

# **A Revenue Guide to Professional Services Withholding Tax (PSWT) for Accountable Persons and Specified Persons**

## ***Part 4 - Professional Services***

### **4.1 Services covered by PSWT**

PSWT applies to the provision of professional services. Section 520 of the Taxes Consolidation Act 1997 lists services which come within the meaning of professional services. It provides that professional services which are subject to PSWT, include

- \_ services of a medical, dental, pharmaceutical, optical, aural or veterinary nature,
- \_ services of an architectural, engineering, quantity surveying or surveying nature, and related services,
- \_ services of accountancy, auditing or finance and services of financial, economic, marketing, advertising or other consultancies,
- \_ services of a solicitor or barrister or other legal services,
- \_ geological services, and
- \_ training services provided on behalf of FAS.

The above is not an exhaustive list. Issues have arisen as to whether or not certain services come within the terms of PSWT. A summary of the Revenue position in relation to the application of PSWT to various services is set out in Appendix 4. In the case of some of the services included in the appendix, the advice seeks to differentiate between situations where PSWT will or will not apply. In a number of cases, a service may not of itself attract PSWT. However, where a service forms part of a wider consultancy service, it would then come within the scope of PSWT. For example, where printing forms part of an overall professional service provided to an accountable person, it is an expense incurred in the provision of that service. The full amount of the payment in respect of the overall service is subject to PSWT. Where, for example, an accountable person commissions a specified person to design and print a brochure, the entire payment for the production of the brochure (including the printing of the brochure) is subject to PSWT. However, if the commission was confined to printing the brochure, then payment in respect of the printing service only would not be subject to PSWT.

### **4.2 Services which are not regarded as Professional Services for the purposes of PSWT**

Revenue does not regard the following services as professional services for the purposes of PSWT: -

- \_ Teaching, training or lecturing services other than training services provided on behalf of FAS (see Appendix 5)
- \_ Translation services including services of an interpreter
- \_ Proof-reading services
- \_ Services of stenographers
- \_ Setting and assessing oral, aural or written examinations

Page 16

- \_ Contract cleaning services
- \_ Maintenance and repair work

## **Appendix 4**

### ***Revenue Opinions regarding Professional Services***

#### **1 Advertising Services**

Subject to the comments below in relation to advertising space or time, payments for advertising services are subject to PSWT. Advertising services include services involved in-

- \_ designing an advertisement, and
- \_ conducting an advertising campaign.

Advertising services can involve the use of many other services. For example, they may involve the services of photographers, models, graphic art designers, commercial artists, freelance writers, and printing. As the overall service provided by the advertising agency is an advertising service, PSWT is to be deducted from the total payment by the accountable person to the agency.

It should be noted that outside of the scenario outlined above, services such as photography, modelling, graphic design, commercial artistry, freelance writing and printing are not generally professional services for the purposes of PSWT. Accordingly, where an accountable person makes a payment for such a service directly to the person providing the service, the payment is not subject to PSWT unless such service forms part of a wider consultancy.

#### ***Advertising Space or Time***

Where advertising space or time is provided as part of an overall professional service e.g. by an advertising agency as part of an advertising service, the total payment for the service (including the advertising space or time) is subject to PSWT.

Payments made to:

- \_ an advertising medium (e.g. a newspaper), or
  - \_ a person acting as an agent for an advertising medium (e.g. an advertising agency)
- in order to obtain advertising space or time are not subject to PSWT.

#### **2 Archaeology**

Payments in respect of archaeological consultancies are subject to PSWT. In general, payments in respect of archaeological digs or excavations are not subject to PSWT. However, where archaeological digs or excavations form part of an overall professional service, for example, an archaeological consultancy, the full amount of the payment is subject to PSWT.

#### **3 Auctioneers/Estate Agents/Valuers**

Payments in respect of auctioneers, estate agents and valuers fees are subject to PSWT. Where the fee includes advertising costs, the full amount of the fee (including advertising costs) is subject to PSWT.

#### **4 Board Members/Chairpersons**

Payments made to chairpersons and individuals who sit on boards and committees are generally emoluments from an office chargeable to tax and subject to the operation of PAYE/PRSI. Accordingly PSWT doesn't apply to such payments.

#### **5 Computer Services**

Payments for independent advice on the installation, development (including the development of a web site) or running of computer systems are subject to PSWT.

Payments in respect of the following services are not subject to PSWT.

- \_ The sale of computer hardware and software packages
- \_ The sale of software packages developed by the seller. This continues to be the position where the cost of the hardware or software package includes an element of service which is not charged separately to the customer, for example:
  - initial analysis of the work to be computerised
  - development of a hardware or software package for the customer
  - provision of training and other back-up services
- \_ Maintenance of computer software

## **6 Consultancy**

Payments in respect of any type of consultancy are subject to PSWT. Note that a service which involves the provision of advice is a consultancy.

## **7 Costs of Acquisitions/Disposals of Land or Property**

### *General*

Payments in respect of professional costs associated with the acquisition or disposal of property or land other than under a compulsory purchase order (see below), including payments made in respect of the costs of a person other than the accountable person are subject to PSWT. Payments in respect of professional costs incurred prior to the formal confirmation of a compulsory purchase order are also subject to PSWT unless they are part of an out of court settlement (see Opinion 8 overleaf)

### *Property/Land Acquisitions by Compulsory Purchase Order*

Where property is acquired by compulsory purchase order, the following are subject to PSWT:

- \_ Conveyancing costs
- \_ Payments made by the accountable person in respect of the accountable person's own costs.

Where property is acquired by compulsory purchase order, the following are not subject to PSWT:

- \_ Professional costs awarded by an arbitrator. Examples include vendors legal costs, auctioneers fees, estate agents fees, valuers fees, etc.
- \_ Professional costs incurred in reaching agreement, prior to arbitration, where such costs could have been awarded by an arbitrator.

## **8 Costs of Legal Actions**

Where, under a ruling of a court, tribunal or similar body which is legally empowered to award costs, an accountable person is required to make a payment to a person in respect of professional costs incurred by that person, the payment is not subject to PSWT. This also applies where the payment is made directly by the accountable person to the person who provided professional services.

The reason for not applying PSWT in these circumstances is that, once awarded, the costs are regarded as a compensation payment made by the accountable person and not a payment in respect of professional services.

PSWT applies to payment of the accountable persons own costs, including any payment out of costs awarded to the accountable person.

Payments made to a person in an "out of court" settlement towards the professional costs of that person are not subject to PSWT if the action was one in respect of which an order for costs could have been made by the court, tribunal etc.

In all other cases, PSWT must be deducted from payments made in respect of the costs of a person other than the accountable person.

## **9 Debt Collection**

Payments in respect of a debt collection service are subject to PSWT. However, where no payment is actually made but instead a percentage of the amount recovered is retained by the debt collector, PSWT does not apply.

## **10 Dental Technicians**

Payments in respect of the supply by a dental technician of goods such as dentures, dental braces and other prosthetic appliances (which are manufactured by the dental technician), directly to an accountable person, are not subject to PSWT.

Page 38

## **11 Employment/Recruitment Agencies**

A service involving the interviewing, screening, or selection of candidates for a job is regarded as a consultancy service and, accordingly, payments for such services are subject to PSWT.

Payments to employment or recruitment agencies simply for the placement of individuals are not subject to PSWT.

## **12 Films/Radio/Television Programmes**

Payments made directly to actors, producers and directors and for postproduction facilities solely for the purposes of making a film, radio or television programme or series are not subject to PSWT.

Where accountants, solicitors etc. are engaged to provide professional services for the purposes of making a film, radio or television programme or series, payments made by an accountable person for such services are subject to PSWT.

## **13 Insurance**

Payments in respect of insurance consultancy services are subject to PSWT. Examples of such services include loss adjusting, identification/assessment of risk exposure, marketing risks, policy design, actuarial advice and claims analysis.

Payments of excesses under insurance policies are not subject to PSWT.

Payments of insurance premiums to brokers for transmission to an insurance company are not subject to PSWT. However, where a broker charges a separate fee for his services, PSWT should be deducted from the broker's fee. Such a fee could be in the form of an annual management fee or a fee charged in relation to a specific transaction.

## **14 Laboratory Tests**

Payments in respect of laboratory tests are subject to PSWT where the test involves a service which is a professional service. For example, payments in respect of medical tests such as blood tests and biopsies are subject to PSWT because the service is of a medical nature.

Payments in respect of laboratory tests are not subject to PSWT where the test is not a service which is a professional service. For example, a payment in respect of a test to measure the level of pollution in water is not subject to PSWT.

## **15 Medical Appliances**

Payments in respect of the supply of artificial limbs, artificial eyes, surgical and medical appliances including any incidental service of fitting are not subject to PSWT.

However, where a separate fee is charged for fitting, the fee is subject to PSWT as the payment is for a service of a medical/optical/aural nature.

## **16 Medical Costs incurred in respect of Employees**

Where, as part of their conditions of employment, the employees of an accountable person are entitled to submit bills for medical treatment incurred by them for payment by the accountable person, payments made by the accountable person to its employees in reimbursement of those expenses are not subject to PSWT.

Where, the accountable person pays the medical practitioner directly for the provision of medical services to the employee, PSWT applies to the payment.

## **17 Opticians/Optometrists**

Where opticians/optometrists receive payments from the Department of Social Welfare, or from the Health Service Executive, the cost of goods provided may be excluded from the amount to be charged to PSWT where the fee and the cost of the goods are shown separately.

Opinion 15 overleaf applies as regards payments in respect of optical appliances.

## **18 Printing**

A printing service is not of itself a professional service within the terms of PSWT.

Accordingly, payments in respect of services which involve printing and nothing else are not subject to PSWT.

Where printing forms part of an overall professional service provided to an accountable person, it is an expense incurred in the provision of that service. The full amount of the payment in respect of the service is subject to PSWT. For example, where an accountable person commissions a specified person to design and print a brochure, the entire payment for the production of the brochure is subject to PSWT.

## **19 Quality Control**

A quality control service is not of itself a professional service within the terms of PSWT.

Accordingly, payments in respect of quality control services are not subject to PSWT where the service provided has no professional element. For example, payments in respect of examinations to determine whether a quality control level is achieved are not subject to PSWT.

Where a quality control service includes a professional element, the entire payment is subject to PSWT. For example, payments in respect of a quality assurance consultancy i.e. the provision of advice on quality control matters are subject to PSWT.

## **20 Retail Chemists**

Payments made to retail chemists are subject to PSWT. However, the cost of goods supplied and containers may be excluded from the amount to be charged to PSWT if these costs are separately identified.

## **21 Teaching/Training**

Payments in respect of training consultancy services are subject to PSWT. Examples of a training consultancy service are

- \_ the provision of advice on training requirements and
- \_ the design/development of a course, syllabus or programme.

Subject to Opinion 22 below, payments in respect of the following services are not subject to PSWT:

- \_ Teaching, training or lecturing services (advice on the taxation of part-time lecturers, teachers and trainers is given at Appendix 5)
- \_ Speeches/lectures given by guest speakers
- \_ The provision of material for open and distance learning courses including any element of professional service involved in preparing or developing such courses

which is part of the overall package of the provision of the material and which service is not charged separately to the customer.

## **22 Training Provided on behalf of FAS**

Payments for training services provided by self-employed persons (see paragraph 1.3) on behalf of FAS are subject to PSWT. In determining whether training services are provided on behalf of FAS, the following rules apply:

\_ Payments in respect of training courses which are for FAS employees only are subject to PSWT.

\_ Payments in respect of training courses which are open to persons other than FAS employees to participate in are not subject to PSWT.

\_ Payments by FAS to its employees e.g. course participants, including payments to employees who provide training services, are subject to PAYE. Accordingly, PSWT does not apply to these payments .

## **23 Video Production**

Payments for the production of a video by a specified person for an accountable person are not subject to PSWT provided

\_ there is no element of consultancy included in the service provided by the specified person and,

\_ the video is subsequently sold by the specified person as a finished product to the accountable person.

Where there is an element of consultancy involved in the service provide by the specified person, PSWT applies to the full amount of the payments.

## Appendix 5

### ***Text of the Article in Tax Briefing, Issue 28 (October 1997) on the***

#### ***Taxation of Part-Time Lecturers / Teachers / Trainers***

##### *Introduction*

The question as to whether part-time lecturers/teachers/trainers are engaged under contracts of service (employees) or under contracts for service (self-employed) arises regularly.

##### *Revenue Position*

Revenue's view is that part-time lecturers/teachers/trainers are employees. Payments are to be made to these individuals net of statutory deductions for PAYE and PRSI.

##### *Case Law*

Revenue's position is founded on a number of precedents, which can be summarised as follows:

##### *Irish Cases*

\_ In the Circuit Court, in 1992, it was held that part-time lecturers employed in a school were engaged under a contract of service (employee).

\_ In the High Court, in 1986, Mr. Justice Murphy held in the case of *Stephen Barcroft v Minister for Health and Social Welfare and James Agnew (Social Welfare Appeals Officer)*, that the teachers engaged by him performed their work under a contract of service and that the employments were insurable.

\_ A Social Welfare Appeals Officer, in 1996, upheld a Deciding Officers decision that individuals engaged as part-time lecturers, in a teaching establishment, were insurable under the Social Welfare Acts.

##### *UK Cases*

\_ *Fuge v McClelland* (High Court Chancery Division, 22 June 1956). This case involved a full-time teacher who also taught adult evening courses. It was held that the night work also came under Schedule E, just as much as the daytime activities.

\_ *Mitchell & Eden v Ross* (House of Lords, May/July 1961). In this case it was held that part-time specialists (hospital consultants) engaged under the Health Act 1946 were assessable under Schedule E.

\_ *Sidey v Phillips* (Chancery Division 5 December 1986). In this case it was held that a non-practising barrister was properly assessable under Schedule E in respect of his part-time lecturing fees.

\_ *Walls v Sinnett* (Chancery Division). This case upheld a decision that a professional singer who lectured in music at a technical college for 4 days each week was assessable under Schedule E.

##### *Exceptions*

Revenue accepts that the above position need not apply in situations where the lecturers/teachers/trainers give "once off" lectures. Lecturers/teachers/trainers in these positions will generally only give lectures once or twice a year for the same body. Such lecture fees must, of course, be returned by the individuals concerned under the self-assessment rules.

It would not be accepted, however, that lecturers/teachers/trainers who give a series of "once off" or guest lectures for the same body are outside the scope of PAYE/PRSI.

Any cases of doubt under this heading can be clarified by contacting the relevant tax office.

IT 61 Revenue August 2008