



Queries raised by the Institute in relation to the Debt Warehousing Scheme and individuals impacted by Section 997A TCA 1997

28 October 2022

We included a [note](#) from Revenue in TaxFax on 21 October 2022 about warehoused debt and director emoluments which are affected by section 997A TCA 1997 (i.e., the extension to section 1080B TCA 1997 in Finance Act 2021). Revenue had confirmed that there are no provisions to warehouse the balance of the relevant Schedule E liability due in respect of 2021 to be paid in 2022.

Revenue considered that the balance due should be small in most cases and advised that where the proprietary director/employee with a material interest is now experiencing difficulty in paying the remaining 10% (balance of Schedule E tax due), they should contact the Collector General's Division and agree an arrangement for what should be a small amount. Revenue pointed to the flexibilities to its payment arrangements as a result of COVID-19 (e.g., payment breaks), which may be appropriate in these circumstances.

We raised a number of questions in relation to Revenue's note. A summary of the questions and Revenue's responses are outlined below.

Question 1: We understand from members that some filers who based preliminary tax for 2021 on 100% of the 2020 liability believed Schedule E Warehousing for section 997A impacted individuals for 2021 would be finalised when filing the 2021 Form 11, meaning they did not enter a figure to warehouse preliminary tax or did not tick the warehousing option (where the company only warehoused 2021 PAYE). It now appears such individuals cannot take a deduction for the warehoused PAYE for 2021 and cannot warehouse the related Schedule E liability for 2021. Is that correct?

Revenue Response: Where a taxpayer has not availed of warehousing for their Schedule E preliminary tax liability for 2021 (i.e., they did not request warehousing when completing the Statement of Net Liabilities declaration, when filing their 2020 Form 11 in 2021), they would not be considered to have warehoused their Schedule E preliminary tax liability and the liability will be due to be paid. If the taxpayer has difficulties making the Schedule E liability payment, they may contact Revenue to discuss flexible payment options available.

Question 2: If seeking a PPA for the 10% balance is not “paying” online, does the 31 October deadline apply and will ROS apply a surcharge if the return is submitted post 31 October? Some individuals may have tax due on non-Schedule E income (which will be paid online).

Revenue Response: Where a taxpayer contacts Revenue to request a payment arrangement for the 10% balance of Schedule E liability, the extended ROS deadline of 16 November 2022 will apply to taxpayers, where the return is filed and the non Schedule E liability is paid via ROS.

Question 3: If preliminary tax requirements are not met, 100% of the income tax liability falls due for payment on the preliminary tax date. Does the individual’s Schedule E warehouse need to be amended to include the full Schedule E 2021 liability in such circumstances if Schedule E preliminary tax was underpaid? Could this be facilitated through the self-review process by making an Unprompted Qualifying Disclosure by 31 January 2023 (for Schedule E) as warehouse participants? (The company may also have to make a disclosure in relation to PAYE in such cases).

Revenue Response: We would need to consider the specific circumstances of the case. If the taxpayer availed of warehousing for their Schedule E preliminary tax liability, it is unclear how they could have underpaid their Schedule E preliminary tax liability. Where a taxpayer has warehoused their Schedule E liability which was due to be paid by October 2021 (November 2021 where the ROS extension applied), and they subsequently realise they have not disclosed the full Schedule E liability, they may avail of the self-review process for making an Unprompted Qualifying disclosure by 31 January 2023, subject to the conditions outlined in the relevant guidance notes i.e. [Level 1 Compliance Programme - Debt Warehousing Scheme](#).

Question 4: As the 2021 balance does not qualify for warehousing, will a PPA for the 10% balance be at the 8% rate of interest or at the 3% interest rate which will be imposed on the company when paying the corresponding liability? Is there any scope for the 10% balance PPA to qualify for the 3% rate e.g., if they qualify for the self-review opportunity?

Revenue Response: The PPA for the balance of Schedule E liability will be at the 8% interest rate. The balance of Schedule E liability is due to be paid by the end of October 2022 (16 November 2022 where the ROS extension applies) and therefore is not within the warehousing provisions (so it would not benefit from the self-review disclosure opportunity).

Question 5: If an individual enters into a PPA for the 10% balance, they may have to start making payments before the employer company starts its PPA in May 2024. Could the individual enter into a PPA now and seek an immediate maximum payment break (e.g., of 12 months) and seek a further payment break, so the company has time to pay off the PAYE?

Revenue response: Revenue has a number of flexible options as part of its Phased Payment Arrangements. We suggest taxpayers approach Revenue and we can discuss what options are available depending on the specific circumstances of the individual.

Question 6: If the individual has to make payments before the company clears the Employer PAYE, how would the individual get credit for the tax paid over to avoid double taxation (through payment of the PAYE by the company and income tax by the individual)? It could be a few years before the employers pays off the PAYE. If the employer company starts making payments from May 2024, but needs three years or more to pay off its debt, will the individual still be entitled to the credit for the PAYE paid and/or to recoup tax paid through the individual PPA given the operation of the 4-year rule?

Revenue response: The normal 4-year rule for claiming a PAYE credit applies. However, we have noted this may be a potential problem for some taxpayers, where the company needs an extended period of time to pay off the warehoused debt. This is currently being considered by Revenue Legislation Services (RLS).