

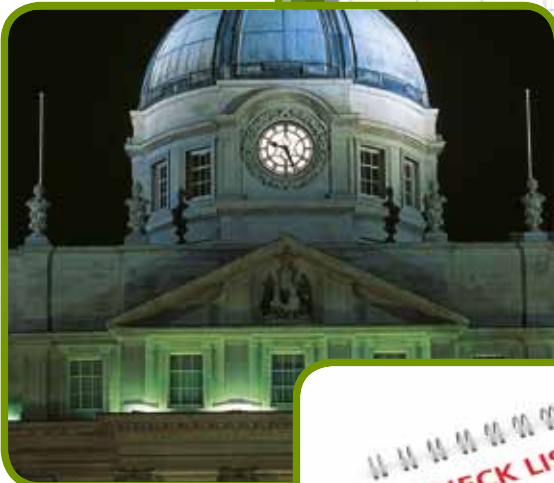
# TAXRELAY

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Irish Taxation  
Institute

## Your Pressing Pay & File Issues Addressed



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## Editorial

Irish Taxation Institute (ITI) President Andrew Cullen and staff from the Executive team recently held the second country-wide tour of 2010. The aim of these tours is to meet members, discuss issues that are currently on your agenda and provide a free update on key developments in tax and Revenue practice.

Not surprisingly, one of the key topics discussed on the tour was the **Pay and File** deadline. The feedback we obtained from members suggested that the following are the main areas of concern around Pay and File:

- » Dealing with clients with cash-flow difficulties
- » Calculation of preliminary tax 2010
- » Obtaining PAYE information for clients
- » Taxation of rental income and cash-flow considerations
- » Revenue's policy for issuing Tax Clearance Certificates where a client has an instalment arrangement
- » ROS payments

In this edition of TaxRelay we have sought to provide you with clarification and guidance on the above issues.

Few of us can fail to appreciate the serious economic issues we face as we await publication of the Government's 4 Year Plan and **Budget 2011**. Last

week we published our Budget 2011 submission, which followed a long period of detailed discussions with members and Government on the role of tax policy in setting our strategy for recovery and the priority tax issues for our members.

Many readers who are following the debate on **Legal Professional Privilege** in the UK will have noted the publication of the Prudential decision in the Court of Appeal on 13 October past. A summary of the decision is included in this TaxRelay for your information.

On the Revenue agenda, the most significant development in the past weeks was the publication of the **Code of Practice for Revenue Audit** on 24 September. ITI published a special edition of TaxFax on the day the code was released with details of the main changes. We have now produced a number of Frequently Asked Questions on the new Code, as a result of feedback received during our tour.

With the first **CPD** period drawing to a close on 31 December, we have provided a reminder of the CPD requirements that apply for 2010. This month's **free TaxCast** is presented by Andrew Clarke on 'SME Client Relationship Management'. This presentation was recorded at our Annual Conference 2010 on 23 April 2010.

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Should you have any comments or queries on any of the articles in this issue of TaxRelay, please contact the editor, Laura McTiernan, at [lmctiernan@taxireland.ie](mailto:lmctiernan@taxireland.ie).

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# Dealing with Clients with Cash-Flow Difficulties

Readers are well aware that the last two years have seen significant tax increases; the income levy was introduced and then doubled, the health levy rates were doubled and additional restrictions were introduced on the use of specified reliefs by high earners. As highlighted on our Members' Tour, the full impact of these changes will be felt in this year's Pay and File deadline and could mean that even where clients' income has been falling, their tax liabilities may increase this year.

No doubt you will already have spoken to your clients about these issues. For any clients who you have not yet engaged with, here are a few salient points to discuss with them.

## 1. Pay any balance of tax for 2009 as a priority

Remember that once the Pay and File date passes, any unpaid income tax for 2009 becomes a debt for collection on Revenue's system. Revenue can act quickly to collect the debt so it is important to clear the balance as far as possible.

## 2. If clients cannot pay the 2009 debt in full, the Collector General's office should be contacted

In situations where clients will not be able to pay the balance of tax due for 2009,

contact should be made with Revenue at an early date so that a proposal for payment by instalment can be considered.

One of the preconditions for an instalment arrangement is that all tax returns are filed to date, so ensure that the tax return for 2009 is filed. The client should also be aware that an instalment arrangement is not a free lunch – interest will be charged for late payment of income tax at 8% per annum. The full amount of tax, together with the projected interest over the life of the arrangement will be set out by Revenue on the instalment agreement form. Revenue's [Guidelines for Instalment Arrangements](#) provide an overview of the preconditions to and the process of availing of an instalment arrangement.

## 3. Clients who cannot pay all of their preliminary tax liability for 2010 should pay as much as they can, as soon as they can.

Once clients have paid the balance of tax due for 2009, they should clear their preliminary tax debt for 2010 as quickly as they can, to minimise their exposure to interest. If clients have underpaid preliminary tax for 2010, it is the balance of tax for 2010 (and not just the balance of preliminary tax due) that becomes payable immediately and interest charges will run on this amount from the deadline for the

preliminary tax payment. Accordingly, clients who do not pay their preliminary tax liability in full by the deadline will in fact need to pay the balance of tax for 2010 in so far as they can as soon as they can to minimise interest charges. Readers should also refer to the 'Preliminary Tax 2010 – More Clarification' article in this issue of TaxRelay.

## 4. Even where clients cannot pay their liabilities, they should file a tax return.

It is important to remind clients of the surcharge (up to 10%) that can be charged on late returns and advise them that Revenue may ultimately take steps to prosecute taxpayers who do not file returns.

### Further information

Revenue recently published a revised 'Agent's Guide to the Collector General's Division' available from the [Revenue website](#). Also remember Revenue's [Case Escalation Decision Framework](#).

# Preliminary Tax 2010 – More Clarification

Readers may be aware that Revenue updated their document containing Frequently Asked Questions on the Income Levy on 24 September (available [here](#)). The update included the following question on the amount of income levy to be included in preliminary tax for 2010:

### 3.8 What income levy should I include in my preliminary tax for 2010?

An individual can calculate their preliminary tax for 2010 on the basis of 90% of the current year liability and incorporate income levy using the 2010 rates of 2%, 4% and 6%.

However where the individual wishes to pay preliminary tax on the basis of the 100% of the previous year liability then their payment should be on the basis of the final liability for the year 2009, including levy calculated at the composite rates. This is on the fact that the composite rate was the charge to levy for 2009.

On the basis of feedback we received during our Members' Tour, it seems that the wording of the above was unclear to some members and we therefore sought the following clarifications from Revenue:

### Option 1: 90% of the current year's liability

When basing preliminary tax for 2010 on the option of 90% of the total liability

for 2010 you must also include 90% of the total income levy liability for 2010 in calculating that payment. The total income levy liability for 2010 will be calculated using the following rates and bands:

- » 2%: On income up to €75,036 p.a.
- » 4%: On income between €75,037 and €174,980 p.a.
- » 6%: On income in excess of €174,980 p.a.

Where a client makes a preliminary tax payment equal to 90% of his/her total liability for 2010 by the 31 October deadline (or 16 November for ROS taxpayers) which includes 90% of their PRSI, health levy and income levy (as outlined above) liabilities for 2010, that person's preliminary tax obligations for 2010 will be met.

### Option 2: 100% of the previous year's liability

When basing preliminary tax for 2010 on the option of 100% of the final liability for 2009 you must also include 100% of the total income levy liability for 2009 within that payment. The total income levy liability for 2009 will be calculated using the composite rates as follows:

- » 1.67%: On income up to €75,036 for 2009
- » 3%: On income between €75,037 and €100,100 for 2009

- » 3.33%: On income between €100,101 and €174,980 for 2009
- » 4.67%: On income between €174,981 and €250,120 for 2009
- » 5%: On income in excess of €250,120 for 2009

Where a client makes a preliminary tax payment equal to 100% of his/her total liability for 2009 by the 31 October 2010 deadline (or 16 November for ROS taxpayers) including 100% of their PRSI, health levy and income levy (based on composite rates as above) liabilities for 2009, that person's preliminary tax obligations for 2010 will also be met.

Readers will recall that to the extent that income tax, PRSI, health levy and income levy have already been collected through payroll, this will be taken into account in calculating Preliminary Tax for 2010.

### Further Information

The above position is also reflected in guidance on ITI's website. We recently launched a dedicated webpage on Pay & File Practitioners' Tips (available [here](#)) through TaxFax. Within this we provided a detailed article highlighting the important considerations when calculating clients' preliminary tax liabilities for 2010. The article also provides a practical worked example taking account of the impact of the income levy and changes to the high earner's restriction on this calculation. The article is available by clicking [here](#).

# Trouble Accessing PAYE Information?

It was also brought to our attention during the course of the Members' Tour that there were difficulties in obtaining PAYE information from Revenue over the phone. As noted in our e-mail circular to members on 5 October, we raised this issue with Revenue and sought a practical solution as a matter of priority, given the constraints of the Pay and File season.

As we advised in our e-mail, Revenue have confirmed to us that all districts will now provide the phone service for PAYE information that they provided in

prior years. Revenue stressed however that, where possible, the relevant PAYE information should be obtained from the client directly or through ROS access to PAYE, as noted in the Revenue [eBrief No. 66/2010](#).

The eBrief provides a reminder that:

1. Agents completing a Form 11 for a client can access PAYE Anytime through their ROS Digital Certificate for any of their clients who are registered for PAYE. Client's Pay

and Tax details can be viewed by selecting the 'Pay & Tax' tab.

2. For unlinked clients or where access to ROS is not available, Pay and Tax details can be obtained from the client's Form P60.

Only in cases where information cannot be sourced through these two routes above should members use the Revenue phone service. For contact details for your relevant regional Revenue office, please click [here](#).

## Rental Income and Cash-flow Considerations

Under the Pay and File theme on our Members' Tour, one of the main areas of discussion was the taxation of landlords. This category of taxpayer is particularly impacted by recent tax changes and is likely to find this Pay and File deadline even more challenging.

### 1. The Income Levy

For many landlords, the income on which they base their income levy liability is broader than the income on which they base their income tax, PRSI and health levy liabilities. This is because deductions such as; wear and tear on fixtures and fittings, other capital allowances and rental losses from an earlier year must all be added back in calculating the rental income subject to the income levy.

### 2. High Earner's Restriction

The further restriction on the use of tax reliefs contained in Finance Act 2010

affects landlords more than most other taxpayers since most of the restricted reliefs are property-based and are ring-fenced for offset against Case V income.

In the last two issues of TaxRelay (available [here](#)), we highlighted the fact that many taxpayers will be impacted by the restriction for the first time in this Pay and File deadline due particularly to the halving of the income entry point at which the restriction applies (i.e. from €250k to €125k). The new rules are an important consideration for those clients who are looking to base their preliminary tax payments for 2010 on the option of 90% of their final tax liability for 2010. Revenue also dealt with this point in [eBrief No. 61/2010](#). There was some confusion around the wording in this eBrief on the calculation of preliminary tax 2010 when using the options to base this on the 2009 or 2008 liabilities. Readers should note that when basing the preliminary tax payment for 2010 on a prior year's tax

liability (2008 or 2009); it is the rules for calculating the high earner's restriction that applied in each of those years that should be used i.e. before the Finance Act 2010 changes.

#### Further information

For more information and practical worked examples on the calculation of the high earner's restriction, ITI have an online workshop – 'Restricted Income Tax Reliefs' presented by Paul Nestor of BDO. This is available to purchase by clicking [here](#).

### 3. Deduction for Expenses

The two main changes here relate to:

- i the deductibility of mortgage interest and
- ii the Non Principal Private Residence (or NPPR) charge.

### (iii) Deductibility of mortgage interest

As readers will be aware, before 7 April 2009, landlords could offset the full amount of the mortgage interest on a residential property against the rental income from that property. However, from 7 April 2009 onwards a landlord can only offset 75% of the mortgage interest paid against the rental income from residential property. The mortgage must be for the purchase, improvement or repair of the rental property. To get a deduction for interest, the landlord must have complied with the registration requirements of the Private Residential Tenancies Board in relation to any tenancies in the particular premises.

A discussion was held in the Dublin meeting as to whether the 75% restriction on interest applies when computing taxable rental income from foreign property. In their guidance notes, Revenue provide the following clarification, “the provisions of section 97(2)(e) TCA 1997 also apply to the purchase of foreign premises. Although rental income from foreign property is

assessed as Case III rather than Case V, section 71(4) TCA, 1997 applies section 97(2)(e) TCA 1997 to foreign rental income and provides the same deduction for interest on borrowed money as that allowed in computing Irish Case V rental income.” (This guidance is available on the Revenue website at section 4.8.6. of [Revenue’s Income Tax, Capital Gains Tax and Corporation Tax manual](#)) is updated to reflect this legislative position.

### (iv) Non Principal Private Residence (NPPR) Charge

Another major change for landlords in 2009 was the introduction of the NPPR charge of €200 per property. The Revenue Commissioners are taking the view that this €200 charge is not deductible in calculating tax on any rental income from the property.

#### Example:

The following simple example demonstrates the cash-flow impact of the recent changes for an average landlord. It is important to note that the following demonstrates the position for only one

property (an average rented residential property).

#### Facts:

- » Rent is €18k in each year
- » Mortgage interest is €10k p.a.
- » Wear & Tear of €1.5k applies p.a.
- » No other allowable expenses (only PRTB)
- » NPPR charge of €200 in 2009
- » Assume marginal rates of tax and levies
- » Assume Class S1 PRSI

#### Cash –Flow Reconciliation:

	2008	2009	Diff
Receipts	18,000	18,000	0
Less:			
Non tax outgoings	(10,070)	(10,270)	(200)
Tax and PRSI	(2,829)	(3,640)	(811)
Income Levy	0	(489)	(489)
Health Levy	(161)	(345)	(184)
Net Cash	4,940	3,256	(1,684)

## Take Note – Tax Clearance Certificates in Instalment Arrangements

A common query on our Members’ Tour related to the issue of a Tax Clearance Certificate where an instalment arrangement is in place for the taxpayer. Generally speaking, a Tax Clearance Certificate will issue where a taxpayer’s returns and payments are up-to-date and this includes a situation where an instalment arrangement that has been agreed with Revenue. However, it is

possible that a Tax Clearance Certificate that would ordinarily have been valid for a year, may issue for a shorter period where the taxpayer has entered into instalment arrangements.

Our June TaxRelay (available [here](#)) also covered another common query relating to the issue of a Tax Clearance Certificate in the context of a Revenue Audit. Readers

are reminded that if an audit of a taxpayer is underway for a period of time and it is clear to Revenue that a substantive underpayment of tax is likely to arise (thereby indicating that a taxpayer’s tax affairs are not up-to-date), Revenue may consider on a case-by-case basis whether it is appropriate for them to issue/re-issue a Tax Clearance Certificate.

# ROS payments – Revenue Information Note

Revenue have provided the Irish Taxation Institute with the following Information Note on Payments by ROS.

## Introduction

ROS Revenue's On Line Service provides for the electronic filing and payment of over 21 different taxes and duties for business clients.

## Completing a ROS Debit Instruction (RDI)

The most common payment method used by business clients is a ROS Debit Instruction (RDI). To set up an RDI, the customer selects the 'Complete/Amend/Download ROS Debit Instruction' hyperlink on the ROS My Services page. An RDI is completed online, signed and submitted to ROS using a ROS digital certificate. The bank account quoted must be a current account in a bank or building society within the Republic of Ireland.

## Making payments

Once the RDI is set up the customer can start to make payments in respect of various taxes. However the customer must initiate each payment by going online and authorising Revenue to deduct the stated amount from their bank account.

Only the exact amounts authorised by ROS customers or their agents on their behalf are deducted from bank accounts. The requisite amounts are never deducted by Revenue in advance of the due dates, even where returns are filed early (unless the payment date is amended by the ROS customer or an instruction is received by Revenue to amend the payment date). Revenue will only deduct the tax owed following authorisation from the customer.

To choose this option when setting up the ROS Debit Instruction on the Tax Registration Selection screen 'Apply your RDI details' select the checkbox for an individual tax head. Complete a separate RDI for each tax head – do not choose the 'Add a Tax head' option.

## Making multiple tax head payments

Multiple taxes can be paid from one ROS Debit Instruction, where this happens one payment will be extracted to cover the total liability. When the customer receives their bank statement a single debit amount will appear.

To choose this option when setting up the ROS Debit Instruction on the Tax Registration Selection screen 'Apply your RDI details' select the checkboxes for all available tax heads.

Multiple taxes can be paid using a separate RDI for each tax head. Each RDI can be completed using the same bank details. When this is done each tax head payment will be taken separately and will appear as a separate payment on the bank statement.

To choose this option when setting up the ROS Debit Instruction on the Tax Registration Selection screen 'Apply your RDI details' select the checkbox for an individual tax head. Complete a separate RDI for each tax head – do not choose the 'Add a Tax head' option. If you already have a multiple RDI in place and want to amend it, you will have to contact Revenue at [rospayments@revenue.ie](mailto:rospayments@revenue.ie)

## Further Information

Detailed guidance in relation to ROS is available on the home page of the [Revenue website](http://www.revenue.ie).

Click "About ROS" under the title ROS Revenue on Line Service.

Further information can be obtained by contacting the ROS Helpdesk at 1890 201 106 or e-mail to: [roshelp@revenue.ie](mailto:roshelp@revenue.ie).



## Pay & File Toolkit

- **Income Tax 2010 – €72**  
Authors: Gearóid Deegan & George Reddin  
Editor: Anne Bolster
- **PRSI and Levy Contributions 2010 – €39**  
Author: John A. Bradley
- **The Taxation of Capital Gains 2010 – €72**  
Authors: Tony Appleby & Finola O'Hanlon  
Editor: Jim McClean
- **Pensions: Revenue Law and Practice 2010 – €50**  
Authors: Maureen Dolan, Paul Murray, Clive Reynolds & Clive Slattery  
Editor: Aidan McLoughlin



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# ITI Budget Submission

Last week ITI submitted our Pre Budget 2011 submission to the Minister for Finance. The submission is available to download by clicking [here](#). The theme of the submission was “Encouraging Business and Job Creation” and the main issues and recommendations that we put forward were as follows:

## 1. Income tax

At the moment the highest marginal tax rate on income (including PRSI and levies) is 55 %, which we believe is now at a “tipping point”. Raising further Exchequer funds by increasing the marginal rates should be avoided, since it is likely to act as a disincentive to work and invest in Ireland.

With 50 % (and rising) of income earners currently paying no tax, the income tax base needs to be broadened to ensure that the burden is spread more evenly over the income earning population.

## 2. Property Tax/ Water Charges

ITI set out 4 key principles of best practice tax administration which should be considered if a property tax or water charge system were to be introduced.

## 3. Universal Social Contribution (USC)

ITI highlighted a number of significant issues concerning the introduction of a USC – its effect on the aggregate marginal tax rate (see above), the definition of the base, the income tax versus social security debate, the simplicity of administration and the lead-in time.

## 4. Tax measures to encourage investment and assist indigenous business

Three key proposals were made by ITI to help unlock private sector capital and encourage job creation:

- (i) Specific proposals to encourage greater investment by pension funds in established, unquoted Irish companies;
- (ii) Tax relief for individuals making loan capital investments in the Irish SME sector;
- (iii) Government assistance for employers who recruit staff from the Live Register – employers could claim 50 % of the employee’s basic social welfare payment to cover salary costs for 12 months.

## 5. 12 ½% rate

ITI would like to see Government reiterate their commitment to the corporate tax rate in the Four Year Budgetary Plan which would help confirm confidence amongst investors.

## 6. Special Assignment Relief Programme (SARP)

ITI recommended that the definition of “relevant emoluments” under section 825B TCA 1997, be extended to include share based remuneration.

## 7. Review of the Appeals System

ITI is seeking reform of the tax appeals system and a new legislative base for the operation of tax appeals to be introduced without delay.

## 8. Establishment of a National Business Forum

ITI believes that a National Business Forum should be established to consider Ireland’s medium to long term tax strategy. The forum would involve representatives from government, business and the profession and any other stakeholders with an interest in tax strategy.

# Legal Professional Privilege

On 13 October 2010, the Court of Appeal in the UK ruled that legal professional privilege (LPP) does not extend to cover communications by tax advisers who are not lawyers. The case was an important milestone in the debate on LPP, so much so that interventions had been made in

the case by the Institute of Chartered Accountants in England and Wales (supported by the Chartered Institute of Taxation), the Bar Council and the UK Law Society.

Readers should note that the decision in the Prudential case relates only to

legal advice privilege (and not litigation privilege) and that Prudential’s application for leave to appeal to the Supreme Court was denied by the Court of Appeal. Leave may still be given by the Supreme Court directly.

# Code of Practice for Revenue Audit

Following the publication of the Code of Practice for Revenue Audit, ITI held a seminar tour dealing with Revenue Audits and Revenue Powers. We have selected a number of common queries raised during that tour in relation to the new Code, and created an FAQ area on our dedicated Revenue Audit webpage. Questions include:

- » When does the Code take effect?
- » How do I know whether the correspondence indicates an audit, investigation or something else?

- » How long do I have to make a Qualifying Disclosure?
- » Does the penalty have to be paid when the disclosure is made?
- » If the taxpayer has difficulty paying, can a Qualifying Disclosure still be made?
- » What is the "5 year rule"?

These and other FAQs are available [here](#).

For detailed information on the new Code and practical tips on dealing with audits

our recording of the Dublin Audit tour seminar is available to purchase [here](#).

Our forthcoming publication *Revenue Audits and Investigations – The Professional Handbook* is available to order now by clicking [here](#). In the book, three of the top Revenue Audit practitioners in the country Mark Barrett of Moore Stephens Nathans, Tim Quinlivan of Sheil Kinnear and Julie Burke of JM Burke Tax Solicitors provide a step-by-step guide to the 2010 Code and on the practicalities of advising clients in the current environment.



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# CPD Reminder

Associates, Fellows and Tax Technician members of ITI are reminded that CPD requirements for the first CPD period (i.e. 2010) must be completed by 31 December 2010. This leaves just over two months to complete the requirements outlined below.

The total CPD requirements for 2010 are as follows:

	Structured (hours)			Unstructured (hours)		
	Tax Technical	Other	Total	Tax Technical	Other	Total
Associates / Fellows	11.25	3.75	15	c. 17	c. 5.5	22.5
Tax Technician Members	c. 5.5	c. 2	7.5	c. 8.5	c. 2.75	11.25

## Free Online CPD

In order to assist you in meeting your requirements above, ITI have provided to date 10 hours of free online tax technical structured CPD as follows:

1. SME Client Relationship Management (Annual Conference 2010) by Andrew Clarke (see below).
2. International Developments (Conference for Recently Qualified AITI Registered Tax Consultants) by Peter Vale, Grant Thornton.
3. Pensions Update 2010 (Part 2) by Aidan McLoughlin, Independent Trustee Company.
4. Pensions Update 2010 (Part 1) by Clive Slattery.
5. Tax Aspects of a Marital Breakdown (CPD Round Up Conference 2009) by Finola O'Hanlon, O'Hanlon Tax Ltd.
6. The Upside of a Downturn (Annual Conference 2009) by Mike Gaffney, KPMG.
7. Employed v Self-Employed Status – Current Issues by David Clancy, Clancy & Associates.
8. The Revenue Audit Regime by Mark Barrett, Moore Stephens Nathans.
9. VAT (1) Back to Basics TaxCast by Frank Mitchell, BL.
10. Tax Clauses in Commercial Contracts by Jeanette Doonan, McCann FitzGerald.

To access these TaxCasts, you will need to first log onto the members' area of the [ITI website](#). You will need your login and password for this. If you do not have those details to hand, just click [here](#) for an instant e-mail reminder.

Click [here](#) for details of upcoming seminars and conferences.

### Further Information

We have created a dedicated webpage with FAQs on CPD on the Institute website, available by clicking [here](#). We will continue to update these FAQs on the basis of common queries we receive from members. If you are encountering any problems or have any queries on CPD, please contact Laura McTiernan on [lmctiernan@taxireland.ie](mailto:lmctiernan@taxireland.ie).

## Free TaxCast – SME Client Relationship Management

This edition's TaxCast is presented by Andrew Clarke and was recorded at our Annual Conference 2010 on 23 April 2010. The presentation covers the following:

- » Terms of Engagement and Delivery
- » Fees, retainers, billing and debtor management
- » Business Development

**CPD Hour(s): 1**

The TaxCast together with accompanying slides are available [here](#).

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