

Section 10 Connected persons

How are the terms "relative", "control", "settlement", and "settlor" defined in relation to connected persons?

(1) For the connected persons rules of this section, your **relative** means your brother, sister, ancestor or lineal descendant. For capital gains tax purposes, a relative also includes an uncle, aunt, niece or nephew.

You **control** a company if you can control the company's affairs or obtain more than half the company's shares, voting power, income, or assets (on a winding up) (section 432).

A **settlement** includes any trust, disposition, covenant, agreement or arrangement, and any transfer of money or other property.

A **settlor** is a person who makes a settlement (trust) and can include any person who directly or indirectly funds the settlement.

For meaning of **settlement** and **arrangement**, see notes to section 794.

Settled property means property held in trust except where another person is absolutely entitled against the trustee. It includes land held on certain trusts under a will, *Crowe v Appleby*, [1976] STC 301, but not land held jointly (concurrently or in common): *Kidson v Macdonald and another*, [1974] STC 54; *Harthan v Mason*, [1980] STC 94.

When do the "connected person" rules apply?

(2) The connected person rules in (3) to (8) apply for income tax, corporation tax and capital gains tax unless the context indicates otherwise.

Who am I considered to be "connected" with?

(3) You are **connected** with:

- (a) your spouse/civil partner,
- (b) your relatives,
- (c) the spouse of a relative,
- (d) a relative of your spouse, or
- (e) the spouse of a relative of the spouse.

A daughter-in-law is connected with her father-in-law; a son-in-law is connected with his father-in-law (*Revenue Precedent* IT 96-3504, 17 January 1996).

A husband and wife in divorce proceedings are regarded as connected until the divorce is final: *Aspden v Hildesley*, [1982] STC 206.

Example

The following table illustrates the connected person rules for income tax and corporation tax purposes:

	Your ancestor, D	
	D's spouse, DS	
	Your parent, E	
	E's spouse, ES	
Your brother, B	You	Your sister, I
B's spouse, BS		I's spouse, IS
	Your child, F	
	F's spouse, FS	
	Your lineal descendant, G	
	G's spouse, GS	
	Y's ancestor, N	
	N's spouse, NS	
	Y's parent, O	
	O's spouse, OS	
Y's brother, L	Your spouse, Y	Y's sister, T
L's spouse, LS		T's spouse, TS
	Y's child, Q	
	Q's spouse, QS	
	Y's lineal descendant, R	
	R's spouse, RS	

- (a) You are connected with your spouse Y.
- (b) You are connected with your relatives: brother B, sister I, parent E, ancestor D, child F, lineal descendant G.
- (c) You are connected with the spouse of each of your relatives: B's spouse BS, I's spouse IS, E's spouse ES, D's spouse DS, F's spouse FS, G's spouse GS.
- (d) You are connected with Y's relatives: Y's brother L, Y's sister T, Y's parent O, Y's ancestor N, Y's child Q, Y's lineal descendant R.
- (e) You are connected with the spouses of Y's relatives: L's spouse LS, T's spouse TS, O's spouse OS, N's spouse NS, Q's spouse QS, R's spouse RS.

The following table illustrates the connected person rules for capital gains tax purposes:

	Your ancestor, D	
	D's spouse, DS	
Your uncle, A	Your parent, E	Your aunt, H

A's spouse, AS	E's spouse, ES	H's spouse, HS
Your brother, B	You	Your sister, I
B's spouse, BS		I's spouse, IS
Your nephew, C	Your child, F	Your niece, J
C's spouse, CS	F's spouse, FS	J's spouse, JS
	Your lineal descendant, G	
	G's spouse, GS	
	Y's ancestor, N	
	N's spouse, NS	
Y's uncle, K	Y's parent, O	Y's aunt, S
K's spouse, KS	O's spouse, OS	S's spouse, SS
Y's brother, L	Your spouse, Y	Y's sister, T
		T's spouse, TS
Y's nephew, M	Y's child, Q	Y's niece, U
M's spouse, MS	Q's spouse, QS	U's spouse, US
	Y's lineal descendant, R	
	R's spouse, RS	

- (a) You are connected with your spouse Y.
- (b) You are connected with your relatives: brother B, sister I, parent E, ancestor D, child F, lineal descendant G. You are also connected with your uncle A, your aunt H, your nephew C, and your niece J.
- (c) You are connected with the spouse of each of your relatives: B's spouse BS, I's spouse IS, E's spouse ES, D's spouse DS, F's spouse FS, G's spouse GS. You are also connected with your uncle A's spouse, AS, your aunt H's spouse HS, your nephew C's spouse CS, and your niece J's spouse JS.
- (d) You are connected with your spouse Y's relatives: Y's brother L, Y's sister T, Y's parent O, Y's ancestor N, Y's child Q, Y's lineal descendant R. You are also connected with Y's uncle K, Y's aunt S, Y's nephew M, and Y's niece U.
- (e) You are connected with the spouses of Y's relatives: L's spouse LS, T's spouse TS, O's spouse OS, N's spouse NS, Q's spouse QS, and R's spouse RS. You are also connected with K's spouse KS, S's spouse SS, M's spouse MS, and U's spouse US.

If I am a trustee, who am I connected with?

(4) If you are a trustee of a settlement, you are connected with:

- (a) the settlor,
- (b) any person connected with the settlor,
- (c) a close company (or a company which, if it were resident in the Republic of Ireland, would be a close company) whose participators (at any time during a tax year or accounting period when it is a close company) include the trustees of, or a beneficiary under the settlement.

If I am a partner, who am I connected with?

(5) You are connected with:

- (a) a partner (any person with whom you are in partnership),
- (b) a partner's spouse, and
- (c) a partner's relatives.

This subsection should be regarded as also applying to a person joining a partnership (Inspector Manual 19.2.9).

If I am a company, who am I connected with?

(6) One company is connected with a second company if a third company or group of persons, either directly or through connected persons, controls the first two companies. See *Floor v Davis*, [1979] STC 379, *IRC v Harton Coal Co Ltd (In Liquidation)*, (1960) 39 TC 174.

If I control a company, who am I connected with?

(7) You are connected with a company, and the company is connected with you, if either directly or through connected persons, you control the company. See *Steele v EVC International NV*, [1996] STC 785.

If I control a company together with another person, are we connected?

(8) If you, together with others, can control or acquire control of a holding in a company, you are both treated connected with each other, and with any person who acts on their direction to control the company.

Section 11 Meaning of "control" in certain contexts

When am I considered to "control" a company?

Where this definition is applied for corporation tax purposes, you are regarded as controlling a company if either through holding shares or through special voting powers, you can ensure that the company's affairs are conducted in accordance with your wishes.

You control a partnership if you have a right to more than half of the partnership income or assets.

This definition of control is used, for example, for seed capital relief (section 493(7)).

The voting power required to secure control is usually contained in the company's articles of association or other documents: *IRC v Lithgows Ltd*, (1960) 39 TC 270. For cases on indirect control see: *IRC v Clark (FA) and Sons Ltd*, (1941) 29 TC 49; *British-American Tobacco Co Ltd v IRC*, (1942) 29 TC 49; *S Berendsen Ltd v IRC*, (1957) 37 TC 517.

Casting votes may be treated as part of the controller's voting power: *IRC v B W Noble Ltd*, (1926) 12 TC 911 and *IRC v Monnick Ltd*, (1949) 29 TC 37. Votes exercised as trustee may also be treated as part of the controller's voting power: *Bibby (J) and Sons Ltd v IRC*, (1945) 29 TC 167; *John Shields and Co (Perth) Ltd v IRC*, (1950) 29 TC 475 and *IRC v Silverts Ltd*, (1951) 29 TC 491.

Votes exercised as attorney may not be treated as part of the controller's voting power: *IRC v James Hodgkinson (Salford) Ltd*, (1949) 29 TC 395.

Votes which cannot be exercised are ignored: *Appleby (Joseph) Ltd v IRC*, (1950) 29 TC 483.

Shares with special rights: see *IRC v Harton Coal Co Ltd (In Liquidation)*, (1960) 39 TC 174.

Example

X Ltd has authorised share capital of 100,000 shares costing €1 each, which have no vote, and 200 voting shares costing €5 each.

You own 101 voting shares. Therefore you control the affairs of X Ltd.

Part 2 THE CHARGE TO TAX

CHAPTER 1 Income tax

Section 12 The charge to income tax

What are the categories (Schedules) under which income is taxed?

Income tax is charged under four Schedules:

- Schedule C,
- Schedule D,
- Schedule E, and
- Schedule F.

Income is not defined. It is described by Schedules which date from the time income tax was first introduced as a temporary tax in 1799 by William Pitt, the chancellor of the exchequer. The rate was 10% and the tax was payable by anyone earning more than £60 a year.

The four original Schedules taxed income in descending order of importance: income from land, income from personal property and trades, income arising outside Great Britain, and income not falling within the other categories. Each taxpayer was required to complete a single return of income comprising income under 19 different headings (Cases) with different deductions for each Case.

The temporary income tax was repealed by Henry Addington, Pitt's successor, but was reintroduced in 1803 to finance the war with France. Wealthy landowners had objected to the notion of a single return disclosing the taxpayer's entire wealth to a local assessor of lower social status. As a result, when the tax was reintroduced, a return for each of the 19 different headings could be sent to a different surveyor, ensuring that no surveyor had a complete picture of the taxpayer's wealth. Although income tax was again abolished after the war with France ended in 1816, it was permanently reintroduced in 1842 by Sir Robert Peel, the Tory prime minister.

The system of charging income tax under Schedules, i.e., the schedular system, assumes that the taxpayer has a **source** of income, for example, land, personal property, or a trade. It follows that if a taxpayer has no source of income, he/she cannot be charged to income tax. The source (or capital) is the tree; income is the fruit of the tree.

A source of income does not include a potential source of income such as an interest-free loan: *Walker v Centaur Clothes Group Ltd*, [1998] STC 814.

Because income tax is an annual tax, for income to be taxed in a tax year the source of the income must exist in that tax year. On this basis receipts arising after a trade has ceased could fall out of assessment and not be taxed as their source has ceased to exist. Such receipts are taxed under section 91. Similarly, income arising before an employment commences, or after the employment ceases could fall out of assessment and not be taxed. Such receipts are taxed under section 112(2).

The Schedules are mutually exclusive. In other words, a source of income may only be taxed under the Schedule to which it is correctly attributable: *Salisbury House Estates Ltd v Fry*, (1930) 15 TC 266. This means that the more generous Schedule D deductions may not be claimed against Schedule E employment income: *Mitchell and Edon v Ross*, (1961) 40 TC 11. Letting of property was held to be the carrying on of a business in *American Leaf Blending Co Sdn Bhd v Director General of Inland Revenue*, [1978] STC 561.

Although the Schedules are mutually exclusive, the Cases are not: *Liverpool and London and Globe Insurance Co v Bennett*, (1913) 6 TC 327. See also *Lowe v J W Ashmore Ltd*, (1970) 46 TC 597.

Example

Your income of €59,000 breaks down as follows:

	€
Income from profession of entertainer	50,000
Pension from former employment	5,000
Income from Irish company dividends	4,000
The entertainment income is chargeable under Schedule D (Case II).	
The pension is regarded as employment income chargeable under Schedule E.	
The company dividend income is chargeable under Schedule F.	

Section 13 Extension of charge to income tax to profits and income derived from activities carried on and employments exercised on the Continental Shelf

Are offshore exploration activities regarded as carried on in Ireland?

(1) **Exploration or exploitation activities** are activities relating to exploration or exploitation of the sea bed and its natural resources either within Irish territorial waters or a **designated area**, i.e., a block on the Continental Shelf in which the Government has granted offshore exploration rights.

Exploration or exploitation rights are rights to assets generated from exploration or exploitation activities.

Prior to the enactment of the underlying legislation in 1973, a non-resident company would only be chargeable to tax if carrying on activities through a branch or agency in the State. This meant that an oil or gas exploration company which was not resident in the State, but was exploring for oil or gas on the Continental Shelf outside Irish territorial waters, would not be chargeable to Irish tax unless it had a branch or agency in the State.

How are offshore exploration activities in a designated area treated?

(2) If you are an offshore oil or exploration company operating in a designated area, you are treated as carrying on your activity within the Republic of Ireland.

Example

You are an Irish-incorporated company with a licence issued by the Minister for Public Enterprise to explore for natural gas on the Irish continental shelf.

You are regarded as carrying on your activity within the State.

Are profits from offshore exploration activities subject to Irish tax?

(3) If you are a non-Irish-resident company engaged in offshore oil or exploration activity, you are treated as carrying on your activity through a branch or agency within the Republic of Ireland.

Example

You are a US-incorporated company with a licence issued by the Minister for Public Enterprise to explore for oil in a designated area.

You are regarded as carrying on your activity through a branch or agency in the Republic of Ireland.

How am I taxed if I hold an exploration licence but don't carry on the exploration activity?

(4) If you hold a licence for exploration or exploitation activities, you are regarded for tax purposes as the agent of the person who carries out the exploration or exploitation activity on your behalf.

Are offshore rig employees subject to Irish tax?

(5) If you have employees working on an offshore exploration platforms on the Continental Shelf, they are regarded as working in the Republic of Ireland and caught for PAYE).

See *Clark v Oceanic Contractors Inc*, [1983] STC 35, which dealt with the UK taxability of workers on North Sea rigs.

Example

C Ltd employs 100 workers on its exploration platform located on the Irish Continental Shelf. The employees are regarded as working in the State, and PAYE/PRSI must be deducted from their wages.

How is tax collected from offshore licence holders?

(6) The detailed rules in Schedule 1 regarding information to be provided to the inspector and collection of tax apply to such licence holders.

Section 14 Fractions of a euro and yearly assessments

Must tax assessments be made for a tax year?

(1)-(2) Yes. Every income tax assessment and charge must be made for a tax year (section 2).

Section 15 Rate of charge

What is the rate of income tax?

(1) Income tax is charged for every tax year at the **standard rate** (20% for the tax year 2011).

When is my income liable to the higher rate of income tax?

(2) If you are individual (other than a trustee or personal representative of a deceased person), you are liable to income tax at the **higher rate** (41% for the tax year 2011) on the part of your taxable income which exceeds the **standard rate band** (see (5) below).

What is the standard rate band for a married couple?

(3) If you are a jointly assessed married couple ([section 1017](#)) or civil partners ([1031C](#)) and you both have income in your own right, you may increase your standard rate band (€41,800 for the tax year 2011), by the lower of:

- €23,800, or
- the lower of your two incomes (**specified income**).

Example

2011 As a jointly assessed married couple, you have income of €50,000, made up as follows:

	€
Husband's salary	46,000
Wife's income from part-time job	4,000
Total	50,000

Therefore, the standard rate band applicable to your income is €49,400 (i.e., €45,400 increased by €4,000 - the lower of the two incomes, which is itself lower than €23,800).

What is the "specified income" of a married couple?

(4) In (3), the net income (**specified income**) of either the husband or the wife means income after deductions attributable to a particular source of income.

What is the standard rate band for a single person, a single parent, or a jointly assessed couple?

(5) For the tax year 2011, income of individuals and married couples is taxed as follows:

- If you are a single person, the first €32,800 of your taxable income is taxed at 20%, and the balance is taxed at 41%.
- If you are a single parent (i.e., entitled to the single parent additional tax credit [section 462](#)), the first €36,800 of your income is taxed at 20% and the balance is taxed at 41%.
- If you are a jointly assessed ([section 1017](#)) married couple or civil partners ([1031C](#)), the first €41,800 of your taxable income is taxed at 20%, and the balance is taxed at 41%. But see (3) above, which allows you to increase your standard rate band if you both have income in your own right.

Example

2011 You are a single individual with employment income of €40,000. You have no other income.

You pay €500 for a qualifying part-time third level course.

Your tax is calculated as:	€	€
Your total income		40,000
32,800 at 20%	6,560	
7,200 at 41%	2,952	
<u>40,000</u>	<u>9,512</u>	

Less tax credits:

Personal tax credits

Single person ([section 461](#)) 1,650

Employee ([section 472](#)) 1,650

General tax credits

Third level course ([section 475](#)) €500 x 20% 100 3,400

Tax 6,112

This tax is deducted from your salary through the PAYE system ([section 985](#)).

Section 16 Income tax charged by deduction

When computing my tax, must I include tax that I have deducted from payments?

(1) You must include the gross amount of income you receive subject to deduction of tax in your tax computation. Tax is deductible at the standard rate applicable for the tax year in which the payment becomes due, not the year in which it accrues.

An annual payment made from income brought into charge to tax ([section 237](#)) is taxed in the hands of the payer (so as to recapture the tax withheld), but only at the standard rate applicable at the time the payment falls due.

If you are the payer, you are charged at the standard rate on so much of the profits as is represented by the payment made under deduction of tax.

The payment is deducted in arriving at your total income, so that the full standard rate band is available to you.

You must deduct tax from other annual payments ([section 238](#)) at the rate applicable when the payment is actually made: *Re Sebright, Public Trustee v Sebright*, (1944) 23 TC 190 and *Regal (Hastings) Ltd v Gulliver*, (1944) 24 ATC 297.

Example

15.06.2008 You covenant to pay X €2,000 on 20.06.2009, 2010, and 2011, i.e., in each of the three tax years 2009, 2010, and 2011.

You must deduct tax at 20% from the 20.06.2008 payment so the net payment to X is €1,600. X must include the gross sum receivable €2,000 in his/her total income for 2008. X will receive a tax credit for the €400 deducted at source.

What rate of tax applies to income tax that I have deducted from payments?

(2) If you are caught for tax you have deducted from an annual payment (for example, on income you have covenanted), although your income may be chargeable to tax at the higher rate, you are only charged at the standard rate on the amount deducted from the annual payment.

Example

You are a single person with various sources of income, from which you pay a royalty of €300, deducting tax of €60 (20% x €300).

Your tax liability for the tax year 2011 is computed as:

	€
Income from all sources	20,000
Royalty	<u>300</u>
Total income	20,300
Deduct:	
Medical expenses	<u>1,500</u>
Taxable income	<u>18,800</u>

Tax	
18,800 at 20%	<u>3,760</u>
18,800	3,760

Less tax credits:

Personal tax credits

Single person ([section 461](#)) 1,650

Tax on income 2,110

Add tax deducted from royalty 60

Tax liability for 2011 2,170

Section 17 Schedule C

When do I deduct Schedule C tax?

(1) If you are a bank or paying agents (responsible for paying dividends and interest payable from the public revenue of any government or foreign public authority) you are liable under Schedule C to deduct standard rate tax from the amount payable in the Republic of Ireland.

In the case of UK Treasury Stock, the Schedule C tax is deducted from the **gross** amount receivable (not the amount payable in the State).

The words "or otherwise" in section 17(1) were considered wide enough to include clearing of a cheque. The encashment tax rule in (1) does not apply where the banker merely clears a cheque or arranges for the clearing of a cheque. A banker that acts as a collecting agent remains obliged to deduct encashment tax.

Tax Briefing 35, March 1999.

The UK Courts have held that the Schedule C charge does not apply to other types of interest: *Esso Petroleum Co Ltd v Ministry of Defence*, (1989) 62 TC 253.

Example

As an Irish resident, you are due to receive €1,000 interest on US treasury bonds.

	€
Interest on US Treasury bonds	1,000
Less 15% US income tax deducted	<u>150</u>
Received in Ireland	850
Less 20% Schedule C withheld by Irish bank: €1,000 x 20%	<u>200</u>
Amount received by you	<u>650</u>

The bank must pay to the Irish Revenue the Schedule C tax withheld (€200).

Example

An Irish resident, you are due to receive €1,000 interest on UK treasury stock.

	€
Interest on UK Treasury Stock	1,000
Less 20% UK income tax deducted at source	<u>200</u>
Received in Ireland	800
Less 20% Schedule C withheld by Irish bank	<u>160</u>