Issue 49 - August 2002

TAX BRIEFING

BOGUS NON-RESIDENT ACCOUNTS

Background

1.1 In May 2001 Revenue announced in *Statement of Practice SP-GEN 1/01 "Underlying Tax" on Funds Deposited in Bogus Non-Resident Accounts* that, having addressed the DIRT liabilities of financial institutions, it had moved on to Phase 2 of its response to bogus non-resident accounts. The *Statement of Practice* set out a voluntary disclosure scheme for bogus account holders which gave favourable treatment to account holders who made a full disclosure and payment to Revenue by 15 November 2001.

1.2 In the months prior to the 15 November deadline, there was extensive advertising by Revenue of this opportunity for settlement by account holders. Many took the opportunity being afforded to them and payments of €227m. (£179m.) were made under the voluntary disclosure scheme.

Purpose of this Article

2.1 The *Statement of Practice* set out the consequences of failure to disclose by 15 November 2001. This article confirms the position set out in the *Statement of Practice* and provides further detail in relation to the consequences of failure to avail of the voluntary disclosure scheme.

2.2 As was the case in S.P. - Gen 1/01 references in this article to bogus account holders do not include account holders who come, or may come, within the scope of

- The Ansbacher investigations, or
- Any investigations arising from, or related to, the Moriarty or Flood Tribunals.

Treatment under the Voluntary Disclosure Scheme

3.1 There were three elements in the treatment of bogus account holders set out in the *Statement of Practice* which were only available until 15 November 2001:

- The identities of the account holders concerned were not published
- The sum of interest and penalties due was capped at 100% of the unpaid tax, and
- Revenue gave a general assurance that it would not investigate the cases concerned with a view to prosecution.

3.2 Account holders who did not avail of the voluntary disclosure scheme by 15 November 2001 are not entitled to its benefits.

Treatment after the 15 November 2001 Deadline

Publication

4.1 Revenue gave notice in the *Statement of Practice* and subsequent publicity that, immediately after the 15 November 2001 deadline and as

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Editorial

The main features of this special issue of ***Tax Briefing*** are to highlight the revised Code of Practice for Revenue Audits and the treatment of Bogus Non-Resident Account holders after the 15 November 2001 deadline. The article on Revenue Audits provides an overview of the provisions of the new code and outlines some of the differences between the revised Code and the Code, which has been in operation for the last number of years. The article on Bogus Non-Resident Account holders confirms the position set out in Statement of Practice SP-GEN 1/01 and provides further detail in relation to the consequences of failure to avail of the voluntary disclosure scheme. ***Tax Briefing*** Issue 50 with Supplement will be published in September/October.

Niall Cody

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the first step in our enquiries concerning account holders who had not availed of the voluntary disclosure scheme, we would use our powers to identify those who had been holders of non-resident accounts. Revenue's enquiries began immediately after 15 November with the use of powers as promised. All subsequent settlements with bogus account holders will, therefore, involve publication of the identity of the persons concerned (see Paragraph 6.1) where the settlement exceeds €12,700.

Interest and Penalties

4.2 The aggregate amount of interest and penalties payable is not limited to 100% of the unpaid tax - there is no cap on interest and penalties payable:

- Settlements will involve payment of statutory interest
- Penalties will be payable in accordance with standard practice. But, there will be no mitigation as regards voluntary disclosure, as Revenue's enquiries and investigations have already begun.

Prosecution

4.3.1 The third element of the treatment of those disclosing by 15 November 2001 was the general assurance that Revenue would not initiate the investigation with a view to prosecution as regards any matter that was disclosed by the account holder. The deadline for availing of that general assurance has passed and "non-disclosers" are now liable to be selected for investigation with a view to prosecution.

4.3.2 In addressing any case of non-compliance with tax law, Revenue must decide whether it is more appropriate, taking account of all the circumstances, to investigate the case with a view to prosecution or with the objective of arriving at a monetary settlement covering the tax, statutory interest and penalties due. Enquiries in relation to the majority of account holders must, necessarily, be with a view to monetary settlement. Nevertheless, a significant number of bogus account holders will be investigated with a view to prosecution and Revenue is advancing its consideration of selected account holders for that purpose.

4.3.3 In the selection of cases for investigation with a view to prosecution, Revenue will distinguish account holders who are now cooperating fully, although belatedly, from those who are not. It is Revenue's intention that, so far as possible, selecting cases for investigation with a view to prosecution should not impede the settlement of other cases, where account holders are now willing to proceed, without delay, to make a full disclosure and settle their liabilities with full payment of all tax, interest and penalties.

4.3.4 While the general assurance in this matter in the *Statement of Practice* only applied to disclosures made before 15 November 2001 and any account holder may now be selected for investigation by Revenue with a view to prosecution, such investigations (whether of individuals or companies) will be initiated and continued in accordance with the following arrangements:

(a) Cases to be addressed will be dealt with in tranches. Before Revenue enquiry letters are issued, each tranche will be considered for investigation with a view to prosecution. Enquiry letters will subsequently be issued to those cases in the tranche who have not, in the course of the prosecution review process, been selected for investigation with a view to prosecution. The standard enquiry letter [see Appendix A] issued to these cases will state that Revenue is prepared to settle the matter on a tax, interest, penalties and publication basis (that is, without initiating an investigation with a view to prosecution) where there is cooperation, resulting in full disclosure and payment by the bogus account holder within the 60 day period beginning on the date specified in the standard letter.

(b) Where non-cooperation by an account holder persists after receipt of the standard enquiry letter, the status of the account holder will revert to being subject to (i) selection for investigation with a view to prosecution and (ii) loss of any penalty mitigation for cooperation.

(c) Where Revenue selects account holders for investigation with a view to prosecution, the standard enquiry letter, referred to above, will not be issued to those account holders. Instead, steps consistent with the carrying out of a criminal investigation will be undertaken. However, where, before Revenue has contacted the account holder for the purposes of such an investigation, the account holder makes a written application to Revenue requesting time within which to make a full disclosure and payment, Revenue

- Will issue the standard enquiry letter [see Appendix A] to the account holder requesting full disclosure and payment within 60 days with a view to monetary settlement and
- Accordingly, will not initiate or continue an investigation with a view to prosecution in the 60-day period specified in the enquiry letter.

It should be noted that an application by a taxpayer, requesting time within which to make a full disclosure and payment leading to monetary settlement, will only be agreed where Revenue has not

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already made contact with the taxpayer for the purposes of an investigation with a view to prosecution.

The written application to Revenue requesting time within which to make a full disclosure and payment should be sent to the account holder's local Tax Office. In the case of account holders who make their tax returns to Dublin Districts application should be made to:

Underlying Tax Project,
Revenue Commissioners,
5th Floor,
Hammam Buildings,
11-13 Upper O'Connell Street,
Dublin 1.

4.3.5 A number of enquiry letters in relation to non-resident deposit accounts have already issued this year before the publication of this article and the text of the standard enquiry letter. Those letters already issued will be treated for the purposes of this article as standard enquiry letters for which the 60-day period, within which full disclosure and payment is to be made, is deemed to end on 30 September 2002.

4.3.6 Where a disclosure in response to a standard enquiry letter is related to a bogus non-resident account that was held by a director of a company and funded from untaxed moneys extracted from the company concerned, the arrangements set out in paragraph 4.3.4 will extend to a full disclosure and payment by the company (see also paragraph 5.6).

Calculations

5.1 In calculating tax on the deposit interest, a credit will be given for the DIRT which should have been deducted and which has subsequently been accounted for by financial institutions as a result of the DIRT look-back audits.

5.2 The DIRT credit should be computed by applying the standard rate of income tax, for the year in which the interest was credited to the account, to the amount of interest actually credited to the account, that is, the interest actually received. The interest to be charged is the actual amount of interest credited to the account. The interest charged should not be regrossed to include the DIRT credit. Essentially, as regards previously undisclosed deposit interest of individuals, income tax is due at the difference between the higher or marginal rate and the standard rate for the years 1986/87 to 1992/93 - but is not due for later years.

5.3 For the purposes of computing liabilities and determining due dates for payment, liabilities (income tax, PRSI and levy) for years up to and including 1987/88 or, for VAT purposes, taxable supplies for periods up to and including March /April 1988 may be calculated on an aggregate basis, treating the aggregate amount as a liability of the 1987/88 tax year (or as taxable supplies of the March/April 1988 taxable period). A similar approach may be adopted as respects corporation tax liabilities for periods up to and including the company's accounting period ending in 1987/88. In computing liabilities on an aggregate basis, care should be taken to ensure that a credit for DIRT is not claimed in respect of deposit interest paid in pre-DIRT years, that is, in 1985/86 or earlier years.

5.4 Where records are not available for earlier periods, estimates which can be shown to be best estimates, based on reasonable assumptions by reference to the facts and circumstances of the case concerned, should be used.

5.5 Where the director of a closely-held company holds a bogus non-resident account, it may be difficult in practice to determine whether the undeclared moneys were originally owned by the company or the director. In general, in such cases the most practical way to calculate the undeclared liabilities, including VAT liabilities, will be to assume that the moneys and undeclared income belonged to the director, rather than the company, from the start.

5.6 Where, on the other hand, the moneys in a bogus account held by a director are treated as having been funded by untaxed moneys extracted from a closely-held company they should normally be regarded as additional remuneration of the directors. In addition to any VAT liability where the moneys concerned were undisclosed receipts, the company will have a PAYE/PRSI liability in respect of the moneys deposited in the bogus account from company funds. In such circumstances, no adjustment to the corporation tax liability will be treated as arising, whether to charge undisclosed receipts as profits or to deduct undisclosed remuneration from profits.

Full disclosure and payment

6.1 All undeclared liabilities must be stated and paid - not just tax liabilities related to bogus non-resident accounts. Disclosures in response to the standard enquiry letter must include the following:

(a) particulars of all bogus non-resident accounts concerned, i.e. the name of the financial institution and the account number in respect of each account,

(b) a statement of the sources, including capital transactions, from which the chargeable amounts not previously disclosed arose,

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(c) sufficient information to enable the basis for any estimates or assumptions made, or other matters crucial to the calculation of tax, interest or penalties, to be understood,

(d) a statement on a year-by-year basis of the amounts of

(i) tax, duties, PRSI and levies due, and

(ii) interest and penalties due, and

(e) a declaration in the following terms [subject to Part (1) of the declaration not being required where the total settlement does not exceed €12,700]:

"(1) I understand and accept that my name, address, occupation or description of business, the total tax paid, the total interest and penalties paid and the total amount paid in respect of what will be identified as a 'bogus non-resident account case' will be published by Revenue in accordance with Section 1086 of the Taxes Consolidation Act, 1997.

(2) I declare that to the best of my knowledge, information and belief all statements that I have made in this disclosure are correct and complete."

6.2 The disclosure must be accompanied by a payment of the full tax, interest and penalties due.

6.3 While Revenue will be primarily focussing on account holders who refuse to cooperate and disclose the amounts of tax, interest and penalties due, auditors in each region will examine a representative selection of disclosures, made in accordance with Paragraph 6.1 in response to the standard enquiry letter. The computations, records and documents supporting disclosures must, therefore, be retained for inspection, on request, by Revenue.

APPENDIX A

Standard Enquiry Letter: Registered post

Tax Enquiry

Dear Sir/Madam,

I have information that you hold or have held a non-resident deposit account.[i] Please address the following urgently:

(1) Do you hold or have you held a non-resident deposit account?

(2) Have you any undeclared tax liabilities, whether related to the non-resident deposit account or otherwise, for any year of assessment or taxable period?

(3) If you hold or have held a non-resident deposit account and your answer to question (2) is "no", please explain the basis for your claim that you have no undeclared tax liabilities.

Please let me have your reply to the above enquiries by DD MM YY [i.e. date of issue plus 30 days]. In the absence of a reply, Revenue officers may call to you without further notice.

(4) If you have any undeclared tax liabilities for any year of assessment or taxable period, please supply details of all those undeclared liabilities and the related interest and penalties within the 60-day period beginning on DD MM YY [i.e. date of issue plus 7 days] and ending on DD MM YY together with a remittance to cover

- those tax liabilities, and
- the related interest and appropriate penalties.

Where there is cooperation, leading to full disclosure and payment by you, Revenue is prepared to deal with any matters arising in relation to your undeclared tax liabilities on the basis that the tax, interest and penalties concerned are to be paid in a settlement to be published under Section 1086 (2)(c)of the Taxes Consolidation Act 1997.

Yours faithfully,

c.c. Agent

[i] Where the standard enquiry letter is issued on foot of a written application from the taxpayer requesting time to make a full disclosure and payment the following sentence will be substituted for the opening sentence of the letter:
I refer to your application of DDMMYY for time to prepare a full disclosure involving a non-resident deposit account.

CODE OF PRACTICE REVENUE AUDITS

Introduction

A revised Code of Practice is being introduced for Revenue Audits. This article provides an overview of the provisions in the new Code and highlights some of the differences between the revised Code and the Code which has been in operation for the last number of years.

Before finalising the revised Code, a wide consultative process was carried out with members of staff and representatives of the accountancy and tax practitioner professions. The revised Code is Revenue's considered response to the issues raised. We are confident, that like its predecessor, the revised Code will lead to further benefits for both Revenue and practitioners alike and contribute significantly to an improved culture of tax compliance.

Major Changes in the Revised Code

The key changes in the revised Code are outlined in this article. They are as follows:

- The scope of the Code
- Mitigation of Penalties
- Qualifying Disclosures
- Self Correction of Returns
- VAT "No Loss of Revenue"
- CGT Valuations
- Commencement

Scope of Code of Practice

The original Code covered Income Tax (including inter alia PAYE/PRSI and RCT), Corporation Tax, Capital Gains Tax and VAT. The scope of the Code is being extended to cover audits of Capital Acquisitions Tax and Stamp Duties. This reflects the major restructuring taking place within Revenue and an objective within Revenue that all audits will operate under one general code. (Modifications apply in respect of some individual taxes and duties). The Code will be extended, in due course, to cover audits of Customs and Excise.

Mitigation of Penalties

One of the major changes in the revised Code concerns the Revenue approach to the mitigation of penalties. In the original Code, penalties were mitigated based on Co-operation, Voluntary Disclosure, and Scale and Gravity. A "one size fits all" approach resulted and, in general, the only factors, which influenced the mitigation of penalties, were factors which took place after the default had occurred. The new code addresses this issue by introducing a level of mitigation based on the category of the default which gave rise to the penalty.

The other major change in the Code is to stipulate that, to avail of the substantial levels of mitigation, which arises from the making of a disclosure, such a disclosure must be made in writing and be signed.

Adjustments which do not attract penalties

Innocent Error

The revised Code specifically recognises that not every type of an adjustment, which arises during the course of a Revenue audit, will result in a penalty. Fraud or negligence must be present before a penalty can arise.

Technical Adjustments

These are adjustments that arise from differences in the interpretation or application of legislation. The revised Code sets out the conditions to be met for a technical adjustment not to attract a penalty. The auditor must be satisfied that:

- Due care has been taken by the taxpayer, and
- The treatment concerned was based on an interpretation of the law which could reasonably have been considered as likely as not to be correct.

The treatment of the position taken by a taxpayer in relation to a particular item depends on a number of factors such as:

- Whether an expression of doubt was made under the provisions of the Taxes Consolidation Act 1997 or the VAT Act 1972
- The complexity of the relevant legislation
- The amount of legal precedent available
- The guidance available including Revenue Statements of Practice and Tax Briefing
- The tax implications of the decision taken. A taxpayer who takes a position on a matter which has significant tax consequences, is expected to take due care.

Mitigation Table

The new table for the mitigation of penalties in the revised Code is set out across. The mitigation of a penalty will depend on the following factors:

- The category of tax default within which the offence falls
- The level of co-operation received
- Whether the taxpayer has made a qualifying disclosure.

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Category of Tax Default	Tax-geared Penalty	Net Penalty after mitigation where there is:		
		Co-operation only	Co-operation and a Prompted Qualifying Disclosure	Co-operation and an Unprompted Qualifying Disclosure
Deliberate Default	100%	75%	50%	10%
Gross Carelessness	40%	30%	20%	5%
Insufficient Care	20%	15%	10%	3%

Fixed Penalties

The Tax Acts include many provisions where fixed penalties (normally relatively small) can be applied. The tax-geared penalty collected under the provisions of the revised Code is deemed to include any fixed penalty due.

De Minimis Exclusion

Penalties will be mitigated to nil where relatively minor shortfalls in the Insufficient Care category occur. If, as a result of an audit, the total tax shortfall in respect of which penalties are computed does not exceed €3,000 and the shortfall is exclusively within the Insufficient Care category, no penalty will be applied.

For this exclusion to apply, all of the tax defaults which attract a penalty and which arise during the course of the audit must be in the Insufficient Care category. If a tax default arises in any of the other two categories, the exclusion does not apply.

For example, an audit is carried out and there are tax shortfalls in a number of categories of default totalling €10,000, of which €3,000 falls within the Insufficient Care category. In this case, the penalty will be computed by reference to the total shortfall of €10,000.

Publication

The Finance Act 2002 contains changes to the publication provisions. Any settlement where the penalty element in the settlement does not exceed 15% of the amount of the tax included in the settlement will not in future be published. This effectively means that publication of the name of the taxpayer will not apply to any tax shortfall in the category of Insufficient Care, provided full co-operation is received from the taxpayer during the course of the audit.

Categories of Tax Default

There are three categories of tax default, by which penalties are mitigated in the revised Code. They are as follows:

- Insufficient Care
- Gross Carelessness
- Deliberate Default.

The following paragraphs outline how the new mitigation scheme will operate in practice.

Insufficient Care

At the core of the revised Code is an emphasis on the obligation on taxpayers to take the appropriate amount of care to ensure that correct returns for tax purposes have been made. The table shows that the taxpayer who takes insufficient care in making a declaration or return is liable to pay a penalty.

To fall within the category of Insufficient Care, the test to be applied is whether the taxpayer has taken the care that a reasonable person should take to meet his/her tax obligations.

For example, a taxpayer whose only explanation for omitting an amount of income from a tax return was that he/she forgot, would not, in the absence of any other relevant factors be accepted as having taken reasonable care.

The following are among the factors that are taken into account in determining whether a penalty in the category of Insufficient Care is to be applied.

- The internal controls in place
- The efforts the taxpayer had taken to resolve the issue
- The size and nature of the business
- The standard of record keeping in the business
- The size of the tax at risk - the greater the tax at risk, the greater the care required
- The frequency of the errors made. A case that has frequent errors will be looked at in a different light than a case with an isolated small error.

This list is not exhaustive and does not replace the need to make a decision on the facts of each case.

The penalties applicable to a tax shortfall in the category of Insufficient Care are outlined in the table above. The shortfall penalty is initially mitigated to 20%. This can be mitigated further to a penalty of 15% if the taxpayer co-operates during the course of the audit. Greater mitigation is available if the taxpayer makes either a prompted or unprompted qualifying disclosure.

Gross Carelessness

A taxpayer does not have to act dishonestly to find that he/she has acted with gross carelessness. Rather it is sufficient that the taxpayer's behaviour displayed a high degree of carelessness and indifference to the consequences.

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A taxpayer would be seen to behave with gross carelessness if:

- He or she acted in such a way which created a risk of a tax shortfall occurring
- The risk would have been foreseen by a reasonable person as being substantial, having regard to the likelihood of the consequences occurring, and the extent of those consequences (e.g., the size of the tax shortfall)
- When the taxpayer acted, he or she was either indifferent to the possibility of such a risk, or recognised that such a risk was involved and still ignored it.

Indicators consistent with gross carelessness on the part of the taxpayer would include the following, to the extent that they lead to significant tax shortfalls:

- Estimation of accounts items
- Neglecting to categorise expenditure into allowable and disallowable categories for tax purposes
- Neglecting to take advice on an issue of interpretation when either a tax advisor or Revenue should have been approached for guidance.

Gross Carelessness is distinguished from the higher category of default, i.e. Deliberate Default by the absence of indicators in the facts and circumstances of the case that are consistent with intent on the part of the taxpayer to disregard his/her tax obligations.

Gross Carelessness is distinguished from Insufficient Care primarily by reference to the size of the tax shortfall relative to the correct tax liability concerned.

For general guidance the revised Code provides that if a tax shortfall arises from lack of due care on behalf of the taxpayer and the shortfall for the particular tax type exceeds 15% of the tax finally due for that tax type, then a penalty in the category of gross carelessness applies.

The 15% guidance is used only for distinguishing defaults in the category of Insufficient Care from those in the category of Gross Carelessness. It has absolutely no relevance whatsoever in determining whether a default in the category of Deliberate Default has taken place.

The 15% guidance is to be applied separately to each tax type and period in respect of which a return is due to be made by the taxpayer. Tax for this purpose includes Income Tax, Corporation Tax, Capital Gains Tax, VAT, Relevant Contracts Tax, Employers' PAYE/PRSI and levies, Capital Acquisitions Tax and Stamp Duties.

Audits can give rise to tax shortfalls in one or more of the default categories.

For example, a comprehensive audit is carried out for the year 2000/2001. The adjustments that arise as a result of the audit are outlined in the following table.

	Tax Shortfall	Final Liability
Income Tax	6,000	20,000
VAT	6,000	40,000
PAYE/PRSI	7,000	30,000

Assuming these defaults do not fall within the Deliberate Default category, the category of tax default appropriate to each element of the settlement is as follows:

- Income Tax- as the shortfall exceeds 15% of the final liability for the taxhead the appropriate category of default, is gross carelessness
- VAT - as the shortfall does not exceed 15% of the final liability for the taxhead, the appropriate category of default is insufficient care.
- PAYE/PRSI - as the shortfall exceeds 15% of the final liability for the taxhead the appropriate category of default, is gross carelessness.

The penalties applicable to a tax shortfall in the category of Gross Carelessness are outlined in the table above. The shortfall penalty is initially mitigated to 40%. This can be mitigated further to a penalty of 30% if the taxpayer co-operates during the course of the audit. Greater mitigation is available if the taxpayer makes either a prompted or unprompted qualifying disclosure.

Deliberate Default

This is the most serious category of tax default and involves a deliberate attempt to deprive Revenue of taxes that are lawfully due. This may include a taxpayer failing to return all the income of a business or obtaining refunds knowing that he or she is not legally entitled to them.

It arises where:

- The facts and circumstances of the case are consistent with intent to default, or
- The taxpayer's actions or omissions were likely to result in a tax default and those actions or omissions cannot be explained solely by carelessness.

Examples of indicators consistent with deliberate default would include:

- Omissions from Tax Returns
- Failure to keep proper books and records as required by tax law to enable the taxpayer's correct tax liability to be determined

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- Repeated omissions of transactions or a large single omission of a transaction in the books of the taxpayer
- Providing incomplete, false or misleading documents or information
- Claiming a refund of tax when not lawfully entitled to that refund
- Failure to operate fiduciary taxes
- Concealment of bank accounts or other assets.

This list is not exhaustive.

An example of deliberate default discovered during an audit is where sales were significantly understated over a number of years and the proceeds were lodged to a bank account not previously disclosed to Revenue.

The facts of this case indicate intent on the part of the taxpayer to deprive Revenue of taxes which are lawfully due. The appropriate category of tax default in this case is Deliberate Default.

The penalties applicable to a tax shortfall in the category of Deliberate Default are outlined in the table over. The initial shortfall penalty is 100%. This can be mitigated to a penalty of 75% if the taxpayer co-operates during the course of the audit. Greater mitigation is available if the taxpayer makes either a prompted or unprompted qualifying disclosure.

Co-Operation

As can be seen from the mitigation table over, there is a substantial degree of mitigation available to a taxpayer who co-operates throughout the course of the audit. In order to avail of this mitigation the Code sets out the following conditions:

- All books, records and linking papers must be made available for the auditor at the commencement of the audit
- All requests for information and explanations must be responded to promptly and fully
- All correspondence must be answered promptly and fully
- The audit settlement liability must be paid promptly.

Examples of a lack of co-operation include:

- Refusing reasonable access to the business premises
- Refusing reasonable access to the business records
- Failing to provide the auditor with information known to the taxpayer which could be used in determining whether a tax underpayment arises
- Delays by the taxpayer or agent during the course of an audit where there was no reasonable excuse for those delays.

Qualifying Disclosure

In the previous Code, there was no requirement that disclosures made must be in writing.

The revised Code introduces a new concept called a "qualifying disclosure". There are three main benefits which will arise if a qualifying disclosure is made. These are:

- Greater mitigation of penalties in line with the table already discussed
- Non Publication of the settlement
- Revenue's assurance as regards non-prosecution - See below.

The conditions attaching to a disclosure for non-publication purposes are contained in *Section 1086 (4) TCA 1997* and do not include the stipulation that the disclosure be in writing. The term Qualifying Disclosure has been introduced to draw a distinction between the conditions attaching to non-publication and those attaching to the other benefits. The main difference is that a qualifying disclosure must be made in writing while a disclosure for non-publication purposes need not be made in writing.

An **unprompted qualifying disclosure** is a disclosure made ***before*** the taxpayer is notified of an audit or contacted by the Revenue regarding an enquiry into his/her tax affairs.

A **prompted qualifying disclosure** is a disclosure made ***after*** a taxpayer is notified that an audit is to be conducted, but before an examination of the books and records or other documentation has begun.

The mitigation table sets out the mitigation benefits available for both types of qualifying disclosure. The level of mitigation available for an unprompted qualifying disclosure is substantially greater than that which applies to a prompted qualifying disclosure. This reflects the importance that Revenue places on such disclosures and the benefits which are available to taxpayers who regularly review their tax compliance position.

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Procedures for preparing Qualifying Disclosures

The following conditions must be satisfied for a disclosure to be a qualifying disclosure for the purpose of mitigation of penalties:

- The disclosure must be made in writing and signed by or on behalf of the taxpayer
- The disclosure must
  - In the case of all disclosures, state the amount of all previously undeclared liabilities to tax, interest and penalties for all taxheads and all periods, which were liabilities undisclosed by reason of deliberate default, and
  - In the case of a prompted disclosure state the amount of all previously undeclared liabilities to tax, interest and penalties, for any reason other than deliberate default, for all taxheads and all periods within the scope of the audit and all related liabilities for taxheads or periods not within the scope of the initial audit.
- The disclosure must be accompanied by a payment in settlement of the total liability.

Qualifying Disclosure - Exclusions

A disclosure will not be a qualifying disclosure if any of the following circumstances apply:

- The disclosure is incomplete by reference to the conditions set out above
- Before a disclosure of a tax default was made by the taxpayer, Revenue had made an enquiry or begun an investigation relating to the tax defaults and had contacted the taxpayer, or a person connected with the taxpayer, in that regard
- Matters the tax consequences of which are included in the disclosure have become known, or are likely to become known to Revenue through its own investigations of a class of cases, such as Ansbacher cases, or through investigations conducted by other agencies of a class of cases
- Matters the tax consequences of which are included in the disclosure, come within the scope of an inquiry wholly or partly carried on in the public domain
- The taxpayer has been linked, or is about to be linked, publicly with matters the tax consequences of which are included in the disclosure.

Time to prepare Qualifying Disclosure

It is obviously important that a qualifying disclosure is comprehensive and fulfils the conditions as set out above. Revenue recognise that a substantial amount of work may be necessary to prepare such a disclosure. Therefore, Revenue will allow a period of time, not exceeding 60 days, to prepare such a disclosure. To avail of this timeframe, Revenue will need to be informed of the taxpayer's intention to make a qualifying disclosure.

To avail of the 60-day period in the case of an unprompted qualifying disclosure, the taxpayer must notify the Audit District of the intention to make a disclosure before:

- A notification of audit is received, or
- The taxpayer is contacted by Revenue regarding an enquiry into his/her tax affairs.

In the case of a prompted qualifying disclosure the Audit District must be notified of the intention to make the disclosure:

- Within 14 days of the notification of an audit, or
- Within 14 days of a desk or verification contact being made.

During the 60-day period the taxpayer/agent can contact the Audit District to discuss the appropriate tax default category, if any, for the tax shortfall, or any other matter.

The period of 60 days will begin on the day notification was given to Revenue of the intention to make a disclosure. The taxpayer will be informed in writing of this time period.

As already mentioned, the qualifying disclosure arrangements do not affect the entitlement of the taxpayer, who has been notified of an audit to make a disclosure, for the purpose of avoiding publication, at any time before an examination of the books and records or other documentation begins.

Format of Qualifying Disclosure

All qualifying disclosures should include the following:

- A statement of all sources, including capital transactions, from which the tax shortfall arose
- A statement including computations together with the disclosure of estimates used if any, of the amount of tax, duties, PRSI and levies due for each period concerned
- A statement, including computations, of the amount of the interest and penalties due for each period concerned
- A declaration from the taxpayer that the disclosure is correct and complete to the best of the taxpayer's knowledge.

The revised Code provides that the taxpayer need not describe the portion of the payment which refers to penalties as penalties but may instead describe it as a payment on account without prejudice.

CODE OF PRACTICE REVENUE AUDITS

Examination of Disclosure

Revenue recognise that taxpayers are entitled to know if the qualifying disclosures made are being accepted or are going to be examined. The policy, set out in the revised Code, is as follows:

A selection of unprompted qualifying disclosures will be examined for accuracy. If such a disclosure is not selected for examination, the taxpayer is informed that on the information to hand Revenue do not propose to make further enquiries.

All prompted qualifying disclosures will be examined to verify the details disclosed. Additional underpayments arising from this inspection will not negate the benefits from the disclosure if such underpayments are not significant.

Assurances regarding investigation with a view to prosecutions if Qualifying Disclosures are made

Where a qualifying disclosure is made, Revenue will not initiate an investigation with a view to prosecution of the taxpayer.

A taxpayer may be investigated with a view to prosecution where:

- A disclosure of tax defaults, which is a qualifying disclosure for the purposes of mitigation of penalties, has not been made by the taxpayer, or
- A disclosure of tax defaults has been made by the taxpayer which is incomplete, or
- Before a disclosure admitting a tax default was made by the taxpayer, Revenue had made an enquiry or begun an investigation relating to the tax default and had contacted the taxpayer, or a person connected with the taxpayer, in that regard, or
- The taxpayer is one of a class of taxpayers, such as Ansbacher cases, being investigated by Revenue or other agencies, or
- The taxpayer comes within the scope of an enquiry wholly or partly carried on in public, or
- The taxpayer is linked or about to be linked, publicly with matters which may involve tax default.

Having considered such cases Revenue may decide to proceed on the basis of investigating with a view to prosecution or on the basis of seeking a monetary settlement.

Second (or subsequent) Disclosures

To encourage compliance and deter evasion the level of mitigation of penalties associated with qualifying disclosures is restricted in respect of second and subsequent disclosures which relate to defaults in the categories of Deliberate Default and Gross Carelessness.

This effectively gives a taxpayer a once only chance to avail of the full benefits attaching to a qualifying disclosure if the default is in either of these categories.

The restricted mitigation is as follows:

- The mitigation of penalties, for a second qualifying disclosure in these categories is to be restricted to 50%
- In the event of a third or further qualifying disclosure in these categories, penalties will not be mitigated
- A disclosure of tax defaults, which are tax defaults that occurred before a change of ownership (within the meaning of Paragraph 1, Schedule 9 Taxes Consolidation Act, 1997) of a company, will be disregarded in considering the application of this Section to a qualifying disclosure made after the change of ownership in so far as the tax defaults disclosed after the change of ownership occurred after that change. (This is to ensure that the new owners of a company will not lose the benefits of a first disclosure due to a disclosure already made by the previous owners)

Self-Correction

The revised Code introduces a new concept of self-correction of tax returns. Revenue wishes to encourage taxpayers to regularly review their compliance position and is introducing a timeframe within which corrections can be made to tax returns without any penalty arising. Taxpayers will be allowed to self-correct tax returns, without penalty, subject to the following conditions:

- The taxpayer must notify Revenue of the adjustment to be made
- The taxpayer must include a computation of the correct tax and statutory interest payable
- A payment in settlement must accompany the submission
- For bi-monthly remitters of VAT if the net underpayment is less than €5000, the amount of the tax can be included (without interest or notification to Revenue) as an adjustment on the next VAT return to be submitted.

The following time limits will apply in respect of self-correction:

- For Income Tax, Corporation Tax and Capital Gains Tax, the self-correction must take place within twelve months of the due date for filing the return
- For VAT the self correction must take place before the due date for filing the Income Tax or Corporation Tax return for the chargeable period within which the relevant VAT period ends

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CODE OF PRACTICE REVENUE AUDITS

Continued from page 11

- For the PAYE/PRSI annual return, the self correction must take place within twelve months of the due date for filing the annual return
- For Relevant Contracts Tax, the self-correction must take place within twelve months of the due date of filing the annual return.

The benefit of self- correction will not apply after Revenue has notified a taxpayer of an audit or contacted the taxpayer regarding an enquiry or investigation relating to his or her tax affairs.

Self- correction in accordance with this section will not result in an audit. However, an audit of the return may arise based on normal selection procedures.

Once the time limits listed above have elapsed the taxpayer will still be entitled to benefit from a qualifying disclosure.

Examples of self-correction are as follows:

- During the preparation of the accounts for the year ended 31 December 2002, the agent while conducting a reconciliation between the sales per the VAT returns and the sales per the accounts noticed that the 21% sales per the VAT returns were understated by €30,000. Because of this new provision to self-correct, the agent can notify Revenue of the adjustment that needs to be made and submit a payment for the relevant tax and statutory interest with this notification. A penalty will not be applied and the case will not be selected for a Revenue Audit because of this self-correction.
- A taxpayer discovers when preparing the November/December 2002 VAT Return that he or she has incorrectly claimed input credits amounting to €3,500 in the September/October 2002 VAT Return. The taxpayer can now self-correct this error in the November/December 2002 without having to notify Revenue and without incurring an interest charge.

VAT "No Loss of Revenue"

Revenue has reviewed its position in respect of what came to be known as "No Loss of VAT" cases. The resultant policy is set out in the revised Code.

New Procedures

The new procedures are as follows:

- Notwithstanding any previous instructions, interest and penalties are to be collected, in addition to the relevant VAT in all cases other than the "group case" specified below
- Where the taxpayer proves, to the satisfaction of the Auditor, that "no loss of VAT could be claimed, the penalty for the non operation of VAT will be mitigated to the lesser of 3% of the VAT underpaid or €60,000. It is a matter for the taxpayer to prove that this penalty mitigation should apply. This mitigation does not apply where:
    - There has been a general failure to operate VAT, or
    - There are suppressed supplies.

"Group Case"

Interest and penalties will not be pursued in respect of VAT on transactions, other than supplies to exempt or partially exempt companies:

- Which are transactions between the members of a group of companies, and
- Where "no loss of revenue" could be claimed in respect of those transactions.

The "group" is a group of companies satisfying the following conditions:

- The group is made up of companies resident or established in the State, and
- All the members of the group are under common control, where "control" means:
    - The power to hold fifty percent or more of the issued share capital or voting rights in the company, or
    - The power to appoint fifty percent or more of the Board of Directors of the company.

CGT Valuations

Revenue is introducing a separate basis for mitigating penalties in circumstances where the issue involved concerns a difference between the valuation originally submitted with the return and the valuation eventually agreed. This is a concept which already exists in Capital Acquisitions Tax and Stamp Duty. The basis is set out in the revised Code. Where reliable evidence has not been supplied in support of a taxpayer's valuation, penalties are to be mitigated by reference to the following criteria:

Ascertain the difference between the valuation figure finally agreed and the original valuation.

- If the difference is not greater than 30% of the valuation figure finally agreed, there is no penalty
- If the difference is greater than 30% but not greater than 50% of the valuation figure finally agreed, the category of tax default for the purposes of mitigation of penalties is Insufficient Care
- If the difference is greater than 50% but not greater than 60% of the valuation figure finally agreed, the category of tax default for the purposes of mitigation of penalties is Gross Carelessness

CODE OF PRACTICE REVENUE AUDITS

- If the difference is greater than 60% of the valuation figure finally agreed, the category of tax default for the purposes of mitigation of penalties is Deliberate Default.

Commencement

The revised Code will come into effect from 1 September 2002 as regards audits which are notified on or after that date. As regards audits which had been notified but which have not been settled before 1 September 2002, the taxpayer may chose whether the settlement is to be made under the terms of the revised Code or the original Code.

The revised Code will come into effect as regards qualifying disclosures or self-corrections where the qualifying disclosure or self-correction is made from now on.

The revised Code will be available shortly in hardcopy from any Tax Office. It will be published on the Revenue Website on 16 August, under the heading publications. You can access the Revenue Website at **www.revenue.ie.**

RECEIPTS FOR TAX PAYMENTS

In recent years, Revenue has expanded the number of methods for payment of tax, and has increasingly favoured electronic payment as the preferred method, having regard to both the reduced likelihood of error and the speed of giving credit to the taxpayer. In addition to the traditional payment by cheque, tax may now be paid through the Revenue On-Line Service (ROS) (see page 16), by monthly Direct Debit, and a new method, the Single Debit Authority (SDA) has been introduced for Environmental Levy and Income Tax and will be extended to other taxes later in 2002.

Traditionally, Revenue's practice has been to credit the taxpayer with the value of a payment on the date of receipt, regardless of the method of payment or the place of payment. As the number of methods of payment has expanded, this practice has led to a situation where some taxpayers are being treated unfairly. An increasing number of our customers are now availing of instant methods of transferring credit, such as electronic transfer or direct debit. Other more traditional forms of payment can delay the transfer of credit up to several days. In the interest of equity, this difference should be reflected in the record of the effective payment date. On the other hand, occasional circumstances, and delays in processing within Revenue, are outside of the control of the taxpayer, and the taxpayer should not be penalised for such factors.

We have reviewed the receipting of different forms of payment, and the receipt dates set out below will be applied from 2 September 2002. We accept that no listing can possibly deal with all circumstances, and in the event of special circumstances arising in individual cases, the Collector-General's Office will be prepared to make exceptions.

- Most payments are required to be made to the office (normally the Collector-General's Office) which is specified on the return or correspondence. Where payment is made to any other office, credit will be given on the **next working day following receipt**.
- Payment through ROS (Revenue Online Service), direct debit, and Single Debit Authority (SDA) will receive credit **on the day of payment.** For the time being, the same conditions will apply to payment by Giro, but the utilisation of Giro for payment has been so low that this method is likely to be phased out in the coming year.
- Payment over-the-counter in the Collector-General's offices at Apollo House, Dublin, and Sarsfield House, Limerick will not be possible in the traditional way after 30 August 2002. A facility (similar to the express lodgment facility offered by banks) will be provided at those offices for delivery of payments, but without the issue of a receipt at the time of delivery. **Payments delivered in time to be included with normal bank lodgments (usually 12:00 Midday) will be credited to the taxpayers' account on the day of receipt. Later payments will be credited on the next working day.**
- Problems are occasionally encountered with less common types of payment, for example postal orders and cheques drawn on banks outside the State. These will be dealt with on a case-by-case basis.

These changes are an attempt to address the appearance of inequity in the present receipting arrangements, and are part of our commitment to treat all taxpayers fairly and equally.

Revenue

CHANGE IN DUE DATE Preliminary CT

Change in Due Date for Payment of Preliminary Corporation Tax by Certain Companies

Section 958 TCA 1997 (as amended by *Section 58* of the Finance Act 2002) advances the payment date for preliminary corporation tax to one month before the end of the accounting period. The change is being phased in over a 5 year transition period and is to be fully effective for accounting periods ending after 2005. During the transition period, preliminary corporation tax is payable in two instalments. The first instalment is due 1 month before the end of the accounting period. The second instalment within 6 months after the end of the accounting period.

The changes in preliminary corporation tax are set out in detail in ***Tax Briefing*** Issue 48.

The legislation also contains a mechanism which allows the Minister for Finance to make an Order providing that preliminary corporation tax due to be paid in any month be paid on an earlier date in that month. This can apply to both first and second instalments of preliminary corporation tax.

The Minister for Finance by means of an Order made on 26 July 2002 (S.I. No. 394 of 2002) appointed -

- 20 November 2002 as the payment date for preliminary corporation tax where a company's accounting period ends in the period -
  - 21 May 2002 to 31 May 2002 (inclusive) in the case of payments which are second instalments of preliminary corporation tax, and
  - 21 December 2002 to 31 December 2002 (inclusive) in the case of payments which are first instalments of preliminary corporation tax, and
- 20 December 2002 as the payment date for preliminary corporation tax where a company's accounting period ends in the period -
  - 21 June 2002 to 30 June 2002 (inclusive) in the case of payments which are second instalments of preliminary corporation tax, and
  - 21 January 2003 to 31 January 2003 (inclusive) in the case of payments which are first instalments of preliminary corporation tax.

Correction

Tax Briefing Issue 48 covered the revised arrangements for payment of Preliminary Corporation Tax. In the final example on Page 3 the correct tax liability should, of course, read €5,000.

RELEVANT CONTRACTS TAX (RCT)

RCT applies where a principal contractor makes a payment to a subcontractor in respect of relevant operations [construction, forestry or meat processing operations]. Relevant operations are defined in the legislation but the legislation is silent as to where the relevant operations are performed. On a strict reading, a principal contractor would be required to operate RCT in respect of relevant operations performed by a subcontractor whether or not the subcontractor is carrying on business in the State and whether or not the relevant operations are carried on in the State.

In future, Revenue will accept that RCT does not apply where relevant operations are performed wholly abroad. RCT will be regarded as applying where the relevant operations are performed or partly performed in the State. For this purpose, the State is taken to include the territory of Ireland, its territorial waters and any area outside the territorial waters of Ireland over which Ireland has exploration or exploitation rights.

Contracts are sometimes performed partly in the State and partly outside. Where the performance abroad is merely incidental to the performance in the State, RCT will be regarded as applying to the full contract.

In all other cases, RCT need only be applied to the part of the contract that is performed in the State. Where there is a single price for the entire contract, payments may be apportioned on a basis agreed in advance with the Inspector of Taxes. For example, payment for construction of a gas pipeline to the UK might be apportioned on the basis of the respective lengths of the pipeline in the State and in the UK.

PAY AND FILE

The 2001 Income Tax Return

Early Filers

Revenue will issue assessments, to all customers who file their 2001 Income Tax Return by 31 August, in good time to allow these customers meet their Pay and File obligations. To ensure that this commitment is met, it is important that the 2001 returns are properly completed. There are a number of complications, which arise in relation to the 2001 return, for example, the implications of the short tax "year" and the changeover to the Euro.

At this stage there is an increase in the level of early filing and this is a welcome development. In addition, in the region of a thousand 2001 Income Tax Returns have been filed through ROS.

This article highlights some of the key issues in relation to the 2001 return.

Short Tax "Year"

The 2001 return relates to the short tax "year" which covers the period 6 April 2001 to 31 December 2001. The 74% rule (*Tax Briefing* Issue 44 Page 21) applies to the Case 1/Case 11 income and the various tax credits allowable. It is clear from an analysis of early filers that a mixture of figures are being used, for example, the 74% rule is applied to trading income but is not applied to Capital Allowances. Care should be taken to ensure that the 74% rule is applied properly.

Change in Accounting Period

It is clear that a significant number of customers are changing their accounting period to a 31 December year end to correspond with the change in the tax year and the introduction of the Euro. ***Tax Briefing*** Issue 48 Page 7 sets out the implications of the change from a 31 March to a 31 December year end. It is important to note that where a nine month account to 31 December 2001 is prepared, the basis period for the short "year" is the year ended 31 December multiplied by 74%. In addition, there is a requirement to review the previous year and return any "review" year liability on the appropriate Panel of the return. In general, Revenue will process the return on the basis of the completed return and will not at processing stage, query the basis period or the absence of review year entry. However, these entries may give rise to queries at a later stage.

Completion of Returns

A considerable number of returns are only partially completed with references on the form to "as per accounts" or "as per attached computation". It is essential that the entries are completed on the return, for example, the profit assessable should be entered at D1 at Panel 1 on the form 11. Care should be taken and all panels should be completed. Failure to do so may result in an incomplete return being filed. Also, the declaration on the return must be signed by the customer or an authorised signatory: a company name or stamp is not sufficient.

Forms AG12/BP1

It is important that the accounting period used for returning farming/business profit is stated clearly on Panel F of the Form AG12 or Panel 4 of the BP1, as appropriate. From a number of returns received to date it is not clear what accounting period is being used. If the return covers a period other than the nine-month period from 6 April to 31 December 2001, this fact should be stated clearly on the return, in the box provided. For example, if your client always prepares his/her accounts up to 31 December and there is no change in accounting periods, you should enter the figures for the accounts year ended 31/12/01 on the return and note the return (either Panel F or 4) that you have used this 12-month figure. The assessable figure is 74% of the 12-month figure and the tax office will make the adjustment for assessment purposes. If there was a change in accounting periods, see the earlier paragraph above about how this is treated.

Attachments

Tax Briefing Issue 48 Page 6 states the attachments that must accompany the 2001 return. These are the Case 1/11 accounts and accompanying tax adjustment computations and the Form Med 1.

Euro and Irish Pound Returns

Care should be taken to ensure that only Irish pound figures are entered on Irish pound return forms and only Euro amounts on the Euro returns. See also, ***Tax Briefing*** Issue 46

Single Debit Authority

Where Single Debit Authority is being used it is essential that the Bank Branch code, the Account number and the Debit amount must all be completed.

Personalised Returns

As outlined at the Pay and File seminars and in ***Tax Briefing*** Issue 48 the personalised returns are barcoded. Please do not photocopy or amend a personalised return to file a return on behalf of someone else. If a new return is required, a blank return should be used and the PPS number and GCD reference should be clearly stated on the front of the return. In addition, the GCD reference should be stated on the front of facsimile returns (see Page 6, ***Tax Briefing*** Issue 48).

Returns Filed after 31 August 2002

Paper returns being filed after 31 August should be submitted directly to Collector-General's Office, PO Box 354, Limerick - see ***Tax Briefing*** Issue 47 dated April 2002.

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PAY AND FILE

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Conclusion

The transition to Pay and File is a significant challenge. Early filing and electronic filing through ROS provides all parties with significant advantages. Revenue appreciates that early filing is not a feasible proposition for the majority of returns, however, it is important that due care is taken in the completion of returns to prevent difficulties and reduce compliance and administrative costs for all. The next issue of ***Tax Briefing*** will revisit this topic.

Revenue On-line Service Payments

Pay Income Tax Via ROS And have your Clients Pay & File Deadline Extended By 3 Weeks to 21 November 2002

There are currently 2 methods of making payments through ROS - ROS Debit Instruction (RDI) and laser card. €4 billion has been paid to Revenue through this service to date.

ROS Debit Instruction

The Debit Instruction method requires that customers must complete a ROS Debit Instruction (RDI) in order to make payments for any of the taxes available in ROS. The RDI includes details of the ROS customer's bank account from which Revenue can collect the appropriate liability at the due date. The RDI can be completed on-line by the taxpayer on the ROS site, digitally signed and digitally transmitted to Revenue. Alternatively a paper copy can be printed off, signed and sent by land-mail to:

The Collector- General's Office,
Apollo House,
Tara St.
Dublin 2.

Once the RDI has been set up on ROS, the taxpayer or agent acting on his/her behalf authorises the payment for the requisite amount and period.

Where an agent is submitting an RDI on behalf of a client, there is no facility at present to complete the RDI on line. A paper version must be completed and submitted. A facility to enable agents to complete RDI's on-line will be available in ROS this September. Furthermore blank RDI forms will be issuing to all preliminary tax cases this September.

To ensure that your clients can avail of the three week extension for ROS customers this year i.e. preliminary tax payments and balancing payments are due for ROS customers on 21 November, it is particularly important that ROS customers and their agents ensure that RDI's are set up in plenty of time before tax payments are due.

Laser Card

The second payment method currently available in ROS is by way of laser card. When a payment is due and is being paid on line, the details of the taxpayers laser card are input and each individual payment is authorised by the customer.

ROS Payments

For both these payment methods 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. If, for whatever reason, a customer does not wish to make a payment that is due or is only making a partial payment, it is important to note that Revenue will not deduct the tax owed without authorisation from the customer. All payments made through ROS are acknowledged instantly and a receipt will be issued once the payment has been processed by Revenue.

Pay and File

To cater for the introduction of Pay and File for Income Tax this year, changes are being made (scheduled for mid August) to the ROS Income Tax payment screen. These changes will reflect the requirements of the Single Debit Authority and will allow ROS customers or their agents to authorise payments in a single transaction for:

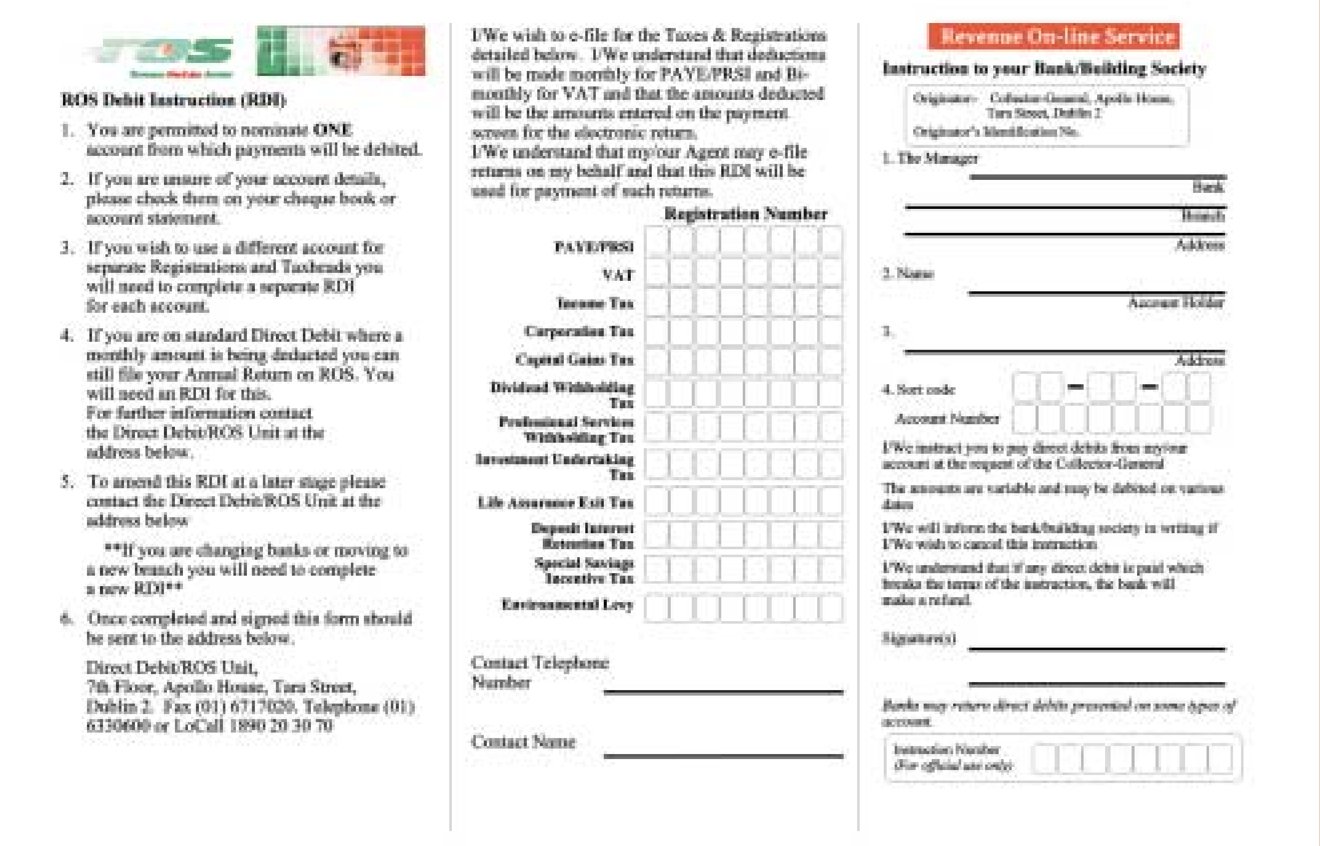
- Balance of Tax for 2001
- Capital Gains Tax Payment for 2001
- Preliminary Tax for 2002
- Any additional tax due for 2000/2001.

Discussions are well underway with the banking sector to provide the ROS customer with the option to

ROS

make tax payments electronically through the use of on-line banking. Revenue has been assured that this will be in place by September this year, with at least one of the major banks, and that the rest of the banks will provide this facility as soon as possible.

If you would like more information on making payments online through ROS, visit our website at **www.revenue.ie**, where you will find a series of demos which will take you through how to make payments and how to set up a ROS Debit Instruction. Alternatively contact our Help desk at 1890 20 11 06 or email **roshelp@revenue.ie.**



ROS Debit Instruction (RDI)

1. You are permitted to nominate **ONE** account from which payments will be debited.
2. If you are unsure of your account details, please check them on your cheque book or account statement.
3. If you wish to use a different account for separate Registrations and Taxheads you will need to complete a separate RDI for each account.
4. If you are on standard Direct Debit where a monthly amount is being deducted you can still file your Annual Return on ROS. You will need an RDI for this. For further information contact the Direct Debit/ROS Unit at the address below.
5. To amend this RDI at a later stage please contact the Direct Debit/ROS Unit at the address below

   If you are changing banks or moving to a new branch you will need to complete a new RDI

6. Once completed and signed this form should be sent to the address below.

   Direct Debit/ROS Unit,
   7th Floor, Apollo House, Tara Street,
   Dublin 2. Fax (01) 6717020, Telephone (01) 6330600 or LoCall 1890 20 30 70

I/We wish to e-file for the Taxes & Registrations detailed below. I/We understand that deductions will be made monthly for PAYE/PRSI and Bi-monthly for VAT and that the amounts deducted will be the amounts entered on the payment screen for the electronic return.
I/We understand that my/our Agent may e-file returns on my behalf and that this RDI will be used for payment of such returns.

	Registration Number
PAYE/PRSI	
VAT	
Income Tax	
Corporation Tax	
Capital Gains Tax	
Dividend Withholding Tax	
Professional Services Withholding Tax	
Investment Undertaking Tax	
Life Assurance Exit Tax	
Deposit Interest Retention Tax	
Special Savings Incentive Tax	
Environmental Levy	

Contact Telephone Number ______________

Contact Name ______________

Revenue On-line Service

Instruction to your Bank/Building Society

Originator- Collector-General, Apollo House, Tara Street, Dublin 2
Originator's Identification No.

1. The Manager

______________ Bank
______________ Branch
______________ Address

2. Name

______________ Account Holder

3.

______________ Address

4. Sort code ☐☐ – ☐☐ – ☐☐

Account Number ☐☐☐☐☐☐☐☐

I/We instruct you to pay direct debits from my/our account at the request of the Collector-General

The amounts are variable and may be debited on various dates

I/We will inform the bank/building society in writing if I/We wish to cancel this instruction

I/We understand that if any direct debit is paid which breaks the terms of the instruction, the bank will make a refund.

Signature(s) ______________

____

Banks may return direct debits presented on some types of account.

Instruction Number *(For official use only)* ☐☐☐☐☐☐☐☐

EMPLOYER PAID MEDICAL INSURANCE PREMIUMS

Tax Briefing Issue 43 included an article on the treatment of Medical Insurance Premiums paid by an employer. This explained that where the employer pays the premium it will be paid net of tax relief. The employee will continue to be charged on the perquisite, net of tax relief at the standard rate. To maintain the status quo prior to the tax year 2001, the tax relief at source given to the employer will be recovered. *Section 112A TCA 1997* applies the provisions of *Section 238* to recover the tax due.

In the case of a company, the tax is due within 6 months of the end of the accounting period in respect of which the charge arises. In the case of an individual or a partnership, Revenue accepts that the tax due may be paid up to the specified return date in relation to the year of assessment to which the charge relates. For example, in relation to premiums paid in the short tax year 2001, the tax will be due by 31 October 2002.

Revenue accepts that the tax may be accounted for by the precedent acting partner, where the employer is a partnership. The tax paid is allowed as a deduction in arriving at the partnership profits.

While, in strictness, the tax to be remitted is the tax computed by reference to premium payments made in the tax year, employers may opt to account for the tax by reference to premium payments made in the basis period for the tax year. Where an employer opts to pay the tax on this basis, tax for future periods should be accounted for on the same basis. For the tax year 2001, premium payments made in the part of the basis period commencing on 6 April 2001 should be included. The definition of basis period in *Section 303 TCA 1997* should be applied where there are intervals between basis periods or where basis periods overlap. The tax should, of course, be taken into account in calculating the Preliminary Tax payable.

RETURNS BY INTERMEDIARIES

Returns to be made by Intermediaries in relation to certain Offshore Products

Section 896 TCA 1997 as inserted by *Section 232 Finance Act 2001,* requires any person who acts as an intermediary in relation to the acquisition by another person of an interest in an offshore fund or foreign life assurance policy to make a return to the Inspector of Taxes.

Previously three separate returns were required:

- Form 19 - Return of Third Party Information by certain intermediaries in relation to UCITS under *Section 893 TCA 1997*
- Form 8D - Return of Third Party Information by intermediaries in relation to material interests in offshore funds under *Section 896 TCA 1997*
- Form 8C - Return of Third Party Information by brokers and other intermediaries under *Section 594 TCA 1997.*

New legislation

Section 893 and *Subsection 594(3) TCA 1997* have now been repealed, while *Section 896 TCA 1997* has been replaced in its entirety. The new return required to be made under the amended *Section 896* is the new Form 8D.

Commencement date for new Form 8D return

The new legislation applies as respects any chargeable period (as defined in *Section 321 TCA 1997*) commencing on or after 15 February 2001. However, to facilitate person who make returns on an ongoing basis, the automatic reporting provisions in *Section 896 TCA 1997* will not apply to the period prior to 6 April 2001 provided the old format returns above have been furnished for the period up to and including 5 April 2001.

Persons who should make this return

Any person carrying on a trade or business in the State in the ordinary course of the operations of which that person acts as an intermediary in, or in connection with, the acquisition of a material interest in an offshore fund, or foreign life policy. The definition of intermediary is very wide and persons likely to be intermediaries are any person who acts in connection with the transaction. Persons such as auctioneers and accountants who provide an investment service as an ancillary to their core business would be considered to be intermediaries for the purposes of this legislation.

What intermediaries are affected?

Any person carrying on in the State a trade or business in the course of operations of which that person provides relevant facilities.

Relevant facilities means:

- The marketing in the State of offshore products
- The acting in the State as an intermediary in relation to the acquisition or disposal, in whole or in part, of offshore products by or on behalf of persons who are resident or ordinarily resident in the State, or

RETURNS BY INTERMEDIARIES

- The provision in the State of facilities for the making of payments from an offshore product to persons who are entitled to the offshore product, whether on the disposal, in whole or in part of the offshore product or otherwise.

Offshore product means:

- A material interest in an offshore fund, or
- A foreign life policy.

A material interest in an offshore fund is defined in *Section 743(2) TCA 1997*. Briefly, it is an interest in an investment vehicle, which is either a non-resident company, a unit trust the trustees of which are not resident in the State or an arrangement under the laws of a foreign country, which creates rights in the nature of co-ownership.

A foreign life policy is defined in *Section 896(1) TCA 1997*. It means a policy of assurance on the life of a person commenced either by a branch or agency (carrying on business in a State other than the State) of an assurance company, or by an assurance company (carrying on business in a State other than the State) other than by its branch or agency carrying on business in the State.

Return Filing

In the case of persons and bodies of persons (other than companies chargeable to corporation tax), the new format Form 8D returns are required for the year of assessment 2001, and subsequent years. However, where accounts of a trade or other business are normally made up to a date other than 31 December, the return may be made by reference to the date in the year of assessment to which the accounts are prepared provided that, on an ongoing basis, no periods are omitted from returns.

The first return on the new Form 8D must be made not later than 31 October 2002. In the case of companies chargeable to corporation tax, returns are required in respect of accounting periods commencing on or after 6 April 2001. They must be made not later than nine months from the end of the company's accounting period.

Details to be included in the Return Form 8D

Intermediaries should ensure that they obtain the information necessary to make a full return such as:

- The full name and address of the person
- The person's tax reference number
- A description of the relevant facilities provided, including a description of the offshore product concerned and the name and address of the person who provided the offshore product
- Details of all payments made (directly or indirectly) by the person in respect of the offshore product
- Details of all payments made (directly or indirectly) to the person in respect of the offshore product.

Client obligations

The legislation obliges the client to supply the information required by the intermediary to complete the return to the intermediary: *Section 896(4) TCA 1997*. In practice, intermediaries should obtain the information, including the client's tax reference number, when the relevant facilities are being provided. Intermediaries should draw their clients' attention to the following:

- Statutory penalties apply to clients who fail to furnish such details to an intermediary, or who furnish incorrect details knowingly or wilfully
- A person who acquires an offshore product, i.e. a material interest in an offshore fund or a foreign life policy is a chargeable person for income tax purposes. Such persons must make a return of income and include details of that investment in their tax return.

Statutory penalties may be imposed on an intermediary for:

- Failure to make a return
- Failure to include all details to be included in a return listed above
- Failure to take reasonable care to confirm the details referred to above.

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RETURNS BY INTERMEDIARIES

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Form 8D

Notes

Persons who should make this return

Intermediary

Relevant Facilities

Offshore Fund

Offshore Products

Foreign Life Policy

Penalties

RETURN BY PERSON(S) ACTING AS AN INTERMEDIARY FOR AN IRISH RESIDENT IN RESPECT OF WHOM "RELEVANT FACILITIES" IN RELATION TO OFFSHORE PRODUCTS WERE PROVIDED.