Emer Joyce
Director, Grant Thornton

Prepare for Pay and File 2020

Although there are no substantial changes to the Form 11 2019 compared to previous versions of the form, it is worthwhile recapping on the basics and highlighting the subtle changes.

Form 11 2019: Main Changes

The Form 11 for 2019 remains for the most part the same as the previous year. Changes worth noting are:

- Where a taxpayer's status is updated to married or jointly assessed, the spouse's PPSN is required in the spouse details section of the Form 11.
- The "Non-resident claiming joint assessment" tick box now contains a new warning message and is presented at the end of the Personal Details section of the form, requesting the taxpayer to confirm that the information is correct.
- A new question has been added to the Mandatory Disclosure sub-panel in respect of reportable cross-border arrangements, and a reference number is required.
- A claim for capital allowances has been added to the "Machinery & Plant" capital allowances section of the form referring to:

  - childcare and fitness centre equipment under s285B TCA 1997 and
  - gas vehicle and refuelling equipment under s285C TCA 1997.
- A claim for industrial buildings allowances in respect of buildings used for the purposes of providing childcare services or a fitness centre to employees, available under s843B TCA 1997, has been added to the capital allowances. This has also been added to the "Specified Relief" and property-based incentive sections of the form.
- The Terminal Loss Relief sub-panel has been updated with additional questions for "Loss arising in subsequent years" to provide for loss relief claims by self-employed individuals whose business has been severely adversely affected by the Covid-19 restrictions.
- A rental income deduction has been added for "Relevant Interest" claimed for the years 2016, 2017 and 2018 where a relevant undertaking has been made under s97(2K) TCA 1997
- A proprietary director who has received a bonus/fee relating to 2019 paid in 2020 should ensure that these details are included in the Gross Pay section of the Form 11. A credit is available for income tax and USC deducted from such bonuses/fees, and this should also be included on the Form 11.
- The "Social Welfare Payments" section of the form now requires the sum of Jobseeker's Benefit received by the self-employed to be included. In most cases this information will be pre-populated based on data exchange between the Department of Employment Affairs and Social Protection and Revenue.
- On the "Foreign Income" section of the form the details of transborder relief have been extended to include details of the foreign employment, the foreign employer, the individual's tax reference number in the foreign jurisdiction, the foreign tax paid and the duration of the foreign employment.
- The details of maintenance payments on the "Annual Payments, Charges and Interest Paid" panel of the form have been expanded to include details of the spouse or civil partner and the date of the legally enforceable maintenance agreement.
  In addition, the question relating to maintenance payments made with the deduction of tax has been removed from the form.
- The tax credits section of the form now requires the number of assistance dogs and guide dogs maintained by an individual to be included.
- The section of the form on which Employment and Investment Incentive (EII) relief is claimed has been expanded to request additional details of the shares subscribed for before 1 January 2019, between 1 January and 8 October 2019 and between 8 October and 31 December 2019, and the order in which the claim is to be made.
- The Capital Gains Tax section of the form includes additional validation to assist taxpayers in completing the CGT return correctly.
- The presentation of the Statement of Net Liabilities panel has been updated to simplify the process for taxpayers.

July Stimulus Measures

The Government announced the July Jobs Stimulus on 23 July, which includes various taxation and other measures aimed at helping Irish businesses to navigate the Covid-19 period. Among the measures are:

- debt warehousing and a reduced rate of interest for outstanding "non-Covid-19" debts,
- temporary acceleration of corporation tax loss relief,
- temporary income tax relief for self-employed individuals carrying on a trade or profession,
- a reduction in the standard rate of VAT,
- a new Employment Wage Subsidy Scheme (EWSS),
- an enhanced Help to Buy scheme and
- a new Stay and Spend scheme.

Further details of each of the measures announced can be found on Revenue's website, at https://www.revenue.ie/en/corporate/communications/stimulus/index.aspx.

Back to Basics

The ROS Form 11 can be pre-populated from Revenue's records where the information is recorded by Revenue. For example, where a prior-year return has been filed, the details will be taken from that return, or the employment income details will be taken from the employer's payroll submission. It is important that the pre-populated return option is selected on opening the Form 11 in ROS if these details are wanted. Pre-population may save some time, but it is important that all pre-populated entries are checked and confirmed as correct.

If a taxpayer's personal circumstances changed during 2019, the details of the change will need to be indicated on the Form 11. If the individual was married during the year, they will still file a return as a single person but may benefit from claiming year-of-marriage relief under s1020 TCA 1997.

Individuals must confirm their status in terms of residence, ordinary residence and domicile. If non-resident, details on country of residence and tax identification number and address in that country are required. The country of nationality or citizenship must also be reported.

It is necessary to consider whether the taxpayer is a chargeable person for 2019 and therefore required to file a 2019 Form 11 income tax return. Revenue's Tax and Duty Manual Part 41A-01-01 states that an individual will not be a chargeable person for 2019 if they are in receipt of:

- PAYE income only,
- PAYE and non-PAYE income where the total non-PAYE income assessable to tax does not exceed €5,000 and is "coded" into the individual's tax credits certificate and
- gross non-PAYE income that does not exceed €30,000.

Residence, Ordinary Residence and Domicile

The criteria used to determine an individual's liability to Irish tax are his or her status in terms of residence, ordinary residence and domicile, subject to any relief afforded under a double taxation agreement, and are unchanged for 2019 income tax returns.

Residence

An individual will be Irish resident if present in Ireland:

- for a period of 183 days or more in the tax year or
- for a period of 280 days or more in aggregate in the tax year and the preceding tax year.

However, for any year in which the individual is in Ireland for fewer than 30 days, they will not be treated as resident and those days are not taken into account for aggregation purposes.

An individual can elect to be resident for a tax year if he or she is in Ireland with the intention and in such circumstances that he or she will be resident in the following tax year.

If an individual is tax resident in Ireland for three consecutive tax years, they are regarded as ordinarily resident in Ireland from the beginning of the fourth tax year. An individual will not cease to be ordinarily resident until they have been non-resident in Ireland for three consecutive tax years.

Domicile

The term domicile is not defined in Irish tax legislation. It is a complex legal concept and is primarily a question of fact, based on the notion of an individual's permanent home. Individuals acquire a "domicile of origin" at birth, usually that of their father, which is retained until such time as a new "domicile of choice" is acquired.

Tax implications of residence, ordinary residence and domicile

Resident and domiciled

An Irish-domiciled individual who is tax resident in Ireland for a tax year is liable to Irish tax on his or her worldwide income and capital gains for that tax year.

Non-resident, ordinarily resident and domiciled

An individual who is non-resident, ordinarily resident and domiciled in Ireland is treated in the same way as an individual who is tax resident but will not be taxed on:

- income from a trade, profession, office or employment all of the duties of which are exercised outside Ireland or
- other foreign income, provided that it does not exceed €3,810.

Resident and non-domiciled

A non-Irish-domiciled individual who is tax resident in Ireland for a tax year is liable to Irish tax on his or her Irish-source income and Irish capital gains for that tax year. The individual's foreign-sourced income and foreign capital gains for that tax year are taxable only to the extent that they are remitted to Ireland.

Non-resident, ordinarily resident and non-domiciled

A non-Irish-domiciled individual who is non-resident but ordinarily resident in Ireland for a tax year is liable to tax on Irish-source income and capital gains and foreign income and capital gains to the extent that the foreign income/gains are remitted to Ireland.

Non-resident, non-ordinarily resident and non-domiciled

An individual who non-domiciled, non-resident and non-ordinarily resident in Ireland for a tax year is liable to tax on Irish-source income and gains from disposals of Irish specified assets.

Remittance Basis

Where an individual moves to Ireland for the first time, any funds accumulated before 1 January in the year in which the individual becomes tax resident in Ireland will not be subject to Irish tax even if remitted to the Ireland after that date.

Any foreign non-employment income earned from 1 January in the tax year that a non-domiciled individual becomes resident in Ireland is fully liable to Irish tax if it is remitted to Ireland.

It is advisable to maintain separate foreign bank accounts for "capital" (income earned before 1 January in the tax year in which an individual becomes Irish tax resident and foreign employment income earned before transfer) and "income" (income earned outside of the Ireland while Irish tax resident).The ordinary meaning of remittance is the act of sending money, or money equivalents, from one location to another. Therefore the transfer of funds from an overseas bank account containing foreign income to an Irish bank account will clearly be a remittance.

Foreign-source income relieved from Irish tax under the remittance basis will be chargeable to tax if remitted to Ireland in a future tax year (if the individual is tax resident here in that future tax year).

Revenue's operational manual Part 05-01-21A states that an income account or a mixed (capital and income) fund account may include:

- income from a foreign employment that is chargeable to tax under Schedule E whether or not remitted and
- income from a foreign employment that is chargeable to tax under Case III of Schedule D and to which the remittance basis of assessment may apply (and, possibly, other income).

The manual indicates that where an individual has the sources of income described above, a remittance from such an account may be treated as arising firstly from a foreign employment that is chargeable to tax under Schedule E (and subject to PAYE).

Split-Year Relief

This relief is available to individuals on their employment income during the first year of arrival/return to Ireland. To claim split-year relief, an individual must be non-resident in Ireland in the prior year and arrive with the intention and in such circumstance that they become resident in the following year.

The effect of the relief is to attribute non-residence (for employment income purposes only) to that part of a tax year for which the person is not in Ireland. Consequently, the foreign employment earnings of residents arising in the part of the tax year for which they are treated as not being resident will not be taxable.

Where split-year relief is claimed, the individual is resident for that tax year and is entitled to claim full Irish rate bands and tax credits for year.

Similarly, where an individual leaves Ireland with the intention that they become non-resident in the following year, the individual's employment income will be subject to Irish income tax up to the date they leave Ireland only.

Preliminary Tax

Along with the payment of any balance of tax due for 2019, preliminary tax for 2020 is due for payment by 31 October 2020 for paper filers or by the extended deadline of 12 November 2020 where the taxpayer pays and files through ROS. Preliminary tax is an estimate of the income tax, PRSI and USC that the taxpayer expects to pay for 2020.

The preliminary tax payment can be calculated as follows:

- 90% of the final liability for 2020,
- 100% of the final liability for 2019 or
- 105% of the final liability for 2018 (however, this option is available only where preliminary tax is paid by direct debit and does not apply where the tax payable for 2018 year was nil).

Late payments of preliminary tax are liable to interest charges at a rate of 0.0219% per day from the due date to the date of payment.

If the preliminary tax for 2019 was insufficient, then the balance of tax due for the 2019 year is deemed to be due and payable on the due date for payment of preliminary tax for that tax year, i.e. 31 October 2019. Interest will run at a rate of 0.0219% per day from that date to the date of payment. It should be noted that this can arise where preliminary tax was paid by the due date but the amount paid fell short of the 90%/100% requirements. It is worth confirming as soon as possible that the 2019 preliminary tax payment was sufficient.

Married Couples/Civil Partners

There is no change in 2019 to the treatment of married couples and registered civil partners. In the year of marriage the couple will continue to be taxed as single persons. In the following years there are three assessment options available to them:

- joint assessment,
- separate assessment and
- separate treatment.

Joint assessment is generally the most favourable basis of assessment for married couples/civil partners who are living together. In the absence of an election to the contrary, a couple is deemed to have elected for joint assessment.

A request for separate assessment must be made in writing by either spouse/civil partner between 1 October of the previous year and 31 March of the year in which they want separate assessment to apply. This election remains in place until the spouse/civil partner who made the request withdraws it.

In the case of a non-resident individual, even if living with a spouse, Revenue takes the view that an election for joint assessment cannot be made unless the total income from all sources of each spouse is chargeable to Irish tax. This view has been upheld by the High Court.

Form 11: Extracts from Accounts

Self-employed taxpayers are not required to submit their accounts to Revenue but instead must complete the "Extracts from Accounts" section of the Form 11. This section does not have to be completed in respect of partnership income, as this information should be returned by the precedent partner on Form 1 (Firms), or if the taxpayer has already submitted accounts to Revenue.

The requirement to complete the Extract from Accounts does not replace the taxpayer's obligation to prepare proper accounts for the business for tax purposes, which should be retained for six years.

Each section of the Extracts from Accounts that is relevant to the taxpayer and for which there is an entry in the accounts must be completed. This may involve aggregating some line items in the accounts to arrive at a figure to be included in the appropriate extracts panel.

Where you are filing a return on ROS on behalf of a taxpayer, it should be noted that unless certain fields in the Extracts from Accounts are completed you will not be able to file the return. If a required field is not relevant or the information is not available from the accounts, "0" should be entered.

It is important to remember that if the Extracts from Accounts are not completed where a taxpayer has trading or professional income, a valid return will not have been made. In such circumstances the taxpayer is exposed to a surcharge for late filing.

High-Income Earner Restriction

This restriction limits the use of tax reliefs and exemptions by high-income individuals. The restriction may apply to a taxpayer if:

- the income is greater than or equal to €125,000 – less if there is ring-fenced income (income that is normally liable to tax at a specific rate, such as deposit interest retention tax (DIRT)),
- total reliefs available are greater than €80,000 and
- the aggregate of the specified reliefs used is greater than 20% of the taxpayer's adjusted income.

If a taxpayer is subject to the restriction, they should:

- include the details on the Form 11 and
- submit a calculation of the restriction on a Form RR1, which is accessed through the ROS Form 11 "Restriction of Reliefs" panel.

The restriction applies to such reliefs as the sectoral and area-based property tax incentives. A full list of the specified reliefs is set out in Schedule 25B TCA 1997.

Domicile Levy

The domicile levy, introduced in 2010, continues to apply. The relevant legislation is in Part 18C TCA 1997. The levy applies to individuals who are Irish-domiciled and Irish citizens:

- whose worldwide income exceeds €1m,
- whose Irish property is greater in value than €5m and
- whose liability to Irish tax in a relevant year was less than €200,000.

The amount of the levy is €200,000, and it is payable annually under the pay and file self-assessment system. Irish income tax paid by an individual in a tax year is allowed as a credit in calculating the amount of domicile levy due for that year. Neither the USC nor PRSI is allowable as a credit against the domicile levy because they are not income tax.

A Reminder of the Reliefs

Special Assignee Relief Programme

The SARP aims to reduce the cost to employers of assigning skilled individuals from abroad to take up positions in Ireland, thereby creating jobs and facilitating the development and expansion of businesses in Ireland. Individuals coming to Ireland on an assignment or as a local hire can potentially qualify for this relief if assigned by a relevant employer to work in Ireland for that employer (or an associated company of the relevant employer). The SARP applies to assignments during any of the tax years 2012 to 2022.

Relevant employer

This is a company that is incorporated and tax resident in a country with which Ireland has either

- a double taxation agreement or
- a tax information exchange agreement.

A taxpayer may be eligible to claim the SARP where certain conditions are met and they arrived in Ireland in any of the tax years 2012 to 2022.

Where an individual qualifies for the SARP, they can make a claim to have a proportion of their employment earnings disregarded for income tax purposes. For 2019, the proportion is 30% of income over €75,000 up to a limit of €1m. This applies where the individual started their employment duties in Ireland on or after 1 January 2019.

For 2019, if the individual started employment duties in Ireland on or before 31 December 2018, the upper limit of €1m will generally apply only to their earnings from 1 January 2020. Relief is not extended to USC or PRSI, which is payable on the full amount of salary.

A claim for the relief for a maximum of five consecutive years can be made starting with the year in which the individual is first entitled to the relief.

Individuals who qualify for the relief are entitled to receive certain travel expenses and certain costs associated with their children's education without creating an additional tax charge.

To apply for the SARP employers should send a Form SARP 1A to Revenue for each employee within 90 days of the employee's arriving in Ireland. The employer must also make an annual return, the SARP Employer Return, to Revenue. This is due by 23 February after the end of the relevant tax year.

Individuals claiming the SARP are deemed to be chargeable persons and must therefore register for income tax and submit a Form 11. The interaction between this relief and other employment tax reliefs would need to be considered.

Foreign earnings deduction

If an individual is resident in Ireland for tax purposes but spends some time working abroad, they may be able to claim the FED. To qualify, they must work in a relevant state for at least 30 qualifying days in 2017 to 2022. They must work for the number of qualifying days during a tax year or during a continuous 12-month period that spans two tax years. Certain individuals are excluded from claiming a deduction, e.g. civil and public servants.

The amount of the allowance due is less than or equal to €35,000 or the specified amount, which is determined by the formula:

$$(D \times E) / F, \text{ where}$$

D is the number of qualifying days in the year of assessment in relation to the individual;

E is the income in the tax year from a relevant office or employment and includes so much of any share option gains realised by the exercise, assignment or release of a right obtained by the individual as an office holder or employee in the relevant office or employment that is chargeable to tax under s128 TCA 1997, after deducting any contribution or qualifying pension premium but excluding the amount of:

- any benefit-in-kind under general BIK provisions (s118 TCA 1997),
- any benefit-in-kind arising by virtue of a car's being made available by reason of the employment (s121(2)(b)(ii) TCA 1997),
- any benefit in respect of a preferential loan (s122 TCA 1997),
- any ex gratia termination payment (s123 TCA 1997),
- any payments under restrictive covenants (s127(2) TCA 1997);

and

F is the total number of days in the tax year that the individual held a relevant office or employment.

The specified amount is reduced by your income earned on qualifying days for which double taxation relief is available under a tax treaty.

The amount of any deduction will depend on the number of qualifying days' absence in either a tax year or a period of 12 months straddling two tax years. The deduction is claimed at the end of the tax year and must be claimed within four years. Relief is not extended to USC or PRSI, which is payable on the full amount of salary. The interaction between this relief and other employment tax reliefs would need to be considered.

Transborder relief for cross-border workers

Irish-resident and -domiciled individuals are liable to Irish tax on worldwide income; however, these individuals may be in a position to avail of transborder relief in respect of their employment income. The practical effect of the relief is that no Irish tax will be due, and the individual will only pay tax in the country in which they are working on the income from that employment.

The relief is subject to a number of conditions. Where these conditions are met, an individual can have their income tax liability for a particular tax year reduced to what is known as the specified amount. The specified amount is calculated as follows:

- Calculate the income tax payable for a tax year under normal rules, excluding credit for any foreign tax paid.
- Reduce this amount by the proportion that total income (excluding the income from the qualifying employment) bears to total income (including the income from the foreign employment).

Effectively, a liability to Irish tax should arise only if the individual has non-qualifying employment income.

Individuals should make a claim for the relief on their annual income tax return. Revenue may request evidence of foreign tax paid in support of the claim.

The relief does not apply to employment income that qualifies for split-year treatment or the remittance basis of assessment. It also does not apply to income paid by a company to one of its proprietary directors or to the spouse of one of its proprietary directors. The interaction between this relief and other employment tax reliefs would need to be considered.

Employment and Investment Incentive

The EII is a tax relief that aims to encourage individuals to provide equity-based finance to trading companies. EII claims are made as part of the Form 11 filing. It should be noted that the legislation on the EII was fundamentally amended by Finance Act 2018 and Finance Act 2019. An analysis of the changes is beyond the scope of this article.[1]

Start-up Capital Incentive

The SCI is designed to assist start-up companies raise equity financing. It is a tax relief for early-stage micro companies to attract equity-based risk finance from family members and is claimed on the Form 11. Where the company, the investment and the investors meet certain criteria, the investor can claim the same relief as an EII investor would claim, that is, relief will apply in respect of the tax year in which the shares are issued. SCI investments cannot be made through designated investment funds. They must be made directly in the company.

Start-Up Refunds for Entrepreneurs

SURE is a form of tax relief that provides a refund of income tax paid by individuals in previous years. It is aimed at entrepreneurs who leave an employment to set up their own company. Depending on the size of the investment, investors may be entitled to a refund of income tax paid over the six years before the year of investment. SURE investments cannot be made through designated investment funds and must be made directly in the company.

The relief applies to individuals who hold a full-time employment either as a director or as an employee of a newly set up company in which they have purchased shares. Again, claims for SURE are made on the Form 11.

Finance Act 2018 introduced a number of changes to SURE, which are beyond the scope of this article.

Start Your Own Business Relief

Start Your Own Business Relief provides an exemption from income tax to individuals who set up their own business and who were unemployed for at least 12 months and in receipt of certain social welfare payments before the set-up. To be eligible to claim the relief, taxpayers must:

- have started their own business between 25 October 2013 and 31 December 2018 and
- have been unemployed for at least 12 months before starting the business.

The relief must be claimed within four years after the end of the tax year to which the claim relates. The exemption applies to up to €40,000 of the qualifying profits from that business for the first two years of trading.

Exemptions

Investment exemption

Section 189 TCA 1997 exempts from income tax and capital gains tax the return arising to individuals who are permanently and totally incapacitated by reason of mental or physical infirmity from maintaining themselves from the investment of compensation payments that are:

- awarded by the courts,
- made under an out-of-court settlement or
- made following assessment by the Personal Injuries Assessment Board

in respect of the personal injury giving rise to the mental or physical infirmity in question. The section applies where the return on such investment (both income and gains) is greater than 50% of the individual's total income and gains.

1 See the article by Laura Lynch, "Finance Acts 2018 and 2019: The New EII Rules", *Irish Tax Review*, 33/1 (2020).

Magdalen Restorative Justice Ex-Gratia Scheme

Payments made in respect of the Magdalen Restorative Justice Ex-Gratia Scheme are disregarded for income tax, capital gains tax and capital acquisition tax purposes, by virtue of s205A and s613 TCA 1997 and s82 of the Capital Acquisitions Tax Consolidation Act 2003, respectively. Broadly, such payments include ex gratia payments made by the Minister for Justice and Equality and certain payments made by the Minister for Employment Affairs and Social Protection. Finance Act 2018 extended the scope of the scheme to include women who worked in the laundries of the Magdalen institutions but resided in one of the fourteen adjoining institutions. Finance Act 2018 also extended the exemption from tax to investment income derived from the investment of the compensation proceeds received under the scheme.

Rental Income

It is worth recapping on the rules for income from rental properties. Such income should be returned on the Form 11 as "Irish Rental Income" or "Foreign Income", as appropriate.

From 1 January 2019 a taxpayer can deduct 100% of the interest paid on a mortgage used to purchase, improve or repair a rental property (previously 80%). Irish properties must be registered with the Residential Tenancies Board to qualify for mortgage interest relief.

Pre-letting expenditure generally does not qualify for relief, with the exception of costs of negotiating the first letting. There is a measure of relief for pre-letting expenses up to a cap of €5,000 in certain circumstances, where the premises was vacant for 12 months before letting.

Local property tax is not an allowable deduction for rental income purposes.

Irish rental income is taxed under Schedule D, Case V, whereas foreign rental income is taxed under Schedule D, Case III. Therefore Irish rental losses cannot be used to shelter foreign rental profits. Where foreign tax has been paid in a country with which Ireland has a double taxation agreement, a credit may be available for this foreign tax against the Irish liability arising on the rents. If there is no double taxation agreement with the country in which the property is located, the foreign tax paid may be deducted from the foreign rental income for the purposes of calculating the Irish tax due.

Income earned by occasional landlords from providing accommodation to occasional visitors for short periods is not considered to be rental income. Revenue's view is that this income should be treated as Case I trading income where the taxpayer is trading as an ongoing business (e.g. a guesthouse) or as Case IV income where the income is occasional in nature.

The Rent-a-Room relief tax exemption remains at €14,000 for 2019 and does not apply to the provision of short-term accommodation, as outlined above.[2]

Non-resident landlords

Where rents are paid directly to a person whose usual place of abode is outside Ireland, s1041 TCA 1997 obliges the tenant to deduct income tax at the standard rate from the payment.

Rent paid direct by a tenant to a non-resident landlord

The tenant should deduct tax from the rent at the standard rate and account for this tax to Revenue. The tax should be remitted to Revenue with the tenant's annual return of income. It should the noted that the obligation to deduct tax does not make the tenant a chargeable person. For PAYE workers, the recovery of the tax deducted can be achieved by adjustment of tax credits. The tenant

2 For more on rental income, see also the article by Paul Dunlea in this issue "Case V Income (Back to Basics)".

should give the landlord a certificate of the tax deducted on Form R185 (Certificate of Income Tax Deducted).

Tenants may not always be aware of their obligation to deduct tax from rents paid to foreign landlords. In such circumstances Revenue may request the tenant to provide the following information in respect of the landlord:

- name and address,
- details of the bank account into which rent is paid (name and address of the bank and the account number into which the payments are made) and
- details of the rents paid to the non-resident landlord for all years for which the landlord was resident abroad.

Rent paid to Irish agent of non-resident landlord

In this case the tenant is not entitled to deduct income tax from the rent. The landlord is assessable and chargeable to income tax in the name of the Irish agent in accordance with s1034 TCA 1997. The agent should be set up with a separate tax registration.

Treatment of Share Awards

Share options

Share options are commonly used by companies to incentivise and motivate employees. These are rights granted by an employer to an employee whereby the employee may purchase shares at a future specified date at a predetermined price. There are two types of share options for tax purposes:

- a "short option", which must be exercised within seven years from the date it is granted; and
- a "long option", which can be exercised more than seven years from the date it is granted.

Tax treatment at date of grant

No income tax charge arises in the case of a grant of a short option. An income tax charge may arise on the grant of a long option if the market value of the shares at the date of grant exceeds the amount of any consideration given for the shares at exercise (i.e. the option price).

Tax treatment at date of exercise

An individual will be chargeable to income tax on any gain arising in the tax year in which a share option (long or short) is exercised, assigned or released. The gain on the exercise of share options is the difference between the market value of the shares on exercise and the option price. The gain is liable to income tax and USC at the marginal rates and to employee PRSI.

The tax due, referred to as relevant tax on share options (RTSO), must be submitted to Revenue within 30 days of exercise, together with the relevant form RTSO1. Where RTSO is paid late, interest can be charged at 0.0322% per day or part of a day from the date when the RTSO amount becomes due and payable until the actual date of payment. A Form 11 income tax return should also be submitted to Revenue containing details of all share option gains in the year.

Share options: cross-border situations

A charge to income tax continues to exist even if the individual is no longer resident in Ireland for income tax purposes at the time when the share option is exercised, assigned or released but subject, where appropriate, to double taxation relief.

With effect from 5 April 2007 the income tax charge on stock options was extended to individuals who at the time of the granting of the stock option were not resident in the State for tax purposes and whose income was not within the charge to Irish tax. Therefore, gains arising from a stock option attributable to the period when the duties of the employment were exercised in Ireland in cases where the stock option was granted before the individual came to Ireland may be subject to tax. However, this will be restricted, on a time-apportionment basis, to the portion of the gain that relates to the period in which the duties of the employment are exercised in Ireland.

Restricted stock units

RSUs are a very common element of compensation in multinational companies. They are, in effect, a promise at the start of a performance period (often three to four years) that if the performance conditions are satisfied and the employee remains employed with the company, the RSU will vest and be exchanged for shares or, sometimes, cash.

Revenue's position is that the RSU is taxable at vest if the individual is resident in Ireland at the vesting date. The RSU is not taxable if the individual is not resident in Ireland at the vesting date.

In the most other jurisdictions RSU income is taxed on an earnings basis by reference to the grant-to-vest period, i.e. the period from the date the RSU is granted to the date it vests, which is when the employee will receive the shares or cash. In recognition of this, Revenue is prepared to allow relief on a real-time basis for any foreign tax once there is a valid entitlement to credit relief under the relevant double taxation agreement.

The procedure is:

- Establish the Irish effective rate of tax on gross income.
- Establish the foreign effective rate of tax on the RSU subject to foreign tax.
- Allow credit for the amount of the RSU subject to foreign tax at the lower effective rate.

The credit may be granted by manually increasing the tax credits specified on the employee's tax credit certificate.

The employee will be required to file a tax return within three months of the end of the tax year instead of the usual filing deadline. Evidence of deduction of foreign tax at source must be provided if requested.

Credit through PAYE system for non-refundable foreign tax

Unlike the provisions for allowing RSU credit relief on a real-time basis, prior Revenue agreement is required for real-time relief on employment income. The application is made on Form DD1, and if Revenue is in agreement the relief will be coded into the individual's tax credit certificate for the year.

Funds

Offshore funds

The offshore fund rules apply to a person who has a "material interest" in an "offshore fund". An interest in an offshore fund will be a material interest if, at the time the person acquired it, it could be reasonably expected that at some time during the period of seven years beginning at the time of acquisition the person will be able to realise the value of their investment in some manner.

An acquisition of a material interest in an offshore fund means that the investor is a chargeable person for that year and must file a Form 11. Revenue's Tax and Duty Manual Part 27-02-01 includes very useful decision trees to assist in determining whether an investment is an offshore fund, the interest is a material interest and any exclusions from the offshore fund regime apply.

Personal portfolio investment undertaking

A PPIU is a fund where the selection of the property of the fund was, or can be, influenced by an individual who is the investor, or certain connected persons, who places personal investments within the fund. Payments from PPIUs are liable to tax at a rate of 60% where they are properly included in the taxpayer's return; otherwise, a rate of 80% applies. This should be reported in the relevant sections under "Offshore Funds".

Capital Transactions

Capital acquisitions tax

If the taxpayer received a gift or inheritance in 2019, this should be indicated on the Form 11. No details of the gift or inheritance are required to be included on the Form 11; however, separately, a CAT return should be filed if the aggregate benefits received on or after

5 December 1991 within the same group exceed 80% of the threshold for that group.[3]

Capital gains tax

All disposals of assets should be reported on the Form 11, and failure to do so could result in a surcharge of 5% or 10% for late filing. The sales consideration received should be included for the type of asset that has been sold. If the taxpayer is claiming relief in respect of a disposal – e.g. retirement relief, principal private residence – the relevant consideration should be entered in the appropriate section.

For 2019 the due dates for paying CGT were:

Disposal date	Due date
Between 1 January 2019 and 30 November 2019	15 December 2019
Between 1 December 2019 and 31 December 2019	31 January 2020

An interest exposure will arise if the capital gains tax is not paid when the return is being filed.

Chargeable assets acquired

Details of chargeable assets acquired during 2019 and the consideration paid should be included on the Form 11.

Disclosure of Foreign Income and Assets

Under s1077E TCA 1997 the penalties for deliberately or carelessly making incorrect returns can be mitigated by submitting qualifying disclosures. The level of mitigation depends on whether the disclosure is prompted or unprompted, the level of tax in question and whether the taxpayer has been cooperative with Revenue.

Since 1 May 2017 it is no longer possible to obtain the benefits of a qualifying disclosure if any matters included in the disclosure relate directly or indirectly to specific offshore matters. The impact of this is that where an individual has not reported offshore income and gains, they will be liable to higher penalty rates, the settlement could be liable for publication and the person could be the subject of a criminal prosecution.

The Code of Practice for Revenue Audit and Other Compliance Measures states that where a tax default is less than €6,000 and the default is not deliberate, a penalty will not arise.

Exchange of Information Agreements

Finally, it is worth keeping in mind that exchange of information is the cross-border sharing of taxpayer information by tax administrations for the purposes of financial and tax transparency. Information may be exchanged on request, spontaneously or automatically. Taxpayers should be mindful of their tax payment and filing obligations in the country in which foreign assets, income sources or investments are located. In the UK, HMRC is particularly active in this area, and many Irish-resident taxpayers have received correspondence in relation to the non-filing of UK tax returns for their UK properties.

Conclusion

The Form 11 income tax return grows each tax year; now over 40 pages long, in the author's view it can be cumbersome to complete. The above shows that although there are no significant changes to the 2019 version of the form, it is important to recap carefully on the basics while always being mindful of measures and Revenue procedures that may not be directly included on the form but nonetheless have an impact.

Read more on taxfind From Irish Tax Institute *Practical Income Tax - The Professional's Guide, Finance Act 2019;* Revenue Tax and Duty Manuals

3 See also the article by Úna Ryan in this issue, "Overview of Key CAT Compliance Obligations in 2020".