Jackie Coughlan
Director, Deloitte

Preparing for Pay and File 2017

Introduction

In the words of Benjamin Franklin, "in this world, nothing is certain except death and taxes". And so, inevitably, another tax filing deadline looms, and each year the Form 11 seems to get longer and more onerous. Unfortunately, it is not possible to address every aspect of the Form 11 in the scope of this article, and therefore the following are some areas to which tax advisers may wish to pay particular attention.

Form 11 2017: Main Changes

- In the Personal Details section it is now mandatory for taxpayers to include the PPS number, first name, date of birth and gender of their spouse/civil partner, in addition to the date of marriage/civil partnership. The PPS number entered for the spouse/ civil partner will be validated against the records of Revenue and the Department of Employment Affairs and Social Protection.

A validation error message will arise if the PPS number record is not found. Agents should ensure that they have the relevant information in relation to their client's spouse/civil partner on file before the filing deadline.

- A separate sub-panel for farmers has been included in the self-employed income section that contains questions on; stock relief, income averaging and succession farm partnerships.
- In the PAYE/BIK/Pensions section it will now be necessary to provide the employer name as well as the registration number. This will be provided in a pre-populated Form 11. There is a separate section to claim relief for pension/AVC contributions against employment income – previously included under Allowable Deductions incurred in Employment.
- A new section is included in Irish Other Income for resident individuals who are claiming a refund of tax withheld on an Irish real estate fund. This section should not be completed by residents or non-residents who are not claiming a refund of withholding tax.
- Under Personal Tax Credits there is a new section to claim the fisher tax credit, which came into effect on 1 January 2017. A credit of €1,270 can be claimed where a resident individual spends not less than 80 days at sea actively engaging in sea-fishing.
- A change has been made in the Capital Gains section to identify chargeable gains and losses of the current year separately. Where a loss arose on a disposal to a connected person, the amount of the loss will have to be provided, together with the name and tax reference number of the connected person.

Finally, it should be noted that an updated ROS Form 11 will be available in June. Any draft returns that are in progress before the updated Form is available may need to be revisited before it is signed off by your client and submitted to Revenue. An overview of all the changes to the 2017 Form 11 is available in Revenue's Tax and Duty Manual Part 38-01-04B.

Civil Status

Where a taxpayer's civil status changed during 2017, this will need to be indicated on the Form 11. Individuals who married or entered into a civil partnership during the year will still file returns as a single person. However, year-of-marriage relief may be beneficial and should be claimed in the Personal Tax Credits section, or line 532 of the paper form.

Residence and Domicile Status

Taxpayers should indicate whether they are resident, ordinarily resident or domiciled in Ireland on the return. An individual was resident in Ireland for 2017 if he or she spent 183 days in Ireland in 2017 or a total of 280 days between 1 January 2016 and 31 December 2017 with at least 30 days spent in Ireland in 2017. An individual is ordinarily resident for a tax year if he or she was resident in Ireland for the three preceding tax years. Domicile is a complex legal concept that is based on the notion of an individual's permanent home to which that individual intends ultimately to return. Every individual acquires a "domicile of origin" at birth, usually that of his or her father, and will retain the "domicile of origin" until such time as a new "domicile of choice" is acquired.

An individual's residence and domicile status determines the extent of his or her liability to Irish tax, so care should be taken when completing this section. In particular, where an individual is resident but non-domiciled in Ireland, it is important that this is correctly reflected on the return.

An individual who is resident but not domiciled in Ireland is liable to Irish tax in respect of foreign-sourced income and foreign capital gains only to the extent that these are remitted to Ireland. This relief is known as the remittance basis and can prove valuable for non-domiciled individuals who may have significant overseas income (e.g. rental income from properties abroad, dividends from non-Irish companies).

It should be noted that the remittance basis does not apply to the income of a non-Irish

sourced employment attributable to the performance of the duties of that employment in Ireland, i.e. this is effectively treated as Irish-source income.

Extracts from Accounts

Self-employed taxpayers are not required to submit their accounts to Revenue but must instead 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. It is important to note that this requirement to complete the Extracts 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 filing a return on ROS on behalf of a taxpayer, you will not be able to file the return unless certain fields in the Extracts from Accounts are completed. If a required field is not relevant or the information is not available from the accounts, "0" should be entered. Other fields are not required fields, but they should, of course, be completed if relevant to the taxpayer.

Examples of common errors made in completing the Extracts from Accounts are:

- Receipts from Government Agencies and Other Income are often incorrectly included in Sales/Receipts/Turnover, for example, where farmers are in receipt of payments from the Department of Agriculture, Food and the Marine. This results in a mismatch between the return and information that Revenue has received from other Government Departments and increases the likelihood of Revenue intervention.
- The Sub-contractors field should be completed only where the entry is related to trades in the construction, meat-processing or forestry industries. Sub-contractor costs are often incorrectly shown as part of the "cost of sales" figure in the profit and loss account. Where the sub-contractor is a person as defined by s531 TCA 1997, the expense should be shown in the Sub-contractors field in the Extract from Accounts.
- The figure to be included in the Other Expenses field is the total of all other expenses included in the profit and loss account that are not required to be itemised under any of the other Expenses and Deductions fields.

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.

Employments

Special Assignee Relief Programme

SARP is a relief that exempts 30% of the employee's total employment income from income tax. However, the exempt amount remains liable to USC and PRSI.

The relief can be claimed where the individual has a basic salary of more than €75,000 (excluding bonuses, commissions etc.), has worked for the employer (or an associated company) for six months before arriving in Ireland and was not tax resident in Ireland for the five tax years immediately before arriving in Ireland. The individual must perform duties for a minimum period of 12 consecutive months from the date of arrival in Ireland, and the relief can be claimed for a maximum of five consecutive years.

The paper Form 11 states that if taxpayers have not already done so, they should submit

a Form SARP 1A in support of the claim. However, s825C(2A)(e) TCA 1997 states that within 30 days of the individual's arriving in Ireland the employer must certify that the employee is eligible for the relief in such form as the Revenue Commissioners may require. Previously, Revenue accepted delayed submission of the Form 1A, but in recent times, there has been increased focus on the 30-day timeframe. Practitioners have raised the particular issues that can cause delays such as the timeframe for receipt of a PPSN. Further clarification is expected from Revenue on this matter.

Agents should review the certification status of any taxpayers who are otherwise eligible for the SARP before making the claim for the relief on the tax return.

Share options

A taxpayer who exercises share options in 2017 is a chargeable person and must return the details of the exercise on the Form 11. However, the payment of the income tax, USC and PRSI due on the exercise of share options should have been made to Revenue within 30 days of the exercise by submitting a Form RTSO1. Taxpayers who do not pay the share option tax by the due date (e.g. if the tax is paid as part of the overall tax liability on submission of the return) are exposed to interest charges on late payment.

Remember also that the employer company is obliged to return details of all share options exercised by employees on the Form RSS1 for 2017.

Foreign Earnings Deduction

Where individuals are tax resident in Ireland but spend significant time working in certain specified countries, it is worth reviewing their overseas travel to establish whether they may be in a position to avail of the FED.

A tax deduction of up to €35,000 of emoluments is available where an individual has 30 qualifying days in a relevant state in a 12-month period. The list of relevant states is available on www.revenue.ie. A qualifying day is one of at least three consecutive days spent working in any relevant state. It is worth noting that time spent travelling to/from a relevant country can be included in the claim. This means that the day of arrival in the relevant state can be counted, provided the individual left Ireland the previous day, and the day of departure from the relevant state can be counted, provided the individual does not arrive back in Ireland until the following day.

Rental Income

Income from rental properties should returned on the Form 11 as Irish Rental Income or Foreign Income, as appropriate.

A profit or a loss should be calculated for each rental source.

Certain expenses can be claimed against the rental income, including:

- rates paid to a local authority,
- ground rents,
- insurance premiums,
- property maintenance costs,
- property fees before you first rent the property, such as advertising, legal or accountancy,
- repairs,
- service costs (e.g. electricity, water and refuse) that are not repaid by the tenant,
- expenses in between renting out the property in certain circumstances and
- capital allowances on the cost of furniture and fittings.

From 1 January 2017 a taxpayer can deduct 80% of the interest paid on a mortgage used to purchase, improve or repair a rental property (previously 75%). Irish properties must be registered with the Residential Tenancies Board to qualify for mortgage interest relief. Pre-letting interest does not qualify for relief. Local property tax is

also 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. The impact of this is that Irish rental losses cannot be used to shelter foreign rental profits and vice versa.

> Taxpayers should be mindful of their tax payment and filing obligations in the country in which their foreign property is located. Ireland's double taxation agreements (DTAs) include exchange-of-information clauses that allow the revenue authorities of either state to share information to detect and prevent tax evasion.

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.

Revenue are receiving increasing amounts of information arising from the various sources such as the OECD's Common Reporting Standard (CRS), the EU's Directive on Administrative Cooperation (DAC), Foreign Account Tax Compliance Act (FATCA), Country-by-Country Reporting, the EU's 4th AML directive, tax rulings and from information from external sources like Panama/Paradise papers. This information provides Revenue with data on the foreign assets, income sources, investments etc of Irish resident individuals irrespective of whether the assets are held directly or indirectly. It is important that taxpayers understand the importance of ensuring that the disclosures on their tax returns correctly reflect their assets and income sources, particularly in light of the changes to the disclosure regime which is discussed further below.

Where foreign tax has been paid in a country with which Ireland has a DTA, a credit may be available for this foreign tax against the Irish liability arising on the rental income. If there is no DTA 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.

Revenue has stated that the income from providing accommodation to occasional visitors for short periods is not considered to be rental income. This is because, according to Revenue, the visitors use the accommodation as guests rather than as tenants. This would include accommodation provided through an online accommodation booking site such as Airbnb. Revenue's view, as outlined in their Tax & Duty Manual Part 04-01-20, is that this income should be included 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. Again, this would mean that rental losses on other properties could not shelter income from this source.

Offshore Funds

The subject of offshore funds strikes fear into the hearts of taxpayers and tax advisers alike and would warrant a separate article in its own right. 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 that 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 would be able to realise the value of the 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 [27.02.01] includes very useful decision trees to assist in determining whether an investment is an offshore fund, whether the interest is a material interest and whether any exclusions from the offshore fund regime apply. Broadly, the different types of funds and the taxation implications are as outlined below.

Distributing fund in a non-EU/EEA/OECD jurisdiction

Income payments are subject to income tax, USC and PRSI under general principles and should be reported under Income from sources not shown elsewhere on the Form 11.

Disposals are subject to capital gains tax at 40% and should be reported in the Capital Gains section under Offshore Funds (s747A) chargeable at 40%.

Non-distributing fund in a non-EU/EEA/OECD jurisdiction

Income payments and gains are subject to income tax, USC and PRSI under general principles and should be reported under Income from sources not shown elsewhere on the Form 11.

Disposals are subject to income tax under Case IV and are liable to USC and PRSI. Gains are calculated using normal capital gains tax rules. It should be noted that indexation is not available and where a loss arises, it is treated as no gain or loss.

Regulated fund in an EU/EEA/OECD jurisdiction

Income payments and gains are subject to 41% tax and should be reported under Offshore Funds (Part 27 Ch 4) in the Foreign Income section of the Form 11.

Unregulated fund in an EU/EEA/OECD jurisdiction

Unregulated funds fall outside the offshore funds regime, and therefore income and gains are taxed under general principles.

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, i.e. the investor, or certain connected persons, who places personal investments within a 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. They should be reported in the relevant sections under Offshore Funds (Part 27 Ch 4).

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.

However, Finance Act 2016 introduced provisions whereby in certain circumstances a disclosure will not be a qualifying disclosure. In such circumstances a taxpayer will not benefit from any of the mitigating benefits of making a qualifying disclosure, such as non-publication. With effect from 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 offshore matters, including:

- an account/asset held or situated in a country or territory other than the State,
- income or gains arising from a source, or accruing, in a country or territory other than the State and
- property situated in a country or territory other than the State.

The impact of this is that where individuals have not reported offshore income and gains they will be liable to higher penalty rates, the settlement could be liable for publication and the person concerned could be the subject of a criminal prosecution.

The Revenue Code of Practice states that where a tax default is less than €6,000 and the default is not deliberate a penalty will not arise. Revenue has stated it will accept corrections of minor errors relating to offshore matters without applying a penalty.

Agents will need to be mindful of these changes when reviewing clients' income

and gains from their offshore sources, and particularly in light of the exchange of information provisions outlined above.

High-Income Earner Restriction

Consider whether the taxpayer is subject to the limitation on the use of specified reliefs for 2017. A detailed overview of the restriction is outside the scope of this article, but in brief it will be necessary to calculate the taxpayer's adjusted income by adding the amount of specified reliefs used for the year to the taxable income and then deducting any ring-fenced income (e.g. deposit interest). The restriction will apply if:

- the adjusted income is equal to or greater than the income threshold amount (normally €125,000, but it can be less if the taxpayer has ring-fenced income),
- the aggregate of the specified reliefs used is equal to or greater than €80,000 and
- the aggregate of the specified reliefs used exceeds 20% of the adjusted income for the year

The individual's taxable income must then be recalculated using the formula:

(T + S) – Y, where

T = taxable income,

S = specified reliefs used and

Y = the greater of the relief threshold amount (€80,000) and 20% of adjusted income.

Capital Acquisitions

If the taxpayer received a gift or inheritance in 2017, this should be indicated on the Form 11. 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. If the valuation date of the benefit is on or before 31 August 2017, the return due date was 31 October 2017. Returns in respect of benefits with a valuation date between 1 September and 31 December 2017 are due by 31 October 2018.

Capital Gains

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.

Keep in mind for share sales that the taxpayer may be eligible for entrepreneur relief, whereby a reduced rate of 10% applies (up to a lifetime limit of €1m of chargeable gains). To qualify for the relief, all of the following conditions must be satisfied:

- the company whose shares are being sold is a trading company or a holding company of 51% trading subsidiaries,
- the individual holds 5% or more of the ordinary shares at the time of sale,
- the shares have been owned for at least three years immediately before the sale and
- the individual spends more than 50% of his or her working time working for the company or companies in a qualifying group in three of the five years immediately before the sale.

As outlined above, gains and losses from the sale of chargeable assets will be reported separately for 2017. Losses brought forward from prior years can be used to offset gains in 2017.

For 2017 the due dates for paying capital gains tax were:

Disposal date	Due date
Between 1 January 2017 and 30 November 2017	15 December 2017
Between 1 December 2017 and 31 December 2017	31 January 2018

An interest exposure will arise if the capital gains tax is paid when the return is being filed.

Finally, for any taxpayers whose shares in Fyffes were acquired by the Japanese group Sumitomo, refer to Revenue eBrief No. 116/2017, which provides a link to a document outlining how the base cost of Fyffes shares should be apportioned in respect of spin-offs in earlier years.

Chargeable assets acquired

Details of chargeable assets acquired in 2017 and the consideration paid should be included on the Form 11.

Practical Matters

The 2017 self-assessment pay and file deadline for paper filers is Wednesday, 31 October 2018. The paper version of the Form 11 can be found on www.revenue.ie. Remember that Monday, 29 October, is a bank holiday, so this should be factored in to your planning with clients. Mid-term school breaks are also typically around this time, so make sure that your client is not planning a holiday and will actually be in the country to sign the return!

The filing deadline is extended to Wednesday, 14 November 2018, where the taxpayer pays and files through the Revenue Online Service. If availing of this extended deadline, there are a few things to bear in mind:

- Ensure that your ROS certificate is valid well before the pay and file deadline extension. If you need to renew the certificate, this will take approximately 10 working days.
- Make sure that you are linked as agent for the taxpayer as this process takes a number of days and you do not want to find that you are unable to upload the return on the evening of 14 November.
- Remind taxpayers that they must have the funds in the bank to settle the tax liabilities due, as failure to pay online when availing of the extended deadline will result in a 5% surcharge.
- Remember that preliminary tax is also due for 2018, which should be equal to:
  - 90% of the final liability for 2018,
  - 100% of the final liability for 2017 and
  - 105% of the final liability for 2016 (but this option is available only where preliminary tax is paid by direct debit and does not apply where the tax payable for 2016 was nil).

Taxpayers should also be reminded that if they have any outstanding local property tax (LPT) liabilities, this will result in a surcharge being applied to their income tax liability, which can come as something of a shock when they believe that they have made a timely return. The surcharge will be reduced to the amount of the LPT liability once the outstanding LPT is paid.

Read more on taxfind From Irish Tax Institute *Practical Income Tax - The Professional's Guide; Taxation Summary, Finance Act 2017*