

TAX BRIEFING



ISSUE 4 - October 1991

Introduction

The information contained in the issues of Tax Briefing published to date has largely been on matters which we have considered to be of interest or of relevance to tax practitioners. While reaction has in the main been complimentary, we have received very little by way of concrete suggestions as regards matters that practitioners would like to see covered in Tax Briefing.

Are these matters that you would like to see covered in Tax Briefing? If there are, please write to me. By writing, you will ensure that Tax Briefing remains relevant to the needs of Tax Practitioners.

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Interest Pursuit Programme

There has been a significant increase in the level of compliance by taxpayers in the submission of returns and timely payment of taxes in recent years. This makes it all the more important to ensure that the non-compliant minority do not secure an unfair commercial advantage over the majority of taxpayers.

The Revenue Commissioners have announced details of the next phase of their campaign to improve compliance by the active and rapid pursuit of interest due on the late payment of tax. The Commissioners are determined to implement their interest pursuit strategy firmly and thoroughly across all taxheads. In their view, the key to a successful tax collection system is to secure timely payment of current taxes. Timely payment is the most sensible option for the taxpayer also.

Some of the additional tax collection staff, which the Minister for Finance announced in his 1991 Budget speech were being made available, have accordingly been assigned to accelerate the pursuit of interest on late payments. A new computer system which analyses payment patterns will ensure that late payers will quickly be identified for pursuit.

Some practitioners may have clients with an unsatisfactory payment pattern who have already received or will shortly receive letters from the Collector-General demanding payment of interest. Failure to make immediate payment of this interest will result in rapid follow-up enforcement action. Where the Sheriff becomes involved, seizure powers will be used just as vigorously for

interest as they are for tax and the taxpayer will also become liable for the Sheriff's costs.

Interest payable to the Revenue is at a high rate (1.25% per month) and it is not allowable as a business expense. The active pursuit of interest under the Interest Pursuit Programme serves to underline the reality that delaying tax payment makes poor business sense.

1. Income Tax

1.1 Self Assessment - Commencements & Cessations

In September 1988, the Revenue commissioners issued a Statement of Practice for commencement & Cessation situations regarding the payment of preliminary tax and the filing of returns under self assessment. The introduction of the Current Year Basis of Assessment and the changed return filing date gave rise to the need to modify that Statement of Practice.

The Revenue Commissioners accordingly issued a further Statement of Practice (SP-IT/2/91) in September 1991, entitled: "Self Assessment - Income Tax"

Payment of Preliminary Tax and Filing of Returns for Commencing Sources under Current Year Basis of Assessment.

Copies of this Statement were issued to all practitioners on our mailing list in September 1991. Further copies may be obtained from any Tax Office.

1.2 Self Assessment - Repayment of Overpaid Tax

The question of entitlement to interest on overpaid tax gives rise to a lot of correspondence. Under Self Assessment, interest is payable where a person pays an amount of Preliminary Tax which is greater than the final liability to tax for the particular chargeable period. The excess amount paid is

repayable with interest (Section 12(7), FA 1988).

A Preliminary Tax payment retains this characteristic regardless of the number of time an assessment is amended or the reason for the amendment. Accordingly, if 1991/92 Preliminary Tax of (say) £30,000 is paid by 1 November 1991, and final 1991/92 liability to tax is found to be £27,500 on making an assessment, the balance of £2,500 is repayable with interest. It does not matter what gives rise to the overpayment it may be that income did not amount to as much as was expected or some additional allowance or relief, not anticipated when preliminary tax was paid, may be due. Whatever the reason, once the overpayment is an overpayment of Preliminary Tax, it is repayable with interest.

Under Self Assessment, interest is not payable on repayments arising in any other circumstances except for repayments arising from amendments to assessments under Section 20, F.A. 1988 - this applied for 1988/89 and 1989/90 years of assessment only.

1.3 Self Assessment - Revenue Audit - Interest on additional liability

Practitioners are asked to note that statutory interest at the rate of 1.25% per month or part of a month, is charged on all tax liability arising from a Revenue Audit. Failure to pay the interest will result in enforcement action by the Collector-General. We hope that by making this clear, unnecessary debate on the matter will be avoided in concluding audits with Inspectors.

1.4 Pension Scheme for Doctors in the General Medical Service - Tax Treatment of contributions.

Some confusion has arisen as to the basis on which relief for contributions to the above scheme are allowable.

The contribution allowable for a year of assessment are the contributions paid in the basis period for that year. Accordingly, a doctor whose accounts are prepared annually to the 31st of March would qualify for relief in 1989/90 in respect of contributions paid in the year to 31 March 1989 (preceding year basis). With the change to a current year basis from 1990/91 in respect of contributions paid in the year to 31 March 1991. In the same way as the profits of the drop-out year (y/e 31 March 1990 in this example) do not come into the reckoning for assessment purposes, neither do contributions paid in the same period come into the reckoning for relief.

1.5 Mortgage Interest Relief & Remortgaging

Practitioners will be aware of the increased publicity given in recent times in the press and elsewhere to the apparent attractiveness of remortgaging, in certain circumstances.

We would remind practitioners that relief in respect of personal borrowing is now largely confined to borrowing which is used only for the purposes of purchase of or improvement to a sole or main residence. Leaflet 18, titled "Tax Relief for Interest paid on Personal Borrowings", issued by the Revenue Commissioners in October, 1990 set out the conditions applicable to obtaining tax relief on borrowings, with particular reference to "Remortgages" and the use of borrowings for "qualifying" and "non-qualifying" purposes.

Dublin Tax District - temporary move.

While refurbishment work is being carried out on the premises at Lr Grand Canal Street, part of Dublin Tax District has been moved to Clanwilliam Court.

Taxpayers whose surnames begin with B,G,H,I,J,L,N and U to Z, will be dealt with at Clanwilliam Court, until further notice.

The telephone number for Clanwilliam Court is 789922.

All correspondence (including Tax Returns) in respect of clients in the above range should continue to be sent directly to:

Dublin Tax District, Lr. Grand Canal Street, Dublin 2.

1.6 Control of Farmyard Pollution - Capital Allowances

Practitioners will be aware that accelerated capital allowances cease, in general, to be available in respect of expenditure incurred on or after 1 April 1992.

However, Section 25, Finance Act 1991, preserves accelerated allowances (50%max.) in respect of capital expenditure incurred before 1 April 1993, where

(I) the work carried out is for the control of farmyard pollution and

(II) where it has been grant-aided under either of the following EC Structural Fund programmes:

(A) The scheme of Investment Aid for the Control of Farmyard Pollution (Council Regulation (EEC) No. 2052/88) or

(B) The Farm Improvement Programme (Council Regulation (EEC) No. 797/85).

Practitioners are advised that they can accept that work which is grant-aided under (a) above, is capable of qualifying for accelerated capital allowances.

However, under the Farm Improvement Programme [(b) above], grants are paid for various farm improvements. They are not confined to works for the purpose of control of farmyard pollution. Practitioners should therefore ensure, in respect of works which are grant-aided under the Farm Improvement

Programme, that accelerated capital allowances are only claimed in respect of expenditure on works for the purposes the control of farmyard pollution.

1.7 Use of Farm Profile - Form AG12

Practitioners should note that farmers who wish to switch from the making of a Tax Return on Form 11 and accounts to the Farm Profile can only do so with the approval of their Inspector of Taxes. This approval will readily be granted in cases for which the Farm Profile was intended. The Farm Profile may not be used as a substitute for accounts in cases where an Inspector of Taxes has refused to allow a Farm Profile to be used. Use of Farm Profiles will generally not be allowed where:

- 1) the extent of the farming activities are exceptionally complex
- 2) the farming activities comprise intensive production or stud farming,
- 3) the farmer wishes to claim Stock relief, or has another trade,
- 4) the farming is carried on by a company.

Full accounts are required in such cases - A Farm Profile with adjustments for opening and closing stock is not acceptable.

2. Corporation Tax

2.1 Company Return Compliance

When Self Assessment was introduced, one would have expected the corporate sector (where professional advice on accounts and tax matters is the norm) to have been to the forefront in relation to fulfilling its obligations. In practice, however, we find that the level of company return compliance has, to date, been disappointing. A recent study has revealed that many companies that are actively trading - including members of

groups of companies - have not filed tax returns.

At this stage, these companies should be aware of the fact that the filing of returns is a fundamental obligation under Self Assessment. Non compliance from the corporate sector is accordingly difficult to understand. We would therefore ask practitioners to ensure that their corporate clients are fully aware of their duties in relation to return filing. This is particularly important where the company registered office is not located at premises which are under the immediate control of the company's officers and as a result they may not have seen all the publicity material or indeed the forms CT1 issued. In this situation, Revenue compliance operations may come as a complete surprise to some companies.

Practitioners should also point out to their corporate clients that, if it becomes necessary to initiate compliance / audit operations for failure to file returns, the non-compliant companies will be rigorously pursued up to and including prosecution. Some action in this regard can be expected shortly.

2.2 Advance Corporation Tax

Panel 32 of the form CT1 (Finance Act 1990) asks whether or not the company is liable to pay A.C.T. in respect of distributions made in the accounting period. If the answer is yes, the company is required to attach completed Form ACT1 to the form CT1 for that period. Similarly, a claim under Section 47 of the Finance Act 1983 (distributions to certain non-resident companies) must be made on the form CT1 for the period.

Section 50 of the Finance Act 1983, as amended by Section 55 of the Finance Act 1990, requires the company to make a return of all distributions made by it in the accounting period and of all distributions

received by it from other resident companies in that period.

Accordingly, even where the company is not actually liable to pay Advance Corporation Tax for the accounting period e.g. where the aggregate amount of the tax credits in respect of the distributions received by the company in the accounting period exceeds the aggregate amount of the tax credits in respect of the distributions made by the company in that period, a return on form ACT1 must still be made for the accounting period and submitted with the form CT1 for the period.

2.3 Manufacturing Relief

Where a company wishes to claim Manufacturing Relief for an accounting period, it is required to enter the amount of the claiming panel 16 of the form CT1. It is not sufficient merely to calculate the tax at the reduced rate and enter this amount in panel 15 of the return.

As a reminder to practitioners who may not be entirely familiar with the formula for calculating manufacturing relief, an example follows

Calculation of Manufacturing Relief

Example

A company prepared accounts for the year ended 31 December 1990.

The profits for the accounting period are as follows:

Case I	50,000
Case V	<u>12,000</u>
Profits	62,000

Corporation Tax at 43% = £26,660

The Company's Total Sales for the period are 500,000
Manufacturing Sales are 400,000

Manufacturing Relief is calculated as follows:

$$26,660 \times \frac{400,000}{500,000} \times \frac{50,000}{62,000} \times \frac{33}{43} = 13,200$$

Summary :

Corporation Tax for year ended 31/12/1990	26,660
Manufacturing Relief	<u>13,200</u>
Liability	13,460

*Notes: For accounting periods ending on or after 1/4/1991 this fraction is 30/40

3. Capital Taxes

3.1 Residential Property Tax : Have your clients submitted their Residential Property Tax Returns?

The 1st of October 1991, was the deadline for making a timely return. If you have clients who have not made returns yet, they should not delay any further. A return (form R.P.I.) must be made if a person's residential property was worth more than £96,000 on 5 April 1991. This legal requirement applies even if the household income is below the income exemption limit of £28,500. If residential property tax is payable, payment should be sent with the return.

Forms R.P.I. are available from Tax Offices, main Post Offices, or from the Capital Taxes Branch in Dublin Castle. Telephone (01) 6792777, Extns. 2331 and 2332.

3.2 Stamp Duty - Stamp Duty now mandatory

The collection and enforcement of stamp duty - a major area of concern - has been addressed by Sections 94 to 100, and Section 130 of Finance Act 1991. These sections bring stamp duty into line with the collection

and enforcement provisions of other taxes by removing the effective voluntary nature of Stamp Duty that existed up to now.

The main features of the revised stamp duty regime for instruments executed on or after 1 November 1991 are as follows:

*the payment of stamp duty will be mandatory.

*Duty must be paid not later than thirty days after execution for an instrument (unless the instrument is lodged for adjudication, in which case payment must be made within fourteen days of the issuing of an assessment).

*Accountable persons are specified.

*There will be significant new penalties for fraud and negligence.

*Transfers of property for less than full consideration must be brought specifically to the attention of the Commissioners, and a statement of market value for the property must be provided.

*The Revenue Commissioners may raise assessment of duty, correcting assessments and additional assessments, even where an instrument is not presented to them.

*Penalties for late payment of duty are substantially revised, and increased in some cases. These penalties will apply to all instruments whenever executed, if presented for stamping on or after 1 November 1991.

*The impressing of an adjudication stamp on an instrument will not prevent the Commissioners from recovering additional duty where due.

*A wide range of people will be obliged to provide information relevant to a stamp duty liability.

*Understatement of market value in the case of gifts and understatement of consideration paid will expose parties to the deed to surcharges of up to 200% of the duty payable, as well as to prosecution for negligence or fraud.

*No change is made to the collection and enforcement procedures which already apply to instruments executed before 1 November 1991.

For the majority of those who pay stamp duty the changes will make little practical difference. However, the penalties for late payment have been increased, and anti-evasion measures have been considerably strengthened. It should be noted that the provisions of the Act are not retrospective. In order to allow time for taxpayers and tax practitioners to become aware of the new provisions the Act provides that they will only apply to instruments executed on or after 1 November 1991.

A comprehensive Statement of Practice (SP-SD/1/91) sets out the background to the changes and outlines the provisions. It also, where necessary, explains the rationale behind the provisions and indicates how they will be implemented by the Revenue Commissioners. Copies were recently posted to all practitioners on our mailing list. Further copies are available on request from the Stamp Duty Offices. Phone 6792777 exts. 2254 & 2256.

3.3 Levies

Payments in respect of the levy on Collective Investment Undertakings (Section 109, Finance Act, 1990) and the levy on Certain Premiums of Insurance (Section 92, Finance Act, 1982, as amended) for the quarter ended

30 September 1991 are due on or before 30 October 1991.

4. VAT

The following changes will come into effect on 1 January 1992.

(A) **Veterinary Surgeons** - The supply of services by veterinary surgeons in the course of their profession will become liable to VAT at the rate of 12.5%.

(B) **An Post** - The non-postal services of An Post will come within the scope of VAT. The public postal services i.e. sale of stamps, delivery of letters etc. will not be effected.

(C) **Hotels**; lettings of Immovable Goods - The scope of application of VAT will be extended to all establishments providing accommodation for visitors or travellers. Lettings of holiday cottages and holiday apartments, including time-shares, will be liable to the tax, as will the provision of holiday accommodation in caravans, tents, houseboats etc. The applicable rate will be 10%.

5. Collection-General

5.1 Tax Clearance Scheme

The Tax Clearance Scheme was introduced in June 1986 and was extended and modified in subsequent years. The latest changes in the scheme apply with effect from 1 September 1991. The purpose of the scheme is to ensure that state contracts/grants and haulage/carrier's licences are given only to those individuals or companies who can demonstrate that their tax affairs are in order by producing to the awarding bodies concerned a current tax clearance certificate.

Summary of Main Provisions

The scheme currently applies to the following activities.

(1) Public sector contracts of a value of *£5,000 (incl. of VAT) or more. The contracts in question would normally involve the supply of specific goods and services.

(2) State grants, subsidies, etc. of a value of *£5,000 or more (modified rules apply to payments under £5,000; payments under £500 are not subject to the scheme).

(3) Haulage/Carriers' licences.

[*The tax clearance threshold for State contracts and grants was reduced from £10,000 to £5,000 by the Minister for Finance with effect from 1 September 1991.]

The scheme is administered by the Tax Clearance Section, Collector-General's Office, Shelbourne House, Shelbourne Road, Dublin 4 (Tel. 01-606111) in respect of tenders/applicants who are permanently resident in the State. [Applications by non-resident tenders/applicants etc. for statements of clearance (in lieu of a tax clearance certificate) from the Revenue Commissioners are dealt with by Residence Branch, Dublin Castle (Tel. 01-6792777).]

The tax affairs (i.e. Income Tax, Corporation Tax, Capital Gains Tax, VAT or PAYE/PRSI) of each applicant must be completely up to date in order to qualify for a tax clearance certificate.

The Tax Clearance Section can usually process all applications for tax clearance certificates within six working days of receipt of same. Each tax clearance certificate is normally valid for a period of one year from the date of issue.

Applicants for State contracts/grants must promptly produce a tax clearance certificate

to the relevant public authorities as one of the preconditions of the award of such contracts and grants. Applicants for haulage/carriers' licences must be able to furnish either a current tax clearance certificate or a C2 (Sub-Contractor's Certificate) to the appropriate licensing authority viz. The Department of Tourism, Transport and Communications.

The official application forms - Form TC1 (Contracts;/Grants) and Form TC1A (Haulage/Carriers' Licences) - for a tax clearance certificate are issued to individual applicants by the relevant public bodies.

5.2 Taxpayer Service

In keeping with the spirit of the Charter of Rights, the Collector-General is committed to improving service to the taxpayer at every opportunity.

Practitioners could help in achieving fast and efficient service for themselves and their clients if all outstanding returns were submitted so that the correct liability could be quantified before contact is made with the Collector-General's office about payment of taxes due.

5.3 The Appointment of an Examiner

The Companies (Amendment) Act 1990, introduced in August 1990, provides a legal framework within which companies in financial difficulties may seek the protection of the Courts and petition for the appointment of an Examiner.

The purpose of the Act is to provide an opportunity of survival to companies which might otherwise go to into liquidation because of insolvency.

In many instances Revenue is a major creditor of those companies. A special section has been set up in the Collector-General's Office to deal with all

Revenue-related matters in Examiner cases i.e. payment of current taxes during the term of the Examiner and examination and agreement of schemes of arrangement where applicable etc.

The section is located on the 2nd Floor, St. Martin's House, Waterloo Road, Dublin 4, telephone 668666 X3005/3006.

5.4 Employers PAYE/PRSI Returns - Forms P35 - Penalties.

All employers who have failed to submit their forms P35 (End-of Year return of PAYE/PRSI) in respect of 1989/90 have been identified and it is expected that the majority of these will be successfully prosecuted before the end of 1991.

Those Employers who have failed to submit their forms P35 by the 30th April in respect of the relevant tax year can incur a penalty of £800 for each year for which the P35 was not submitted by the due date.

Action is about to commence in respect of 1990/91 and it is expected that substantial number of those cases will also be successfully prosecuted in the current year.