Income & Corporation Tax Training

How Profits, Businesses and Individuals are Taxed & How to Make Better Financial Decisions

Patrick Mulcahy

Agenda

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Income Tax:

- Residency
- Tax Schedules and Cases
- Karshan Case (Dominio’s Pizza)
- Tax Bands/credits/PRSI/USC
- Expenses/Real Time reporting
- Tax relief at source
- Pay and file rules
- Income Tax losses

Agenda

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Corporation Tax:

- Residency
- Trade
- Recent updates to Cases
- Section 81 TCA 1997
- Capital allowances
- Close Co rules
- Losses
- Dividend v salary
- Pay and file rules

Introduction

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- Recent Tax appeal cases
- Importance of full and true disclosure
- Current activity in relation to the Form CT1 and Form 11
- Four-year statutory time period.
- Activity in relation to Level 1 and 2 interventions


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Territorial Scope of Income Tax

Territorial Scope of Income Tax

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- Tax Residence
- Ordinary Residence
- Domicile

Tax Residence

- Present for 183 days in the tax year, or
- 280 aggregate days over a tax year and the preceding tax year
- Ignore ≤30 days in a tax year
- Option to elect for residence if advantageous

- NB – Definition of a day / exceptions
- Any time in Ireland during a day except in transit / unavoidable

Tax Residence – Election

Election	No Election
Personal Credits and Reliefs	Delay becoming ordinarily resident
Worldwide Income and Gains taxable	Taxable on Irish source income only
Split Year, Remittance Basis and DTA access	Personal Credits and Reliefs

Ordinary Residence

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- Ordinary Residence is acquired if a person has been a tax resident in Ireland for three consecutive tax years
- Will be Ordinarily Resident (OR) in the fourth year and thereafter unless Ordinary Residence is subsequently lost
- Ordinary Residence is lost after a person has been non-resident for three consecutive years
- Will be Not Ordinarily Resident (NOR) in the fourth year and thereafter unless Ordinary Residence is regained

Domicile

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- Legal Concept – not defined in legislation
- Substantial Case Law
- Only 1 domicile at a time
- Domicile of Origin / Dependency
- Domicile of Choice
- Domicile of Choice can only be acquired by losing existing domicile
- Long-term intentions / physical presence
- Personal, Social, Financial, Business and other ties / interests

Impact of Tax Residence, Ordinary Residence, Domicile (Examples)

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Res.	Ord. Res.	Dom.	Income Liable
YES	YES	YES	Worldwide
YES	YES	NO	Irish income + Irish Emp. Income Foreign Remittances
YES	NO	YES	Worldwide
NO	YES	YES	Worldwide-exceptions
NO	NO	NO	Irish

Impact of Irish Residence, Ordinary Residence, Domicile

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- Tax Resident – Liable to Irish Income Tax on Worldwide Income
- Non-resident – Liable on Irish source income only
- Ordinary Resident – Liable on worldwide income except -
  - Employment Income earned abroad
  - Trading / Professional Income earned outside Ireland
  - Foreign Investment Income up to €3,810 (note – if this is exceeded, the full amount is taxable)

- Domiciled – Liable on Worldwide Income subject to Res / OR status
- Non-Domiciled – Liable on Irish Source Income subject to Res / OR status and on Foreign Income if remitted into Ireland (N.B. re. foreign employment income where duties exercised in Ireland)

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Schedules and Cases

Nature of Income – The Schedules

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Schedules D, E and F

- Schedule D – Case I / II
- Schedule D – Case III
- Schedule D – Case IV
- Schedule D – Case V
- Schedule E
- Schedule F

Nature of Income – The Schedules

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- The category will determine:
  - The specific treatment of the income and rules that determine how much of the income is taxable in a given year
  - The expense deductions available against that income
  - What losses, if any, can be set off against the income
  - In some cases, the rate of tax which the income will be charged at

Nature of Income – The Schedules

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- Schedule D, Case I / II: Trading / Professional Income *(Badges of Trade, Taxed based on earnings in accounting period, Deductions must be wholly and exclusively incurred for the purpose of the trade)*

- Schedule D, Case III: Investment income not chargeable under a different Schedule or Case, Foreign Income, not subject to deduction of Irish tax at source (e.g., interest payments not subject to DIRT, foreign rental income).

Nature of Income – The Schedules

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- Schedule D, Case IV: “Catch All” case, Investment Income subject to tax at source (Irish Deposit Interest, US Dividends subject to Irish encashment tax, Post cessation trading income, Miscellaneous income not taxed elsewhere)

- Schedule D, Case V: Irish Rental Income. (Taxed on income receivable. N.B. re. Rent-a-Room relief).

- Schedule F: Irish Dividend Income (DWT, Scrip Dividends, etc.)

Nature of Income – The Schedules

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- Schedule E: Irish Employment Income, Directors' remuneration, Irish pensions, Foreign employment income where duties are exercised in Ireland (otherwise Sch. D, Case III)
- Employment Status – Employed v Self-Employed (Sch D, Case I v Sch. E)
- PAYE System generally applies
- Expenses / Deductibility
- Termination Payments

Exempt Income

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- Compensation payments under employment law
- Profits from lotteries
- Interest payable on savings certificates
- Certain foreign pensions
- Artists' Income (within limits)
- Income from Government securities owned by non-residents

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Employee v Self-Employed

Employed v self employed

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- Self-employed v employee:
  - Revenue guidance/interpretation of contract of service and contract for services
  - Importance of case (October 2023) of The Revenue Commissioners v. Karshan (Midlands) Ltd. t/a Domino's Pizza, held that the delivery drivers for the pizza company were not independent contractors under a contract for service. Instead, they were employees under a contract of service, and taxable under Schedule E (PAYE).
  - Such is the significance of the findings in the Karshan case that Revenue have issued a new Tax and Duty Manual (TDM Part 05-01-30) to outline the implications for determining the employment status for tax purposes. The TDM outlines the five-step decision-making framework that entities are required to use to determine if a worker is an employee or is self-employed for tax purposes.
  - Case Law deciding factors: control, guaranteed salary v performance-based salary
  - Tax deductions for self-employed more generous

Check List – that could be used to help determine contract of/for service

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Justice Murray in the Karshan case decided that the question of whether a contract is one “of service” or “for service” should be resolved by reference to the following five questions:

1. Does the contract involve the exchange of wage or other remuneration for work?

2. If so, is the agreement one pursuant to which the worker is agreeing to provide their own services, and not those of a third party, to the employer?

3. If so, does the employer exercise sufficient control over the putative employee to render the agreement one that is capable of being an employment agreement?

4. If these three requirements are met the decision maker must then determine whether the terms of the contract between employer and worker interpreted in the light of the admissible factual matrix and having regard to the working arrangements between the parties as disclosed by the evidence, are consistent with a contract of employment, or with some other form of contract having regard, in particular, to whether the arrangements point to the putative employee working for themselves or for the putative employer.

5. Finally, it should be determined whether there is anything in the particular legislative regime under consideration that requires the court to adjust or supplement any of the foregoing.

“Employed” versus “Self-Employed” individuals - Implications

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The status of an individual affects a number of issues such as:

- The way in which income tax, PRSI and USC is paid – PAYE system versus tax return (Schedule D vs Schedule E income)
- Applicable PRSI class – generally employees pay Class A PRSI whereas self-employed individuals pay Class S PRSI
- Entitlement to certain social welfare benefits i.e. generally self-employed individuals would not be entitled to unemployment and disability benefits
- Applicable tax rates – self-employed individuals can pay USC at a rate of up to 11% whereas generally an employee will pay a maximum USC rate of 8%
- Employment rights
- Deductibility of expenses – generally more scope for self-employed individuals

** Except for proprietary directors*

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- **Tax Bands/credits/PRSI/USC**

Tax Rates and Bands

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Tax rates and rate bands

Rates and bands for the years 2022 to 2026

Personal circumstances	2026 €	2025 €	2024 €	2023 €	2022 €
Single or widowed or surviving civil partner, without qualifying children	€44,000 @ 20% Balance @ 40%	€44,000 @ 20% Balance @ 40%	€42,000 @ 20% Balance @ 40%	€40,000 @ 20%, balance @ 40%	€36,800 @ 20%, balance @ 40%
Single or widowed or surviving civil partner, qualifying for Single Person Child Carer Credit	€48,000 @ 20% Balance @ 40%	€48,000 @ 20% Balance @ 40%	€46,000 @ 20% Balance @ 40%	€44,000 @ 20%, balance @ 40%	€40,800 @ 20%, balance @ 40%
Married or in a civil partnership (one spouse or civil partner with income)	€53,000 @ 20% Balance @ 40%	€53,000 @ 20% Balance @ 40%	€51,000 @ 20% Balance @ 40%	€49,000 @ 20%, balance @ 40%	€45,800 @ 20%, balance @ 40%
Married or in a civil partnership (both spouses or civil partners with income)	€53,000 @ 20% (with an increase of 35,000 max), balance @ 40%	€53,000 @ 20% (with an increase of 35,000 max), balance @ 40%	€51,000 @ 20% (with an increase of 33,000 max), balance @ 40%	€49,000 @ 20% (with an increase of €31,000 max), balance @ 40%	€45,800 @ 20% (with an increase of €27,800 max), balance @ 40%

Note: The increase in the rate band is capped at the lower of €35,000 or the income of the lower earner. This increase cannot be transferred between spouses or civil partners.

Tax Credits, Allowances, Reliefs & Charges

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- Personal Tax Credits
- Other Tax Credits
- Refundable Tax Credits
- Allowances and Reliefs deductible at the marginal rate
- Tax Rates and Bands
- Low-income exemption and marginal relief
- Charges on income
- Relief for interest

Tax Credits – Non-Refundable

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- Single person credit
- Married couple credit – for jointly assessed couples
- Widowed person credit – Additional to the single allowance
- Single person child carer credit – Additional to the single allowance
- Widowed parent tax credit – The amount of this credit decreases over each of the 5 years following the bereavement
- Incapacitated child tax credit – Available in respect of a qualifying child

Tax Credits – Non-Refundable

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- Home Carer credit – Available where a spouse works at home to care for dependent young or elderly
- Aged allowance (Single/Married) – Where taxpayer or spouse is 65+
- Employee/PAYE credit – Not available to proprietary directors
- Earned income credit – Available where recipient is in receipt of earned income other than that which doesn't qualify for the PAYE tax credit, available to proprietary directors
- Dependent relative tax credit – If the relative is a widowed parent of the claimant, the parent need not be "incapacitated"

Other Tax Credits – Non-Refundable

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- Relief for Third Level Fees (maximum for full-time course €7k per course / first €3k of total claim ignored)
- Relief for dental & medical insurance (Credit @20% / Usually TRS)
- Health Expenses – Credit @20%
- Nursing Home fees @ Marginal Rate

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Universal Social Charge

USC

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- USC is charged on gross income, including notional pay, before deducting pension contributions, and after deducting certain trading losses and certain capital allowances

  Employees: Reckonable Emoluments (through PAYE system) / Non-Employees: Reckonable Income (through self-assessment)

- Exceptions – Deposit Interest, Social Welfare Payments, Tax-free element of termination payments. Exemption where income is not >€13,000 [2025]. Reduced rates for medical card holders >70 where income is less than €60k (2%)

2025 Rates	Income
0.5%	First €12,012 of income
2%	Next €15,370 of income
3%	Next €42,662 of income
8%	Balance of income

2026 Rates	Income
0.5%	First €12,012 of income
2%	Next €16,688 of income
3%	Next €41,344 of income
8%	Balance of income

USC

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- If an individual has income not subject to PAYE exceeding €100,000, an additional 3% surcharge would apply to the excess of that income over €100,000.

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PRSI

PRSI

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Relevant legislation – Social Welfare (Consolidation) Act 2005 (“SWCA 2005”). Also, Social Welfare Regulations / SW Miscellaneous Provisions Acts

Employed contributors

- The PRSI system applies to all employees in the State (certain exceptions)
- Employer and Employee contribute
- PRSI is generally collected on “reckonable earnings” (Schedule E emoluments) through the PAYE system
- The most common PRSI class for private sector employees is Class A

Employee Income	Weekly income band	Rates
PRSI Employee	Exceeding €424/week	4.1% (pre 1 Oct 2025), 4.2% (from 1 Oct 2025)
PRSI Employer	Exceeding €527/week	11.15% (pre 1 Oct 2025), 11.25% (from 1 Oct 2025)

- There is no annual earnings ceiling for PRSI for employees

PRSI

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Employed contributors – limits and exemptions

- Individuals who reach pension age (currently age 66) during the tax year are exempt from PRSI.
- Employees earning €352 or less per week in 2025 & 2026 are exempt from employee's PRSI.
- Individuals aged under 16 in the tax year are exempt from PRSI.
- Individuals employed by a spouse are also exempt.

PRSI

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Self-employed contributors

- PRSI applies to “reckonable income” (trading or professional income and investment income).No Employer Contribution.
- PRSI applies to “reckonable emoluments” (emoluments which do not arise from an employment to which PAYE applies – certain directors fees).
- Self-employed contributors are Class S PRSI contributors (4.2% rate).
- Minimum annual PRSI contribution of €650 for self-employed contributors and an exemption threshold of €5,000.
- PRSI is collected on reckonable income through the self-assessment system.

PRSI

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Self-employed contributors – limits and exemptions

- Individuals with gross income less than €5,000 p.a. are exempt
- Individuals aged 66 or over during the tax year are exempt from PRSI
- Certain relatives working for self-employed persons
- An employed contributor whose only other income is unearned income (e.g., deposit interest, rental income) and who is not a chargeable person, unless unearned income exceeds €5,000
- Non-resident or ordinary resident persons with income other than trade or professional income or directors' emoluments (i.e., unearned income)

NB – Special rules for international employments / self-employments

- **Expenses**

Employee expenses – deductibility/tax free reimbursement

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- Must be incurred ***wholly, necessarily and exclusively*** in the performance of the duties of employment
- Claims for reimbursement must be ***vouched***
- Flat rate allowances are fully taxable unless within the set ***Civil Service Rates***
- Mileage payments determined based on level of business mileage incurred and the engine size of the vehicle [see Revenue's Tax and Duty Manual (TDM) Part 05-01-06]
- Subsistence payments can be made for absences of 5 hours, 10 hours and overnight once certain conditions are met [see Revenue's TDM Part 05-01-06]
- Different rates apply where the absence is outside Ireland in which case the Department of Finance's published Foreign Subsistence Rates should be adhered to
- ***Home-to-work travel*** is not allowable
- ***"Travelling appointments"*** – employer's base is considered the normal place of work

Expenses generally allowable in practice

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- Special clothes work in the performance of the duties, i.e. uniforms and PPE
- Tools used in the performance of the duties
- Expenditure on books and newspapers for journalists
- Expenses by commercial travellers who are required to bear travelling and hotel expenses in the course of performing their duties
- From 1 January 2017, travel and subsistence expenses incurred by non-resident/Irish resident, non-executive directors to attend board meetings may be paid tax-free. Receipts must be provided for the expenses incurred and the meetings attended.

Flat Rate expenses

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- Flat-rate expenses are those that cover the cost of equipment employees need for work. This equipment may include tools, uniforms and stationery
- The amount of the deduction is agreed between Revenue and representatives of groups of employees (Unions)
- All employees of the class or group in question can then claim the agreed deduction in their own tax credits.

Allowable by increasing 20% tax band and granting a tax credit at 20%

- E.g., Shop assistants tax band increased by €121 (converted @20% to €24 tax credit)
- Nurses: (a) where obliged to supply and launder their own uniforms tax band increased €733 (converted @20% to €147 tax credit)

Further details on flat rate expenses are set out below:

https://www.revenue.ie/en/personal-tax-credits-reliefs-and-exemptions/documents/flat-rate-expenses.pdf

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Medical Insurance Premiums - Relief at Source

Medical Insurance Premiums (S470 TCA 1997)

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- In general, relief is granted at source for qualifying premiums.
- The relief is granted as a credit and tax relief can be claimed in relation to a policy taken out for the benefit of any individual.
- List of authorised health insurers on Revenue website.
- On or after 16 October 2013 the relievable amount granted is limited to:
    1. The lesser of the premium paid or €1,000 per adult – max credit is €200
    2. The lesser of the premium paid or €500 per child – max credit is €100
- For policies entered into on or after 1 May 2015, the full adult maximum applies to all individuals aged 21 and over regardless of whether they are availing of the child's premium.

Medical Insurance Premiums

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- The relief is granted by way of a reduction in the amount payable by the individual to the medical insurance provider.

- When tax relief is granted at source then the individual is not required to file a return after the end of the year in order to claim the relief due.

- In the case of PAYE workers, they are not required to seek an adjustment to be made to their tax credits during the year in order to claim a refund.

Medical Insurance Premiums

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Example 1

Fergus renews his medical insurance policy on 1 January. The medical insurance provider issues a notice which shows both the gross and the net premiums due.

Calculation of TRS

Gross €2,500
Amount on which TRS is calculated €1,000
TRS €1,000 @ 20% = €200
Reduced Net Premium Payable €2,300

Medical Insurance Premiums

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Example 2

Liz renews her policy on 1 January. Her policy covers two adults and two children. The medical insurance provider issues a notice showing both the gross and net premiums due.

Calculation of TRS

Gross €5,500 (comprised of €2,500 per adult and €250 per child)
Amount on which TRS is calculated is €2,500 (€1,000 x 2 + €250 x2)
TRS €2,500 @ 20% = €500
Reduced Net Premium Payable €5,000 (€5,500- €500)

Note: The maximum allowable per child is €500 but the cost on the policy is only €250 and the relievable amount is the lesser of the two.

Medical Insurance Premiums

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Employer pays Premium - BIK

- Where an employer pays a medical insurance premium on behalf of an employee, the employer pays the premium net of any tax relief due.
- However, the cost to the employer is based on the invoiced gross premium before tax relief at source.
- Employees are chargeable to Income tax under s112 TCA 1997 at their marginal rate of tax on the value of the perquisite (the gross premium amount).
- PAYE, PRSI and USC must be applied then on the value of this gross amount.
- In such scenarios, since the employee has not benefitted from TRS on the premium paid by the employer he/she is entitled to tax relief on his/her tax credit certificate or by way of a refund at the end of the tax year.
- The relief due in either of these instances is the relievable amount at the standard rate of tax.

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Self-assessment

Self-assessment System

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- System to collect income taxes from a chargeable person
  - Chargeable person is someone who has another source of income not subject to PAYE
    - Includes all self-employed persons
    - Those with other income not subject to PAYE (or not coded in their tax credits)
    - Company directors who own more than 15% of the company (i.e., proprietary directors)

Self-assessment

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Filing of income tax returns

- 31 October of year following tax period

  e.g., tax returns for 2025 (year 31.12.2025) due 31 October 2026

- Online filing of returns through ROS – deadline extended to 18 November 2026

Self-assessment

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Income tax payments

– Preliminary tax due 31 October 2026 or 18 November 2026 (ROS) for 2026 tax year

Three options:
– 100% of prior year – 2025 or
– 90% of estimated current year
– **105%** of the pre-preceding tax year – 2024 [if paying by direct debit ONLY]

Provided preliminary tax is paid on time, there is no interest payable on balance

– Balance payable with return 31 October 2027

To avoid interest on underpayments

Preliminary Tax – Example

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Sarah’s tax liabilities:

Tax year 2024 - €100,000

Tax year 2025 - €200,000

Tax year 2026 - €220,000 estimate

- What are Sarah’s preliminary tax payment options for 2026 (due 31/10/26)?

Tax Returns and Payment Dates

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31 October for all tax and returns

- File return for previous year
- Pay balance of tax for previous year
- Pay preliminary tax for current year

2025 filing deadline for 2026 income tax returns filed on ROS – 18/11/2026

Preliminary Payment Options - Recap

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Tax Year 2025

- 105% of pre-previous year, i.e. 2024

  (only if using Direct Debit)

- 100% of previous year, i.e. 2025

- 90% of current year, i.e. 2026

Interest and Late Filing Penalties

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To avoid interest:

- Meet one of the 3 preliminary tax options

  AND

- Pay before 31 December by direct debit via 8 equal payments for option 1 (105% pre-prior year)
- Pay before 31 October for option 2 or 3 (100% PY or 90% CY)
- Interest is charged from original due date of 31 October at 0.0219%

Penalty for late filing

- Surcharge of 5% (capped at €12,695) of the tax liability for the year if less than 2 months late
- Surcharge of 10% (capped at €63,485) of the tax liability for the year if more than 2 months late

Losses

Losses

- calculated in the same manner as a profit would be calculated
- Resulting assessment is nil
- relief is not given more than once for the same loss

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SECTION 381

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- May claim relief for a loss suffered under Case I or II against the statutory income of the year of assessment in which the loss is incurred

- Claim must be made within 2 years from the end of the year of assessment to which the claim relates

- Full amount of the loss must be claimed

SECTION 382

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- If no S381 claim is made
- or
- it has not relieved the whole loss

- any excess must be carried forward and set against the first available Case I net assessment of the same trade

- No time limit

Case IV

y.e. 31.12.25	**25,000**	**12 months to 31.12.25**	**(90,000)**
y.e. 31.12.26	**35,000**	**12 months to 31.12.26**	**10,000**

Case I

			Loss Fwd
2025	Case I	nil	90,000
	Case IV	25,000	
	S381	-25,000	-25,000
		-	65,000
2026	Case I	10,000	
	S382	-10,000	-10,000
		-	55,000
	Case IV	35,000	

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F. Murphy's Schedule D Case V assessment for 2025 is €17,000. She has a Case I loss for the 12 months ended 31 December 2025 of €8,000. Her personal tax credits for 2025 are €2,800. She forecasts her income for 2026 to be €50,000.

2025	€	alternative €
Case V	17,000	17,000
S381	8,000	-
	9,000	17,000
@ 20%	1,800	3,400
Tax credits	3,000	3,000
Tax payable	nil	400
Allowances forward	nil	nil
Loss forward		

Which is preferable?

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Corporate Tax residency

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Territorial Scope Of Corporation Tax

- The key question as to whether and how a company is to be charged to corporation tax depends on whether or not it is resident in the State.

- A company resident in the State is liable to Corporation Tax on its worldwide Profits wherever they arise and whether they are actually remitted to the State or not.

Deciding on Residence

- There are two methods for deciding the place of residence of a company:
- Section 23A TCA 1997.
- Case law/ Established practice

Section 23A TCA 1997

- The thrust of this section is to provide that a company will be resident in the State if it is either managed and controlled in Ireland or incorporated in Ireland.
- All companies set up and incorporated in Ireland after 11 February 1999 are automatically subject to Irish taxation.
- Section 23A TCA 1997 does not change the existing long standing principle and practice that a company – whether incorporated in the State or in a foreign country – is held to be resident in the State if its central management and control, as exercised by its directors, is located in the State.

Case law/ Established practice

- The key rule which has evolved from case law regarding the company's residence is: 'where the central management and control actually abides':

- Based on the facts of the various leading cases on company residence it is possible to compile a list of questions which determine where the central management and control abides:

- The key questions are as follows:

Case law/ Established practice

1) where are the questions of important policy determined?

2) where are the directors meetings held?

3) where do the majority of directors reside?

4) where are shareholders meetings, both general and extraordinary held?

5) where is the negotiation of major contracts undertaken?

Case law/ Established practice

6) where are the accounts prepared, examined and audited?

7) from where are dividends, if any, declared?

8) where are the profits realised?

10) where is company incorporated?

11) where is the head office?

12) where are the books of account, minute books, company seal and share register kept?

Company Residence

In other words, there are now two alternative tests in Irish law under which a company may be an Irish resident company:

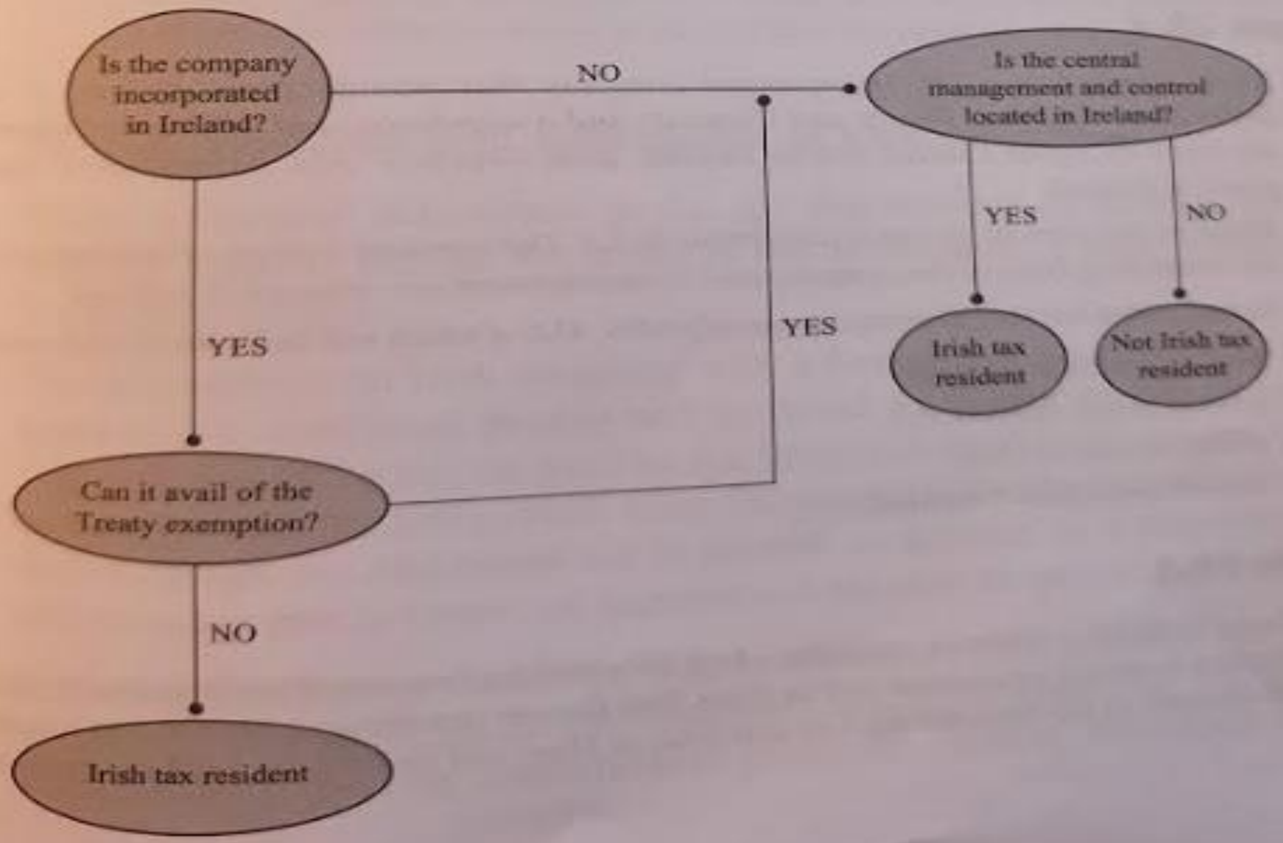
1 - place of incorporation in the State

2 - central management and control in the State

.8 Summary

The various tax residence tests can be summarised as follows:

A. Overview of the tax residence tests – incorporated from 1 January 2015



Implications of Company Residence

- If a company is resident in Ireland for then it is liable to Corporation tax on worldwide profits.

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Non Resident Company – trading profits

- As already noted, determining the tax residence of a company is crucial in assessing the extent to which a company is liable to Irish corporation tax on its income and chargeable gains.
- A non-resident company as defined is chargeable to corporation tax only if the company is carrying on a trade in the State through a branch or agency i.e. a permanent establishment.
- In such cases, all income arising directly or indirectly to the branch or agency is liable to Irish Corporation Tax.

Non Resident Company – trading profits

- Some examples of a ‘Branch or Agency’ include:
- A French incorporated company whose centre of management and control is Paris also opened a factory unit in Thurles where a small workforce manufactures clocks. These clocks are sold from this Thurles factory.

- Therefore, the trading income of the Thurles factory will be liable to Irish corporation tax as it constitutes a branch of the French resident company.

- A German company purchased a factory workshop in Galway. One of the German managers moved to Galway, a number of staff were employed and parts for machines were produced in Ireland for export to customers in Germany.

- This production workshop in Galway constitutes a branch and so its trading income is chargeable

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The concept of trade

Basis of Assessment

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- Income arising from a **trade** is charged under **Schedule D case I**
- Income arising from a **profession** is charged under **Schedule D case II**
- Section 3 (Taxes Consolidation Act 1997) TCA 1997 defines “trade” as including every ***trade, manufacture, adventure or concern in the nature of trade***
- We look to case law and the rules set up by the UK Royal Commission on the Taxation of Profits and Income to provide a guidance as to what constitutes a “trade”. These rules are known as the **Badges of Trade**
- Tax and duty manual on trade Part 02-02-06 - General guidance on the classification of activities as trading.

Badges of Trade

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6 Badges of Trade

- The subject matter of the realisation
- The circumstances giving rise of the transaction
- Length of period of ownership
- Frequency or number of similar transactions
- Supplementary work on/in relation to the property realised
- Motive of the transaction

The absence (or presence) of a given factor does not suggest the existence of a trade, the ‘full picture’ will need to be considered. In the case of *Jenkinson (HMIT) v. Freeland (1961),* the judge highlights that *“all facts in each case must be considered”*

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S21B TCA 1997
Participation exemption
Franked Investment income

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Distributions of trading income from EU/Treaty companies

- 12.5% rate will only apply if the dividend is paid out of foreign subs trading profits or if paid through tiers of foreign trading subsidiaries.
- Companies in receipt of the foreign dividend have to make an election to have the 12.5% rate applied.
- Participation exemption to be considered

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Franked Investment Income

- The receipt of Irish dividends by a company is treated as exempt income
- No tax deduction is available for the paying company
- This form of income is known as Franked Investment Income

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S 81 TCA 1997

Allowable Expenses

- The general rules governing what expenses are allowable deductions for tax purposes are laid out in section 81 (2) TCA 1997.
- The main provisions are:

1. Must be incurred wholly and exclusively for trade purposes i.e. an expense will be disallowed if no connection with the trade can be shown.

2. Must be of a Revenue nature as opposed to capital.

3. Must not be specifically disallowed in the legislation e.g. non-staff entertainment, political subscriptions.

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Capital Allowances

Capital Allowances

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- Capital allowance (wear and tear allowance) is an annual allowance available to persons who incur capital expenditure on the provision of plant and machinery for the purposes of a trade (S284 TCA 1997)
- Capital allowances may be claimed in relation to:
  - ✓Plant and machinery e.g., computers, shelves, factory machinery, printers, etc.
  - ✓Motor vehicles
  - ✓Industrial buildings

- The allowance is given for a chargeable period/accounting period where the plant or machinery is in use at the end of the chargeable or accounting period
- For capital expenditure incurred after 4 December 2002, the amount of capital allowance that can be claimed is 12.5% (on a straight-line basis) of the actual cost of the machinery or plant. This includes renewal, improvement or reinstatement costs (S284(2)(ad) TCA 1997)
- When the chargeable or the accounting period is less than a year, the capital allowance claimed is time apportioned (S284(2)(b) TCA 1997)
- For capital allowances purposes, it is expenditure net of grants that are taken into account – S317(2) TCA 1997

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Plant & Machinery

Plant and Machinery

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- Plant is not defined in tax legislation, so we look to case law for a definition

- The most used definition of plant arose in the case of *Yarmouth v. France (1887)* – Lord Lynley said “in the ordinary sense, it includes whatever apparatus used by a businessman for carrying on his business”. This does not include stock-in-trade i.e., inventories [*Jarrold v. Good (1962)]*

- To determine whether an item would qualify as plant, relevant case law indicates that the following tests are applied:
  - ✓ Is the item functional or merely a setting in which the business is carried on? If functional, capital allowances can be claimed
  - ✓ Is the expenditure incurred directly on the provision of plant and not on the provision of finance which is used to acquire plant?
  - ✓ Does the expenditure replace an item previously regarded as plant?
  - ✓ Is the expenditure related to an entire unit or is merely expenditure on part of a larger, non-functional unit?

Plant and Machinery Summary – Example

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Capital allowances	Plant &machinery (12.5%) €	Fixtures and fittings (12.5%) €	Motor vehicles (12.5%) €	Total €
Cost Opening cost Plus Additions Less Disposals	 100,000 25,000 (7,000)			
Closing cost	118,000			118,000
Tax Written down value (TWDV)				
Opening written down value Plus additions Less disposals Less wear & tear(capital allowances)	50,000 25,000 (3,500) (14,750)*			50,000 25,000 (3,500) (14,750)
Closing written down value	86,250			86,250

* Qualifying cost x applicable rate = €118,000 x 12.5%

Balancing Allowance And Charge

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S288 TCA 1997 provides that a balancing event may arise in a chargeable period where any of the following events occur:

- ✓ The machinery or plant ceases to belong to the person whether on a sale or otherwise,
- ✓ The machinery or plant ceases to be used for the purposes of the trade,
- ✓ The trade permanently ceases, or
- ✓ The granting to another person the right to use machinery or plant consisting of a specified intangible asset, computer software or the right to use or otherwise deal with computer software.

Balancing Allowance And Charge

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- Balancing Allowance: individual entitled to claim additional capital allowances (disposal proceeds less than TWDV of asset)

- Balancing Charge: capital allowances already granted to the individual should be claimed back (disposal proceeds more than TWDV of asset)

- A balancing charge will not arise in respect of plant and machinery where the disposal proceeds for the plant and machinery are less than €2,000

- A balancing charge cannot exceed the total capital allowances already claimed on the asset

Examples

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Example 1

A machine costing €11,000 had a tax written down value ("TWDV") of €3,000 at 31 December 20X1. It was sold for €5,000 during 20X2.

What are the tax consequences?

Example 3

A machine costing €11,000 had a tax written down value ("TWDV") of €1,000 at 31 December 20X1. It was sold for €2,000 during 20X2.

What are the tax consequences?

Example 2

A machine costing €11,000 had a tax written down value ("TWDV") of €3,000 at 31 December 20X1. It was sold for €2,000 during 20X2.

What are the tax consequences?

Examples - Solutions

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- In all examples, no capital allowance may be claimed on the plant in the period to 31 December 20X1 because the plant is not in use at the end of the period.
- The cost of the plant of €11,000 and its TWDV must be removed from the pro forma capital allowances computation.
- Balancing allowance/charge computation for the year 31 December 20X2.

Example 1

Sales proceeds	€5,000
TWDV at 31.12.20X1	(€3,000)
Balancing charge	€2,000

Example 2

Sales proceeds	€2,000
TWDV at 31.12.20X1	(€3,000)
Balancing allowance	€1,000

Example 3

Sales proceeds	€2,000
TWDV at 31.12.20X1	(€1,000)
Balancing charge	€1,000 reduced to Nil

As the proceeds do not exceed €2,000 no balancing charge applies.

Replacement Assets

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- The relief may arise where a trader sells plant which gives rise to a balancing charge but where the plant disposed of was replaced by another item of plant.

- The effect of the relief is that the trader is not taxed immediately on the balancing charge. Instead, when calculating the wear and tear allowances due in respect of the replacement item of plant, the balancing charge is deducted from the plant's qualifying cost.

- The effect of the relief is to defer the liability of a balancing charge to income tax. It does not eliminate a balancing charge.

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Close Companies

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Close Companies

- There is a perception that there are many tax advantages of operating through a company rather than through an unincorporated business.
- This probably would be the case but for the existence of close company legislation.
- The close company legislation places many tax impediments in the way of family companies in the context of the extraction of funds from the company and the retention of profits.

Close Companies

- In the absence of the close company legislation it would be possible for the owners of a family company to avoid ever paying income tax by merely taking loans from the company, or get the company to pay private expenses or to generally use the company as a source of tax free income.

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What is a close company

- A close company is defined as one which is under the control of
  - Five or fewer shareholders (referred to as “participators”)
  - Shareholders who are directors of the company (irrespective of the number of directors involved)

- Broadly speaking, control means ability to exercise control over the company’s affairs (in practice this generally means having more than 50% of the voting power OR the total share capital

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Disadvantages of close company status

1. Certain benefits in kind and expense payments to participators and their associates are treated as distributions

2. Interest paid to certain directors in excess of a prescribed limit is treated as a distribution

3. Loans to participators or their associates must be “grossed up” and income tax paid

4. Loans to participators or their associates which are subsequently written off or forgiven will be treated as income in the recipient’s hands i.e. assessable to income tax

5. A surcharge of 20% is levied on the undistributed after tax investment (Case III & IV) and rental income of trade companies and a surcharge of 15% on 50% of the after tax professional income of service companies

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Losses

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Losses

- The same rules which apply when computing trading profits under Case I also apply where a trading loss arises.
- A company which incurs trading losses can use these losses with much more flexibility than an individual can. The extent and type of loss relief will depend on the income source and which Case of Schedule D it is taxable under.

Example

- A Ltd has a loss before tax figure of €10,000 (P&L), depreciation is €4,000 for the period with client entertainment of €1,000

- Calculate tax computation in the normal way

Loss before tax		(10,000)
Addback		
Depreciation	4,000	
Entertainment	1,000	5,000
Case I adjusted profits		(5,000)

Trade losses

- A company which incurs a “relevant trading loss” may obtain relief for the loss in one of the following ways

I. By carry forward against income from the same trade (S 396(1))

II. By setting off the loss against “relevant trading income” in the same accounting period (S 396A(3))

III. By setting off against “relevant trading income” in the immediately preceding accounting period (S 396A(3))

IV. By deduction as a tax credit, on a value basis, against any corporation tax liability of the of the same accounting period (S396B (3))

V. By deduction as a tax credit, on a value basis, against any corporation tax liability of the immediately preceding accounting period equal in length to the accounting period in which the loss was incurred (S396(B)(3))

Carry forward (S396 (1))

- A trading loss in an accounting period may be carried forward indefinitely and set off against the trading income from the same trade in the succeeding accounting periods.

- The loss must be set off in computing the trading income in the first possible accounting period in which a profit from the same trade applies.

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Cash extraction from a company

Cash extraction from a company

- Cash can be extracted in a number of ways namely:
  - Salary.
  - Dividend.
  - Liquidation.

Dividend V Salary

- No real difference in tax terms between a dividend and a salary.
- If the company is a close company with a surcharge it may make sense to pay a dividend as it may reduce or possibly eliminate the surcharge.

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Salary

- Subject to PAYE/PRSI/levies – shareholder receives a net amount.)(Taxed under Sch E).
- Salary is deductible for tax purposes against the company profits (represents a 12.5% deduction).
- Employers PRSI is payable by the company if the salary is paid to a non controlling shareholder.
- Salary can increase the capacity to increase pension contributions.

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Dividend

- Shareholder receives 75% of the dividend after 25% DWT is applied. (credit for the 25% can be claimed (Taxed under Sch F).
- Dividend is liable to income tax plus levies an and possible PRSI in the hands of the shareholder.
- Company must pay DWT to Revenue on the Dividend.
- A dividend is not tax deductible for tax purposes against the company profits.
- Employers PRSI will not arise on dividends paid to shareholders.
- A dividend may be declared at year end and will lower/eliminate potential close company surcharges.

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Pay and file

Pay and file rules

- Small co
  - One preliminary tax payment due (100% of prior year or 90% of current)
- Large co
  - Prior year liability in excess of €200,000
  - Two preliminary tax payments
  - PT1: 50% of prior year or 45% of current year
  - PT2: PT1 and PT2 to get you to 90% of current year.

- Filing of return and pay balance of tax
  - Within 9 months and 23 days of year end

Thank you

Questions??