[41.0.2B] Income Tax Payable under Section 239 TCA 1997 and Preliminary Tax for Small Companies

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Income Tax Payable under Section 239 TCA 1997 and Preliminary Tax for Small Companies

1. Section 239 TCA 1997 regulates the time and manner in which Irish resident companies are to account for and pay income tax in respect of relevant payments from which income tax is deductible. Relevant payments include annual payments, patent royalties, certain interest payments and perquisites (e.g. employer paid medical insurance premiums) from which the company making the payment is required to deduct income tax at the standard 20% rate under section 238 TCA 1997 (or section 112A in the case of employer paid medical insurance). Income tax is payable net of any income tax borne by the company on payments received, where set off has been claimed.

2. Section 239(5) provides that income tax in respect of relevant payments in an accounting period shall be due at the time by which preliminary tax for the accounting period is due and payable. Section 239(11) provides that such income tax is treated as corporation tax for charging, assessment, collection and recovery purposes and therefore it forms part of a company's corporation tax liability for these purposes.

3. Under section 958 TCA 1997 a **small company** has the option of basing its preliminary tax payment on 90% of the company's corporation tax liability for the current accounting period ('current year basis') or 100% of the corresponding corporation tax for the preceding accounting period ('preceding year basis'). For preliminary tax purposes, a **small company** is defined as a company whose corresponding corporation tax for the preceding chargeable period is €200,000 or less (increased from €150,000 in the Finance Act 2008 with effect from preliminary tax payment dates arising after 5th December 2007).

4. Revenue has examined the provisions of section 239 in the context of preliminary tax payable by small companies. As a result of this examination, Revenue wishes to clarify current practice in this area. At the outset, it should be said that Revenue accepts that income tax payable under section 239 need not be taken into account in determining whether a company falls within the €200,000 limit for small companies. In other words, a company’s eligibility with respect to the €200,000 limit may be determined by reference to the company's corporation tax liability in the preceding year, *excluding income tax paid (or payable) under section 239*.

5. A strict interpretation of section 239(5) requires full payment of income tax due for an accounting period on the preliminary tax date for that accounting period. However, Revenue is prepared to accept that a small company, opting to pay its preliminary tax on a 'preceding year basis', can satisfy its obligations under section 239(5) by paying 100% of the income tax paid or payable by the company under section 239 in the preceding accounting period, on or before the due date for preliminary tax for the current accounting period. Likewise, where a small company opts, instead, to pay preliminary tax on a 'current year basis', the company should pay at least 90% of its income tax liability under section 239 for the current accounting period, on or before the due date for preliminary corporation tax for that accounting period. In both cases, the balance, if any, of income tax due under section 239 for the accounting period should be paid on or before the return filing date for that accounting period.

6. New start up companies do not have to pay preliminary tax in their first accounting period where their tax liability for that accounting period is not more than €200,000. Accordingly, any income tax payable by such a company under section 239 in its first accounting period should be paid on or before the return filing date for that accounting period.

7. Attached are some examples showing how preliminary corporation tax and income tax payable under section 239 is computed in the case of a small company.

Example 1

Company opts to pay preliminary tax on 100% preceding year basis

	Preceding Year 1	**Current Year 2**
Corporation Tax on Profits	€150,000	€200,000
S239 Income Tax	€50,000	€50,000
Total Corporation Tax	€200,000	€250,000

Preliminary tax payable in Year 2 (i.e. 100% of total tax liability in Year 1): €200,000

Example 2

Company opts to pay preliminary tax on 90% current year basis

	Preceding Year 1	**Current Year 2**
Corporation Tax on Profits	€150,000	€100,000
S239 Income Tax	€50,000	€50,000
Total Corporation Tax	€200,000	€150,000

Preliminary tax payable in Year 2 (i.e. 90% of total tax liability in Year 2): €135,000

Note: A company's preliminary tax is payable one month before the end of an accounting period and not later than the 21st day of the penultimate month of the accounting period.

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