the expenses are separately invoiced. Examples of expenses include costs incurred for travel, subsistence, postage, printing, stationery, secretarial services, advertising, and payments by the specified person to third parties

engaged by the specified person in connection with the delivery of the service to the accountable person.

#### **1.4.4 Treatment of late payment interest**

It is an implied term of every commercial contract that interest is payable if debts are not paid on time. Therefore, where interest is payable on a payment which is subject to PSWT then, PSWT should also be deducted from the interest.

## **PART 2: Documentation**

This part of the manual deals with the forms used in the administration of PSWT.

### **2.1 Form F45**

When making a relevant payment, the accountable person must give the specified person a form F45 confirming the amount of the payment made and the amount of PSWT deducted. However, in order that the accountable person may issue form F45, the specified person must provide the accountable person with:

- in the case of an individual, his/her Personal Public Service Number (PPS No.),
- in the case of a company, its tax reference number and
- in the case of a partnership, the partnership's tax number.

Accountable persons can not issue form F45 where the specified person has failed to provide them with their tax reference number.

In the case where an Irish tax reference number has been provided, the accountable person can seek evidence from the specified person or precedent partner in the case of a partnership, confirming that the tax reference number is correct. The accountable person can also seek confirmation from Revenue that the Irish tax reference number provided in respect of a specified person or partnership is correct.

In responding to such enquiries from accountable persons Revenue staff should only confirm the validity of the tax reference number in question. They should not provide the accountable person with any further information relating to the specified person.

### **2.2 Form F45 stationery**

Forms F45 are important documents and supplies of same should be kept securely by accountable persons. Specified persons should also retain forms F45 that have been issued to them by accountable persons for the required period for retaining documents.

Each form F45 issued by an accountable person must contain a security number. Security numbers comprise of six digits preceded by a separate dedicated alpha character.

There are three versions of form F45 available to accountable persons:

1. Manual version of form F45. This version of form F45 is supplied by Revenue, on request, to the accountable person. It has two parts with a security number printed on each part. Part 1 is given to the specified person and part 2 is retained by the accountable person.

Each form must:

- be signed by the accountable person or an authorised official,
  - bear the accountable person's official date stamp.
2. Continuous stationery version of form F45.
  3. Laser stationery version of form F45.

The continuous and laser stationery version of the form F45 do not require a signature or a date stamp.

Both the continuous and laser stationery version of form F45 are supplied by Revenue for use by accountable persons with computer systems which have been approved by Revenue. Neither version has a security number printed on them. Accountable person must therefore order a range of security numbers from Revenue for use with these versions of form F45. These forms, when printed, are given to the specified person while the accountable person retains a computer record of the details included on the form F45.

In no circumstances should a form F45 be printed without a security number or with a number that is not within the range of numbers supplied by Revenue. Any such forms issued will be invalid and must be retrieved and a form F43 issued in its place.

See [Part 18-01-05](#) for details of how to order stationary and security numbers and for details of the computer systems requirements for PSWT purposes.

## 2.3 Forms F43

Form F43 is to be issued by an accountable person where form F45 is found to be incorrect, invalid or has been lost/destroyed. Forms F43 should be issued in exceptional circumstances only and should not be issued just because either:

- the specified person did not retain any of the forms F45, or
- an F43 is requested in order to check that none of the original forms F45 are missing

Where specified persons need to check that no original forms F45 are missing, accountable persons may issue a statement setting out the F45 details requested. However, any such statement issued by an accountable person is for the information of the specified person and cannot be accepted by Revenue for the purposes of PSWT credit.

## 2.4 Form F30 (monthly return)

Form F30 is a monthly return that each accountable person is required to make to Revenue. It is a declaration of the total amount of PSWT deducted by an accountable person in a given month. Form F30 must be filed and payment of PSWT deducted made within 14 days from the end of each income tax month. Where no PSWT is deducted by an accountable person in a month, a nil return must be filed.

## 2.5 Form F35 (annual return)

This is an annual return made by an accountable person declaring their PSWT liability for a tax year and must be filed by 15 February following the end of the tax year to which it relates. Where an accountable person deducts no PSWT in a tax year, a nil return must be filed for that year.

Details to be returned on the form F35 are as follows:

- Total PSWT liability for a tax year in respect of all relevant payments made by an accountable person in that year. Where a form F43 was issued during the tax year to amend the amount of a relevant payment or the amount of PSWT deducted on an original form F45, the accountable person must ensure that the corrected figures are reflected on the form F35.
- Total PSWT already paid to Revenue for the tax year through the monthly form F30 return procedure.
- The difference, if any, between the total PSWT liability for the tax year and the total amount of PSWT paid to Revenue throughout the year. Where a balance of PSWT is owed, it should be paid at the same time as the form F35 is submitted. Where an overpayment of PSWT has been made, Revenue will liaise with the accountable person about this.

A schedule giving details of the total relevant payments made to, and the total PSWT deducted from, each specified person in the tax year must accompany the form F35. The schedule must be completed and contain all of the following information:

- Name of specified person.
- Address.
- PPS number/tax reference number.
- Total amount of relevant payments from which PSWT was deducted.
- Total PSWT deducted.

Where an accountable person makes a return to Revenue under section 891B TCA 1997 there is no requirement to submit a schedule of payments to which PSWT Applied, however the form F35 must be filed.

Queries regarding forms F30/F35 should be made to:

Services and Transactions Taxes Unit,  
Collector-General's Division,  
Government Offices,  
Mill Lane,  
Listowel,  
County Kerry.  
Phone: 068 56936 or + 353 68 56936 (from outside Ireland).

## PART 3: Credit for PSWT deducted

### 3.1 General

Specified persons who have had PSWT deducted from relevant payments are entitled to a credit against the gross amount of income tax or corporation tax chargeable on their income for the period in which the relevant payment is charged to tax. Where a specified person has commenced trading, the PSWT deducted in the first year of business will not normally be given until the second tax year. This arises because the profits shown in the first 12 months accounts may form the basis of a charge to income tax for the first two years. In such circumstances, the PSWT deducted is deemed to be deducted in the basis period for the second year. However such an individual may qualify for an interim refund (see [Part 4](#) below).

Completed forms 11 and forms CT1 should include all information requested in relation to PSWT deducted. Where appropriate the amount of any interim refund dealt with during the year will automatically be deducted from the amount entered on the completed form 11 and form CT1.

Companies are taxed on the profits arising in an accounting period. In an accounting period they will receive credit for PSWT deducted on income taken into account in arriving at the profits for the same accounting period.

Individuals assessable under Case I/II are taxed on the profits arising in a basis period (usually the accounting period which ends within that year of assessment). In a year of assessment they will receive credit for PSWT deducted on income taken into account in arriving at the profit for the basis period for that year of assessment.

#### Example

1. A taxpayer makes up accounts for 12 months to 30 October 2015. On 10 January 2016 a payment from which PSWT was deducted was received. The payment was earned in May 2015 and was reflected in the accounts as turnover in that period, with the corresponding entry in debtors.
2. If the taxpayer is a company, the company will be entitled to claim a credit for this PSWT on the CT1 for the period to 30 October 2015.
3. If the taxpayer is an individual, they will be entitled to claim a credit for this PSWT on their Form 11 for the tax year 2015. The basis period for both their Case I profits and their PSWT credit is the 12 months to 30 October 2015.

Where there is a gap between two basis periods that gap period is, for the purposes of the PSWT credit, to be taken as part of the next basis period. Where there is an overlap between two basis periods then that period of overlap is to be taken as part of the second basis period. That is, where one basis period does not immediately follow the last basis period, for example on a change in accounting date, then the credit for PSWT falls into the second basis period only.

### Examples

1. An individual makes up his or her accounts for the 12 months to 31 May 2015 and then for the 14 months to 31 July 2016 then:
  - The 12 months to 31 May 2015 is the first basis period.
  - The 12 months to 31 July 2016 is the second basis period.
  - The 2 months from 1 June 2015 to 31 July 2015 is a gap between basis periods and credit for PSWT suffered on income taken into account in arriving at the profit for this 2 month period is taken as part of the second basis period.
2. An individual makes up their accounts for the 12 months to 31 May 2015 and then for the 10 months to 31 March 2016 then:
  - The 12 months to 31 May 2015 is the first basis period.
  - The 12 months to 31 March 2016 is the second basis period.
  - The 2 months from 1 April 2015 to 31 May 2015 is an overlap of two basis periods and credit for PSWT suffered on income taken into account in arriving at the profit for this 2 month period is taken as part of the second basis period.

For individuals not taxable under Case I/II (i.e. those taxable under Case IV), the credit is given for PSWT deducted in the year of assessment in which the income from the relevant payment is assessed to tax.

It is possible that a form F45 submitted in support of a claim for credit will be for a date after the end of the accounting period/basis of assessment.

### 3.2 Verification of forms F45/43 and refund procedure

All officers should be aware that PSWT is a high-risk tax credit and there is potential for fictitious claims which may result in a repayment of some or all of the tax credit claimed. The request for and subsequent verification of the supporting documentation should be in accordance with the standard procedures that are in place regarding repayment claims.

When forms F45 / F43 are received they should be carefully examined to verify that they are authentic. If they appear suspect in any way, they should be verified with the accountable person.

**Key points to note:**

- Photocopies of forms must never be accepted in support of claims except in the case of claims made by partners where the copy is accompanied by the statement of apportionment issued by the precedent partner and the original has already been submitted by the precedent partner.
- A form F45 (whether completed manually or using a computerised system) for a payment in excess of €1,000,000 should always be checked with the accountable person.
- The manual form F45 has space for payments up to €1,000,000. In exceptional cases where a payment exceeds this amount, accountable persons may be advised to insert the amount of the payment and initial and stamp the form F45 where the amount has been entered.
- Particular attention should be paid to the security number on continuous and laser stationery versions of Form F45 to ensure the security number is from a range issued by Revenue. Forms F45 issued with a security number which did not come from a range of security numbers supplied by Revenue are invalid. If necessary, Districts can check the allocation of security numbers given to accountable persons by contacting Santry Warehouse or by checking the CRS notes for the accountable person.

**3.3 Non-residents - claim forms**

Non-residents who are not chargeable to tax in the State for the year in which PSWT is deducted may apply for repayment of PSWT deducted to International Claims Section at the address below:

The Revenue Commissioners  
International Claims Section  
Government Offices  
Nenagh  
County Tipperary  
Tel: 1890 666 333 (ROI only)  
+ 353 67 63 400 (from outside Ireland)  
Email: [intclaims@revenue.ie](mailto:intclaims@revenue.ie)

Where a non-resident is chargeable to tax in the State for the period in which the PSWT is deducted, claims for credit, or interim refund of PSWT should be made to the Revenue office which deals with the tax affairs of the non-resident. In general, non-residents are chargeable to tax in the State for the period in which the PSWT is deducted, if during that period they carry on business through a permanent establishment in the State.

### 3.4 Charities

Enquiries from charities regarding claims for refunds of PSWT or in relation to claiming exemption from tax should be directed to Charities Section in the Collector-General's Division.

Charities Section  
Collector General's Division  
Government Offices  
Nenagh  
County Tipperary  
Tel: 1890 666 333 (ROI only)  
+ 353 67 63 400 (from outside Ireland)  
Email: [charities@revenue.ie](mailto:charities@revenue.ie)

### 3.5 Rectifying errors

#### a) PSWT deducted in error

Where PSWT has been deducted in error and remitted to Revenue, the accountable person should provide written confirmation to this effect (indicating the reason for the error) to the specified person. The specified person should forward this written confirmation, together with the relevant form F45, to the Revenue office that deals with the specified person's tax affairs. Revenue will, if appropriate, refund the PSWT deducted in error to the specified person.

Where the PSWT has been deducted in error but has not been remitted to Revenue, the accountable person should retrieve the form F45 from the specified person and refund the relevant amount to the specified person. Both parts of the original form F45 should be marked cancelled and retained by the accountable person.

#### b) Excess PSWT deducted

Where it is found that excess PSWT has been deducted, the accountable person should:

- retrieve the form F45 issued when the relevant payment was made,
- issue form F43 showing the correct details of PSWT deducted,
- refund the excess PSWT deducted to the specified person, and
- reduce the next monthly return (form F30) of PSWT made to Revenue by the amount of the PSWT overpaid in respect of the error.

Where the next monthly return falls into a different tax year, please refer to paragraph (f) below.

**c) Insufficient PSWT deducted**

Where it is found that insufficient PSWT has been deducted, the accountable person should:

- retrieve the form F45 issued when the relevant payment was made,
- issue form F43 showing the correct details of PSWT deducted, and
- remit the additional PSWT due on the payment with the next monthly return (form F30) of PSWT made to Revenue.

Where the next monthly return falls into a different tax year, please refer to paragraph (f) below.

**d) Payment made twice**

Where a relevant payment is made twice in respect of the same transaction, the accountable person should:

- retrieve the duplicate payment and the form F45 in respect of that payment from the specified person,
- mark both parts of that form F45 as cancelled and retain them,
- reduce the next monthly return of PSWT made to Revenue by the amount overpaid to Revenue in respect of the error.

Where the next monthly return falls into a different tax year, refer to subparagraph (f) below.

**e) Payment made to the wrong person**

The accountable person should:

- recover the payment and the form F45 that was issued to the wrong person,
- mark both parts of the form F45 as cancelled and retain them,
- issue a form F45 together with the payment to the correct specified person.

While, in this instance, no amendment is required to the remittance of PSWT to Revenue, care should be taken to ensure that the schedule accompanying form F35 (annual return) accurately reflects payments made to all specified persons. However, if the payment to the correct person is made in a different tax year to the earlier payment, please refer to paragraph (f) below.

**f) Error made in one tax year and rectified in a subsequent tax year**

Where a PSWT error relating to a tax year is discovered after form F35 for that tax year has been filed, the error cannot be rectified by adjusting the next monthly remittance to Revenue.

Instead, an amended form F35 should be completed and submitted electronically to Revenue. Where the amended form F35 results in an additional liability to PSWT,

payment of that amount should be submitted to Revenue. Where the amended form F35 results in an overpayment of PSWT by the accountable person, Revenue will liaise with the accountable person.

## **PART 4: Interim refunds including cases of particular hardship**

### **4.1 Interim refunds (Section 527 TCA 1997)**

Broadly speaking an interim refund can arise in the following circumstances:

- on-going business generally (see 4.2)
- commencing business (see 4.3)
- particular hardship (see 4.4)

In relation to interim refunds the following should be noted:

1. In general, the conditions as set out in section 527(2) TCA 1997 must be met in order to deal with an interim refund i.e.
  - (i) the profits of the previous period must have been finalised,
  - (ii) the tax for the previous period must have been paid, and
  - (iii) forms F45 (or exceptionally forms F43) must accompany the claim.
2. Hardship claims made under section 527(5) must be supported by appropriate documentation substantiating each claim.
3. Where a claim, supported by forms F45, relates to relevant payments made after the end date of the basis period or accounting period in respect of which the refund claim is made, these relevant payments should only be brought into the refund calculations where the specified person has specifically stated that the relevant payments are being treated as income of the basis period or accounting period concerned.

#### **Example:**

A professional makes up accounts to 31 August annually. On 15 October 2016 they receive a relevant payment for services provided during the month of August 2016. The amount of the payment will be a debtor in the accounts to 31 August 2016 and, as such, is capable of being brought into the interim refund calculations for that period.

## 4.2 On-going businesses generally

A specified person carrying on a trade or profession who suffers a deduction of PSWT in relation to that trade or profession may, if certain requirements are satisfied, claim an interim refund for the accounting period or basis period to which the tax refers ["the first-mentioned period"].

The requirements to be satisfied are that:

1. the profits of the accounting period or basis period immediately preceding "the first mentioned-period" have been finally determined
2. the tax payable for the accounting period or for the year of assessment for which the profits referred to at (1) has been paid, and
3. necessary documentation has been submitted which in the case of a partnership should be in accordance with section 529A TCA 1997. See [Part 5](#) below for further information relating to section 529A.

Regarding the requirements outlined at (1) and (2) above the following should be noted:

In relation to (1) the profits are only finally determined when any assessments relating to the profits are final and conclusive.

In relation to (2):

- (i) The full amount of the tax payable on all income and not just the tax payable in respect of the trade or profession must be paid. An instalment arrangement should not be regarded as the payment of the tax until all the post-dated amounts have been paid.
- (ii) Fulfilment of this requirement is necessary even where the tax payable in respect of the preceding period or year is not yet due for payment. For instance in the example below, the full income tax payable in respect of the tax year 2015 would not be due until 31 October 2016, i.e. a balance over preliminary tax could have been due on that date. In such a situation, an interim refund could not be made for tax deducted in the basis period ended 30 September 2015 if the full tax for the year 2015 was not paid.
- (iii) Where a person wishes to pay tax in advance of when it would normally be due to the Collector General, the interim repayment claim may then be dealt with.
- (iv) The argument that the unpaid tax in question might be deducted from the interim refund claimed should not be entertained. No interim refund will be made unless the relevant income tax or corporation tax for the previous period has been paid.

The amount of the interim refund on any claim is the amount of the PSWT applicable to the accounting period or basis period referable to the claim ("the period of claim") which is in excess of the sum of the following.

- An amount equal to the tax payable in respect of the preceding accounting period or year of assessment related to the previous basis period. [This is taken to approximate to the likely final liability for the previous year, see example below].
- Any tax which the claimant is liable to pay or remit at the time of claim.
- Any PSWT for the period of claim already refunded.

**Example:**

Accounts of a specified person are made up to 30 September each year. Liability for 2015 is based on accounts for year ended 30 September 2015. Profits for this period have been finalised and the resultant tax liability of €14,100 was covered by the payment of preliminary tax in 2014.

A form F45 showing PSWT of €15,000 referring to tax deducted in August 2016 (i.e. year ended 30 September 2016, the "first-mentioned period") is submitted with an interim refund claim. The excess over the €14,100 i.e. €900 may be refunded subject to any restriction necessary for arrears of tax.

### 4.3 Commencing businesses

The conditions applicable for ongoing businesses would not allow an interim refund in the case where the business had just commenced. In such cases there would not be any profits or tax payable for a preceding accounting period or year of assessment as is needed to meet the general conditions for an interim refund (see paragraph 4.1). However special provisions are available to enable interim refunds to be claimed in such circumstance. Any such claim must be supported by relevant documentation. Where an interim refund is claimed in circumstances where a trade or profession commences Revenue officials must make an estimate of each of the following in relation to that trade or profession in accordance with the information available and to the best of their knowledge and belief (section 527(4) TCA 1997).

1. the total amount of the relevant payments to be taken into account as income in computing for tax purposes the profits or gains of the first-mentioned period, (A)
2. the total sum of all amounts to be taken into account as income in computing the profits or gains of the specified persons trade or profession for the period, (B)

3. the number of months or fractions of months comprised in the period in respect of which the claim to the refund is made, **(C)**

(Normally, this will be the first 12 months. It cannot be a period greater than 12 months, but may be less than 12 months. The applicant should be asked to state the date up to which the first accounts will be made.)

4. the amount to be laid out or expended wholly and exclusively by the specified person in the first-mentioned period for the purposes of the trade or profession, **(E)** and
5. the number of months or fractions of months comprised in the first-mentioned period, **(P)**

Apart from information supplied and being estimated, Revenue officials should have regard to the proportions of such expenditure in other similar businesses.

The period of claim should be determined by reference to the spread of the forms F45 included in the claim. The period of the first such claim would commence at the date of commencement of the trade; the period of each subsequent claim would commence at the end of the previous claim. There is to be no overlap. Wherever possible each period would be estimated to end at the end of a month, usually at the end of the month in which the latest form F45 included in the claim was issued. Where it can be established that in the interval between that last month in the claim and the month in which the claim is lodged there were no further payments the claim period can be extended to include that interval.

If a subsequent claim includes forms F45 referable to a previous period, the refund due for that previous period may be recomputed and any further refund due may be made. There should not be an estimate for a period which overlaps another period.

It should not be overlooked, however, that the total of the periods covered by all such claims cannot exceed the period estimated at (3) above.

### Calculation

The refund due is calculated by reference to the proportion of allowable expenditure which corresponds to:

- (i) the proportion of income derived from relevant payments, and
- (ii) the part of the first mentioned period covered by the claim.

This is achieved by computing an amount determined by the formula:

$$E \times \frac{A}{B} \times \frac{C}{P}$$

The result of the calculation is rounded up to the nearest €.

The fraction A/B is the proportion of the total income from the trade or profession which are relevant payments. In the early months of the business, Revenue will have to rely mainly on information supplied on this point by the specified person. As the months pass, the amounts actually earned, from commencement, will provide some guide to these proportions.

The amount available for interim refund is the lesser of:

- (i) the amount computed in accordance with the above formula at the standard rate of income tax and
- (ii) the amount of the PSWT included in the claim for the period less any PSWT already refunded for that period.

### Example

Profession commenced 1 May 2015. Forms F45 for August 2015 showing tax €400 deducted on fees received of €2,000.

C is therefore 4 i.e. number of months from 1 May 2015 to 31 August 2015.

The specified person has advised that the first accounts will be for year ended 30 April 2016, P is therefore 12.

The following estimates are made, based on information supplied by the specified person:

A is €20,000 (estimated total of relevant payments)

B is €60,000 (estimated total income)

C is €10,000 (estimated total expenses)

The repayment due is €223, calculated as follows:

$$\frac{10,000 \times 20,000}{60,000} \times \frac{4}{12} = 1,112 \quad @ \quad 20\% = €222.40$$

(Note that the repayment should not exceed the amount of tax deducted.)

## 4.4 Particular hardship

The Revenue Commissioners are empowered to waive one or more of the requirements of section 527 in cases of particular hardship.

The term "particular hardship" is to be interpreted so as to modify the general provisions outlined in paragraph 4.1 concerning interim refunds for cases that would normally come within those provisions but are excluded due to some unusual and extraordinary circumstances.

It would be expected, therefore, that a specified person generally would not obtain the benefit of section 527(5) continuously; having qualified in respect of a particular circumstance, they would cease to qualify once that circumstance no longer existed.

There are a number of situations in which Revenue accept that particular hardship may arise:

1. Where, through no fault on the part of a specified person, the tax liability for the previous year of assessment or accounting period is not yet finally determined and the withholding tax deducted in the period of claim is substantially in excess of their normal tax liability. The delay in settling liability might be due to an exceptional occurrence in the business of the specified person or their adviser - for example, as a result of a fire at their premises.
2. Where, owing to once-off or unusual receipts, irrespective of their source, the tax liability of the previous year of assessment or accounting period is substantially in excess of the specified person's usual tax liability. For example, a barrister might, during a particular period, act in connection with a judicial enquiry. Fees, substantially higher than usual, might be received and taxed in an assessment related to that period and such tax might be substantially higher than would be normal in the practice.
3. Where, owing to a once-off or unusual reduction in the level of a specified person's income, the withholding tax paid in the credit period for a year of assessment is substantially in excess of the liability for that year. An instance of this kind would be where, say, a chemist suffers serious illness and is obliged to hire a locum. This additional expense would impact on their income and would probably lead to a substantial reduction in the tax liability for the year of assessment or accounting period in which the occurrence takes place.
4. Where, owing to a demonstrable permanent substantial reduction in the level of income of the specified person (arising, for example, from the loss of a major contract), the use of the tax liability of the previous year of assessment or accounting period would not constitute a reasonable estimate of the tax liability that the withholding tax is intended to cover.
5. (i) Where income tax (i.e. income tax net of withholding tax credited) which becomes due, and is actually paid, in a period of claim when combined with the withholding tax deducted in that period exceeds 41% of a specified person's income for the period.  
  
(ii) For the purposes of subparagraph (i), provided Revenue are satisfied that the specified person's income has not materially changed, the income of the immediately preceding basis period will be taken as the income of the period of claim. If the Revenue official is satisfied that there is a material change in the amount of a specified person's income, they will, having regard to all the

circumstances, estimate to the best of their knowledge and belief the specified person's income for the period of claim.

6. In paragraphs 2, 3, 4, and 5 above, references to the amount of a specified person's income or to changes in the amount of their income mean, in the case of trading professional or rental income, the amount or changes in the amount of that income as disclosed by the accounts of the trade etc. prepared or to be prepared in accordance with correct principles of commercial accounting.

Section 527 TCA 1997 enables Revenue to refund an amount that they consider to be just and reasonable in a case of particular hardship. In all hardship cases (other than that outlined in paragraph 5) the amount of the refund follows the general rule as modified. Therefore in cases outlined in paragraphs 1, 2, 3 and 4 the figure to be refunded is calculated with regard to the following:

**Cases within paragraph (1)**

Where details of the income for the previous period are not available - the normal tax based on the tax liability for earlier periods and any further relevant information available.

Where details of income are available but the case is subject to an appeal to the Tax Appeals Commission (TAC). Then the figure to be taken is the liability based on the specified person's view of the correct treatment of the disputed item. This is subject to the Revenue Commissioners being satisfied that it is a valid appeal and that it would in the circumstances be appropriate to allow the specified person's view of the correct treatment of the disputed item to stand for the purpose of computing the amount of the interim refund pending the appeal. This position continues where the case is subject to a further appeal to the High Court. In any other case, the figure to be taken will be the liability based on the determination of the TAC.

**Cases within paragraph (2)**

The liability, calculated by omitting the once-off or unusual receipts.

**Cases within paragraph (3)**

The liability based on the present level of the specified person's income. This will be estimated by Revenue. In such cases the interim refund (or the additional interim refund) will be made in respect of the credit period for the year of assessment in which the substantial reduction in liability occurs (i.e. the immediately preceding period).

**Cases within paragraph (4)**

The liability based on the present level of the specified person's income. This will be estimated by Revenue.

**Cases within paragraph (5)**

In general, the relief will be such that, where the sum of the withholding tax deducted and the income tax due and paid in the period of claim exceeds 41% of the specified person's income for that period, the excess will be repaid.

**Meaning of "income"**

Particular note should be taken of the meaning of income/changes in income. In considering a claim on the grounds of particular hardship the trading/professional/rental income to be taken into consideration is the income per the accounts. Variations in income which result from exceptional tax relief (e.g. accelerated capital allowances) do not provide grounds for a claim to particular hardship.

**Set-off of withholding tax in cases of particular hardship**

Where a specified person claims and proves particular hardship, Revenue may waive, in whole or in part, one or more of the requirements outlined in paragraph 4.2. However any amounts of outstanding tax which a specified person is liable to remit will be deducted from any refund to be made.

**4.5 Interim refund - claim forms****Documentation to accompany claims**

Where a specified person's profit from the previous year has been finalised and the previous year's liability has been paid in full then an application for an interim refund of PSWT may be made by submitting the relevant form F45s.

A claim form [form F50] is available for completion. The form is not a statutory one but the information requested on the form is required in order to calculate the interim refund. Where the necessary information and declaration is supplied in a letter, this is acceptable. If the specified person does not give all the necessary information in a letter, a claim form F50 should be issued for completion.

Claims for interim refunds must be supported by forms F45. Districts should normally accept that forms F45 submitted in support of form F50 relate to the period stated on form F50, even if forms F45 show the payment as having been made after the end of that period.

In cases where no form F50 accompanies a claim, the date of payment shown on forms F45 should be used in determining the period to which the payment relates, unless a covering letter states the payment relates to an alternative period.

On receipt of a claim it should be checked to ensure that the number of forms F45 attached is as indicated on the claim and that the total amount of income and appropriate tax on the forms F45 corresponds to the totals shown in the claim form. Any discrepancy should be clarified.

The onus of establishing that particular hardship exists rests on the specified person, who should submit whatever documentation is necessary to prove the existence of such hardship. Where final accounts cannot be produced in support of a claim (for instance, because the specified person's accounting date has not passed, or has only recently passed), draft accounts or estimated accounts should be accepted for the purpose of calculating the amount of the refund only. Such accounts should be accompanied by a statement from the specified person or their agent as to the nature of the particular hardship.

Where the claim is made in the circumstances referred to in paragraph (3) under "particular hardship" above (higher rate rule), reasonable estimates of the specified person's other income (Schedule E, Case III, etc.) should be accepted.

## PART 5 –Partnerships

### 5.1 Treatment of partnerships following amendments in Finance Act 2013

Finance Act 2013 introduced amendments to Chapter 1 Part 18 of the TCA 1997 which provides clarity regarding partnerships namely:

- Individual partners of a partnership are specified persons, not the partnership itself.
- While each partner in the partnership is a specified person an accountable person can make relevant payments to either the partnership or to the individual partner within the partnership who provided the professional service.
- Where the relevant payment is made to the partnership, the precedent partner must in turn provide each partner with a statement setting out the apportionment between the partners of the relevant payment and associated PSWT deducted together with a copy of the form F45 received from the accountable person.
- Accountable persons cannot issue form F45 if they have not been provided with the specified person's tax reference number, or in the case of payments being made to a partnership, the partnership's tax reference number. In the case of a partnership it is the responsibility of the precedent partner to provide the accountable person with the partnership's tax reference number.

### 5.2 Allocation of credit

Accountable persons may make relevant payments to either the partnership or the individual partner who provided the professional service.

Section 528 TCA 1997 provides that where a form F45 refers to two or more persons, any necessary apportionment shall be made for the purposes of making a refund or set off. Normally the apportionment will be made in the same proportion as the profits would be apportioned between the persons concerned.

In relation to partnerships, in exceptional circumstances only, Revenue is prepared to consider requests for the allocation of credit for PSWT between partners other than on the strict basis required by the PSWT legislation e.g. where the strict basis would cause administrative difficulty to the partnership. The partnership must make their application in writing to the Revenue office dealing with their income tax affairs. It is essential that all partners in the partnership sign an undertaking that they will not seek credit or repayment of the tax on any basis other than that which has been agreed and submitted to Revenue.

It is important to ensure that where credit for PSWT is allocated on an alternative basis, the amount credited/repaid does not exceed the amount that would have been credited or repaid if the strict basis had been applied.

## **PART 6 - Payments made to medical practitioners under a contract of insurance in respect of relevant medical expenses**

This section deals with claims for credit for PSWT where a payment is made, by an authorised insurer under a contract of insurance, in the name of an individual medical practitioner but the medical practitioner does not have beneficial entitlement to the payment and has received it as an employee.

### **6.1 Background**

Historically, practitioners provided medical services in their capacity as self-employed individuals and this was reflected in a requirement under section 522 TCA 1997 that authorised insurers make payments for such medical services directly to the practitioner who provided the medical services.

However, section 522 TCA 1997 was amended by Finance (No. 2) Act 2013, to provide that where the medical practitioner provided the medical services as an employee, then the authorised insurer must make the payment to the individual's employer.

### **6.2 Payments made up to and including 31 December 2013**

For payments made up to and including 31 December 2013, the position was that, where under a contract of insurance, a claim in respect of relevant medical expenses is made to an authorised insurer, that insurer would pay the practitioner who provided the services.

### **6.3 Payments made on or after 1 January 2014**

With effect from 1 January 2014, an authorised medical insurer may make a payment of benefit arising from a claim under a contract of insurance to, as appropriate –

- the practitioner who provided the professional services, or
- where the practitioner who provided the professional services is an employee, the employer of the practitioner.

### **6.4 Entitlement to credit for PSWT deducted**

In applying section 522 TCA 1997 authorised insurers are not expected to enquire into the employment status of the practitioner who provided the service. If the service is

invoiced by a company which claims that the practitioner provided the service in their capacity as an employee, then payment may be made to the company.

The fact that the payment is made to a company which claims to employ a practitioner will not of itself constitute evidence that an employer/employee relationship exists. Where the practitioner and the company which claims to be the employer are connected, then Revenue will consider all the facts in deciding whether to accept that:

- (i) the private practice is being carried on by the medical practitioner in their personal capacity, or
- (ii) the private practice is being carried on by a company.

If the position is that of (i), Revenue's view is that the person chargeable to tax on the profits arising from that practice is the medical practitioner and the medical practitioner may claim the PSWT credit.

If the position is that of (ii), Revenue's view is that the person chargeable to tax on the profits arising from that practice is the company and the company may claim a credit the PSWT credit even if the form F45 is in the name of the employee.

## Appendix - Revenue opinions regarding professional services

### 1. Advertising services

Subject to the comments below in relation to *advertising space or time*, payments for advertising services are subject to PSWT. Advertising services include services involved in:

- designing an advertisement, and
- conducting an advertising campaign.

Advertising services can involve the use of many other services. For example, they may involve the services of photographers, models, graphic art designers, commercial artists, freelance writers and printing. Where an advertising service is provided by an advertising agency, PSWT is to be deducted from the total payment (for all component services) by the accountable person to the agency.

It should be noted that outside of the scenario outlined above, services such as photography, modelling, graphic design, commercial artistry, freelance writing and printing are not of themselves generally professional services for the purposes of PSWT. Accordingly, where an accountable person makes a payment for any such individual service directly to the person providing the service, the payment is not subject to PSWT unless such service forms part of a wider consultancy.

### Advertising space or time

Where advertising space or time is provided as part of an overall professional service, e.g. by an advertising agency as part of an advertising service, the total payment for the service (including the advertising space or time) is subject to PSWT. Payments made to:

- an advertising medium (e.g. a newspaper), or
- a person acting as an agent for an advertising medium (e.g. an advertising agency) in order to obtain advertising space or time are not generally subject to PSWT.

### 2. Archaeology

Payments in respect of archaeological consultancies are subject to PSWT. In general, payments in respect of archaeological digs or excavations are not subject to PSWT. However, where archaeological digs or excavations form part of an overall professional service, for example, an archaeological consultancy, the full amount of the payment is subject to PSWT.

**3. Auctioneers/estate agents/valuers**

Payments in respect of an auctioneer's, estate agent's or valuer's fees are subject to PSWT. Where the fee includes advertising costs, the full amount of the fee (including advertising costs) is subject to PSWT.

**4. Bank and payment charges**

Payments in respect of fees, commissions and charges for banking transactions are subject to PSWT. However, the charge imposed by a bank for the ordinary servicing of a customer's current account, which is debited to the customer's current account, is not subject to PSWT.

In relation to fees paid to merchant acquirers these are subject to PSWT, however payments made to payment gateway providers are outside the scope of PSWT.

**5. Board members/Chairpersons**

Payments made to chairpersons and individuals who sit on boards and committees are generally emoluments from an office chargeable to tax and subject to the operation of PAYE/PRSI. Accordingly PSWT does not apply to such payments.

**6. Computer services**

Payments for independent advice on the installation, development (including the development of a web site) or running of computer systems are subject to PSWT.

Payments in respect of the following services are not subject to PSWT:

- the sale of computer hardware and software packages
- the sale of software packages developed by the seller. This continues to be the position where the cost of the hardware or software package includes an element of service which is not charged separately to the customer, for example:
  - initial analysis of the work to be computerised
  - development of a hardware or software package for the customer
  - provision of training and other back-up services
- maintenance of computer software.

**7. Consultancy**

Payments in respect of any type of consultancy are subject to PSWT. Note that a service, which involves the provision of advice, is a consultancy.

**8. Costs of acquisitions/disposals of land or property****General**

Payments in respect of professional costs associated with the acquisition or disposal of

property or land other than under a compulsory purchase order (see below), including payments made in respect of the professional costs of a person other than the accountable person, are subject to PSWT. Payments in respect of professional costs incurred prior to the formal confirmation of a compulsory purchase order are also subject to PSWT unless they are part of an out of court settlement (see Opinion 9 below).

### **Property/land acquisitions by compulsory purchase order**

Where property is acquired by compulsory purchase order, the following are subject to PSWT:

- conveyancing costs,
- payments made by the accountable person in respect of the accountable person's own costs.

Where property is acquired by compulsory purchase order, the following are not subject to PSWT:

- professional costs awarded by an arbitrator. Examples include the vendor's legal costs, auctioneers fees, estate agents fees, valuers fees, etc.,
- professional costs incurred in reaching agreement, prior to arbitration, where such costs could have been awarded by an arbitrator.

### **9. Costs of legal actions**

Where, under a ruling of a court, tribunal or similar body which is legally empowered to award costs, an accountable person is required to make a payment to a person in respect of professional costs incurred by that person, the payment is not subject to PSWT. This also applies where the payment is made directly by the accountable person to the person who provided professional services.

The reason for not applying PSWT in these circumstances is that, once awarded, the costs are regarded as a compensation payment made by the accountable person and not a payment in respect of professional services.

PSWT applies to payment of the accountable person's own costs, including any payment out of costs awarded to the accountable person.

Payments made to a person in an "out of court" settlement towards the professional costs of that person are not subject to PSWT if the action was one in respect of which an order for costs could have been made by the court, tribunal etc.

In all other cases, PSWT must be deducted from payments made in respect of the costs of a person other than the accountable person.

**10. Debt collection**

Payments in respect of a debt collection service are subject to PSWT. However, where no payment is actually made but instead a percentage of the amount recovered is retained by the debt collector, PSWT does not apply.

**11. Dental technicians**

Payments in respect of the supply by a dental technician of goods such as dentures, dental braces and other prosthetic appliances (which are manufactured by the dental technician), directly to an accountable person, are not subject to PSWT.

**12. Employment/recruitment agencies**

A service involving the interviewing, screening, or selection of candidates for a job is regarded as a consultancy service and, accordingly, payments for such services are subject to PSWT.

Payments to employment or recruitment agencies simply for the placement of individuals are not subject to PSWT.

**13. Films/radio/television programmes**

Payments made directly to actors, producers and directors and for post-production facilities solely for the purposes of making a film, radio or television programme or series are not subject to PSWT.

Where accountants, solicitors, etc. are engaged to provide professional services for the purposes of making a film, radio or television programme or series, payments made by an accountable person for such services are subject to PSWT.

**14. Insurance**

Payments in respect of insurance consultancy services are subject to PSWT. Examples of such services include loss adjusting, identification/assessment of risk exposure, marketing risks, policy design, actuarial advice and claims analysis.

Payment of excesses under insurance policies are not subject to PSWT.

Payments of insurance premiums to brokers for transmission to an insurance company are not subject to PSWT. However, where a broker charges a separate fee for his services, PSWT should be deducted from the broker's fee. Such a fee could be in the form of an annual management fee or a fee charged in relation to a specific transaction.

**15. Laboratory tests**

Payments in respect of laboratory tests are subject to PSWT where the tests involve a service which is a professional service. For example, payments in respect of medical tests such as blood tests and biopsies are subject to PSWT because the service is of a medical nature.

Payments in respect of laboratory tests are not subject to PSWT where the test is not a service which is a professional service. For example, a payment in respect of a test to measure the level of pollution in water is not subject to PSWT.

#### **16. Medical appliances**

Payments in respect of the supply of artificial limbs, artificial eyes, surgical and medical appliances including any incidental service of fitting are not subject to PSWT. However, where a separate fee is charged for fitting, the fee is subject to PSWT as the payment is for a service of a medical/ optical/aural nature.

#### **17. Medical costs incurred in respect of employees**

Where, as part of their conditions of employment, the employees of an accountable person are entitled to submit bills for medical treatment incurred by them for payment by the accountable person, payments made by the accountable person to its employees in reimbursement of those expenses are not subject to PSWT.

Where, the accountable person pays a medical practitioner directly for the provision of medical services to the employee, PSWT applies to the payment.

#### **18. Opticians/optometrists**

Where opticians/optometrists receive payments from the Department of Social Protection or from the Health Service Executive, the cost of goods provided may be excluded from the amount to be charged to PSWT where the fee and the cost of the goods are shown separately.

*Opinion 16* above applies as regards payments in respect of optical appliances.

#### **19. Printing**

A printing service is not of itself a professional service within the terms of PSWT. Accordingly, payments in respect of services that involve printing and nothing else are not subject to PSWT.

Where printing forms part of an overall professional service provided to an accountable person, it is an expense incurred in the provision of that service. The full amount of the payment in respect of the service including the printing of forms is subject to PSWT. For example, where an accountable person commissions a specified person to design and print a brochure, the entire payment for the production of the brochure is subject to PSWT.

#### **20. Quality control**

A quality control service is not of itself a professional service within the terms of PSWT. Accordingly, payments in respect of quality control services are not subject to PSWT where the service provided has no professional element. For example, payments in

respect of examinations to determine whether a quality control level is achieved are not subject to PSWT.

Where a quality control service includes a professional element, the entire payment is subject to PSWT. For example, payments in respect of a quality assurance consultancy, i.e. the provision of advice on quality control matters are subject to PSWT.

## **21. Retail chemists**

Payments made to retail chemists are subject to PSWT. However, the cost of goods supplied and containers may be excluded from the amount to be charged to PSWT if these costs are separately identified.

## **22. Training**

Payments in respect of training consultancy services are subject to PSWT. Examples of a training consultancy service are:

- the provision of advice on training requirements, and
- the design/development of a course, syllabus or programme.

Payments in respect of the following services are not subject to PSWT:

- teaching, training or lecturing services,
- speeches/lectures given by guest speakers,
- the provision of material for open and distance learning courses including any element of professional service involved in preparing or developing such courses which is part of the overall package of the provision of the material and which service is not charged separately to the customer.

## **23. Video production**

Payments for the production of a video by a specified person are not subject to PSWT provided:

- there is no element of consultancy included in the service provided by the specified person and,
- the video is subsequently sold by the specified person as a finished product to the accountable person.

Where there is an element of consultancy involved in the service provided by the specified person, PSWT applies to the full amount of the payments.