

[42.4.23] Unpaid remuneration - Section 996 Taxes Consolidation Act (TCA) 1997

Reviewed May 2017

1. Under the PAYE system, tax is deductible by an employer on payment of any remuneration. The employer is liable to remit the tax so deductible within fourteen days from the end of the income tax month in which it was deductible. Where the employer fails to remit the tax, estimates under **Section 989 TCA 1997** (monthly) and **Section 990 TCA 1997** (yearly), may be made in order to recover any tax not remitted. **Section 991 TCA 1997** provides for the charging of interest as if:
 - (a) the tax recoverable by virtue of a notice under **Section 989 TCA 1997**, were tax which the employer was liable to remit for the income tax month or months comprised in the notice, and
 - (b) the tax recoverable by virtue of a notice under **Section 990 TCA 1997**, were tax which the employer was liable to remit for the last income tax month of the year of assessment to which the notices relates.
2. In an effort to circumvent sections 989, 990 and 991 TCA 1997, practices had developed whereby payment of remuneration, particularly of directors' remuneration, was being deferred by companies postponing indefinitely the voting of the remuneration. In the meantime, the remuneration was claimed and allowed as a deduction in computing the profits of the company. Furthermore, the directors were able to enjoy the use of the remuneration debited in the accounts by means of drawings from a loan account. Until the remuneration was formally voted, valid estimates for the recovery of the PAYE liability could not be made because it was only when the remuneration was so voted that payment was made and the remuneration became emoluments for the purposes of the Taxes Acts.
3. For the purposes of **Section 996 TCA 1997**, an 'accounting period' is defined as (i) a period of 12 months ending on the date up to which the accounts of a trade or profession are usually made up or (ii) where accounts of a trade or profession are not made up, such period not exceeding 12 months as the Revenue Commissioners may determine.

A 'period of account' is defined as any period, other than an accounting period, for which the accounts of a trade or profession have been made up.

4. Under **Section 996 TCA 1997**, unpaid remuneration which is deductible as an expense in computing the profits or income of a trade or profession, for an accounting period or period of account, for the purposes of Schedule D is deemed to accrue from day to day during the period of accrual.

A 'period of accrual' is defined as the period beginning on the later of:

- the first day of an accounting period or period of account, and
- the date of commencement of the office or employment,

and ending on the earlier of:

- the last day of an accounting period or period of account, and
- the date of cessation of the office or employment.

5. There is deemed to have been paid on each relevant date so much of the unpaid remuneration which accrued from:

(a) the day following the preceding relevant date (or, where there was no preceding relevant date, the beginning of the period of accrual) up to

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(b) the relevant date or, if earlier, the date of cessation of the employment.

A 'relevant date' is defined as:

(a) the last day of an accounting period or period of account and

(b) each 31 December within a period of account of more than 12 months.

6. Unpaid remuneration is deemed to be emoluments to which **Chapter 4 of Part 42 TCA 1997** applies and all of the provisions of that Chapter and of the Regulations made thereunder and of **Sections 989, 990 and 991 TCA 1997** apply as if the unpaid remuneration had in fact been paid on the relevant dates.

7. Section 996 TCA 1997, does not apply to:

- (a) emoluments to which **Section 984 TCA 1997** applies (i.e. emoluments which are to be taken into account in computing the profits of a trade or profession)

and

- (b) unpaid remuneration which is paid before:

- (i) the date of expiry of six months after the date on which it is deemed to have been paid,

or

- (ii) in relation to a period of account of more than 12 months, the date of expiry of 18 months from the first day of that period of account if that date of expiry is later than the deemed date of payment.

Example

Accounts are made up for a period of account of 36 months from 1/4/2013 to 31/3/2016. Remuneration amounting to €36,000 covering the period of account was unpaid as at 31/3/2016. This remuneration is deemed to have been paid as follows:

Relevant Date	Amount of unpaid remuneration deemed to have been paid €	Latest date for payment of remuneration for s 996 TCA not to apply	If s. 996 TCA applies, year for which tax is to be included in estimate under s 990 TCA
31/12/2013	9000	30/6/2014	2013
31/12/2014	12000	30/6/2015	2014
31/12/2015	12000	30/6/2016	2015
31/3/2016	3000	30/9/2017	2016

Note – As the unpaid remuneration is deemed to accrue from day to day, it is spread evenly over the period of account – in the example, at €1,000 per month over 36 months. As there are nine months between the beginning of the accounting period and the first relevant date (1/4/2013 to 31/12/2013), and there are 36 months in the period of account, 9/36 of the unpaid remuneration, equal to €9,000, is deemed to have been paid on the first relevant date.