

TAX BRIEFING

Revenue



ISSUE 5 - January 1992

Introduction

In this first issue of Tax Briefing for 1992 we publish the results of a survey which was carried out to examine the incidence of amendments to 1990/91 income tax assessments. The level of amendments to assessments is higher than is desirable on an ongoing basis under Self Assessment. We ask practitioners to look closely at the results of the survey and to consider to what extent (if at all) they are contributing to the situation.

Having to amend the assessments is both costly and disruptive for all parties involved. It is, accordingly, in everyone's interest that we achieve a situation where, for any year of assessment, one correct comprehensive return (containing details of all income, chargeable gains and claims for allowances, deductions and reliefs) is submitted and one correct assessment is issued.

We would ask all practitioners and their staff to join with us in making a commitment to try to achieve this situation in 1992 - starting with the remaining Returns for 1990/91 which will be submitted in the coming weeks.

Some of the items contained in Tax Briefing during 1991 resulted from suggestions made by tax practitioners. Some letters raised issues which are beyond the remit of Tax Briefing. Where appropriate, these have been referred elsewhere for consideration.

We look forward to further contributions from practitioners during 1992

Joe Lynch,
Editor - Tax Briefing,

Office of the Chief Inspector of Taxes,
Setanta Centre,
Nassau St.,
Dublin 2.

Revenue Audits

Apart from the original introduction of the concept of Self Assessment for income tax and corporation tax, the Revenue Audit is probably the subject that has evoked most comment in the tax area in recent times. Such audits are of course a necessary feature of any Self Assessment system, VAT, Employers' PAYE/PRSI and Construction Industry Tax are self assessment taxes in this context. The overall Revenue Audit programme have tended to concentrate on single tax-head issues and they have been very extensive in their coverage. For example, during 1990 the following single tax head audits occurred:

- Employers' PAYE/PRSI 3,732
- Value Added Tax 18,896
- Construction Industry Tax 1,969

The main focus of this article is on Tax Return audits, which started in 1989 and covered some 2,500 cases in 1991.

We in Revenue are concerned with ensuring that our resources are utilised efficiently to target the cases where there is real abuse. We are confident that this is also the concern of practitioners. Our audit programmes must also, of course, include some cases selected at random.

With this in mind we offer some guidelines arising from experience to date which, if allowed, will result in :

- Better targeting of cases for audit
- Less time spent by Revenue Inspectors in auditing cases which may not warrant an audit
- Lower compliance costs for practitioners and clients

Apart from cases where profits are understated due to lack of adequate records etc., additional tax also arises in audit cases because of failure to deal correctly or adequately with certain basic matters during the preparation of accounts and computations of liability.

The following are examples:

- Failure to adjust (or adjust adequately) for unallowable or non-business expenditure - e.g. business entertainment (including corporate hospitality/gifts) or non-business travel.
- Failure to make required statutory restrictions - e.g. the Section 32, FA 1976 restriction for motor vehicles.
- Inadequate inquiry to establish the levels of private drawings
- Unrealistic adjustment (if any) for “goods to house” i.e. goods or services withdrawn from the business for private use. This is a significant item in some businesses. For example, in the case of a grocer, an adjustment of at least several pounds would be expected.
- Capital allowances claimed at rates higher than allowable - e.g. 100% free depreciation claimed where 50% is the maximum allowable.
- Stock Relief Clawbacks not taken into account

Failure on the part of practitioners’ staff to deal with these matters at the accounts/computation preparation stage may be the reason why a case is selected for audit. This means that they will have to be dealt with in the course of a Revenue Audit, thus increasing the overall cost to the client and practitioner.

We would expect practitioners to deal with these matters when they are preparing accounts/computations. The proper treatment applied at this stage saves everyone time and money in the long run.

Practitioners should bear in mind that where these items come to light in the course of Revenue Audit and give rise to additional liability, statutory interest and penalties (and perhaps publication under the provisions of S.23 FA 1983) are the consequences for clients.

Audits of Companies

Audits commenced in the Corporation Tax area in July 1991. It is possible at this stage to identify problems which if resolved can reduce or eliminate unnecessary contacts between Revenue officials and practitioners. It appears that some practitioners are not submitting as much detailed information with the statutory return as in the pre-Self Assessment era. It should be borne in mind that, in the course of screening Corporation Tax returns, Inspectors do not have immediate access to the old papers. Cases are normally selected for audit by reference to the relevant return, accounts and supporting (or lack of) documents.

Screening of returns is carried out on an accounting period basis. Unnecessary contacts can be reduced if practitioners avoid use of nondescript abbreviations and technical terms which are not used in every day language. If they are used, a short explanatory note should be included with the covering letter.

If the following information is submitted with the form CT1, unnecessary contacts will be avoided:-

Accounts with full computations, schedules and notes

- Detailed trading/profit and loss accounts, including analysis of cost of sales

- Where the amount charged is significant or unusual; information on, and analysis of, such items as “repairs”, “rent”, “advertising and promotional work”, “inter company charges”, “extraordinary/exceptional charges”, “research and development”.
- Detailed description of all chargeable assets purchases and sold in the accounting period.
- Detailed computations of chargeable capital gains, where relevant
- Brief notes on treatment of unusual items e.g. deferred income, royalties.
- Brief explanation where no ACT was paid on payment of distribution.
- Details of changes in shareholdings.

It would also help if general items such as “fined variable overheads”, “selling expenses”, administration expenses" etc. were accompanied by an analysis.

In the case of companies which are in receivership or liquidation, the receipts and payments account should be submitted.

Failure to supply such information may lead to enquiries having to be made - if only to eliminate a case from being considered for audit - or may result in a full audit being carried out.

Similar considerations apply also to returns for income tax and capital gains tax purposes.

Publication

Practitioners are reminded that where an audit settlement exceeding 10,000 involves tax, interest and penalties the provisions of S.23, F.A. 1983 apply and publication is mandatory, except where a full voluntary disclosure is made in advance of the audit.

Practitioners should note that it is Revenue policy to apply the interest and penalty provisions and the publication provisions of

S.23, F.A. 1983, in relation to VAT, PAYE and Construction Industry Tax, as well as to the other taxes. We would ask practitioners to ensure that their audit staff in particular are made aware of the contents of this article.

1. Income Tax - Self Assessment

1.1 Survey of Amendments made to assessments for 1990/91

With a view to establishing why amendments to assessments are arising in significant numbers, we undertook a survey in all Tax Districts for the amendments that we made in relation to 1990/91 assessments up to mid-September 1991. The results of the survey are very informative and the Table overleaf highlights the main reasons why amendments, arising from practitioners omission/error, were necessary. This table should be a useful guide for practitioners who wish to identify possible problem areas in their offices. [We have also identified the main reasons why amendments arising from errors/omissions by Revenue staff were necessary and these have been circulated to Tax Districts for necessary remedial action.].

The survey

The following are the details of the survey (in round figures):

- 25,000 assessments for 1990/91 were made up to Mid-September 1991.
- 3,900 amendments, which can be directly attributable to tax districts/tax practitioners, were made in respect of these assessments
- The survey sample was 15% and was selected on a consistent basis from all tax districts.
- The survey revealed that 42% of the amendments made were attributable to tax districts and 47% of the amendments were attributable to tax practitioners

Comments

1) The level of amendments is clearly higher than is ideal on an ongoing basis, especially as the amendments in question do not take account of the corrections carried out by way of repair, before the assessments were made.

The level of repair which Revenue staff have to carry out on returns is a disappointing feature. Tax districts report that a high level of repair work on returns submitted is still necessary. But for this repair work, the incidence of incorrect assessments (and thus amendments) would be significantly higher.

2) We are concerned at the incidence of what has been termed “instalment filing” of returns - i.e. return filed first, followed at later stages by claims for capital allowances, B E S, health expenses, etc. {Filing various items during the year followed by a Return at the return filing date is also undesirable}.

We have stressed in the past that while the early filing of returns is desirable, it should not be done at the expense of one comprehensive Return, supported by all relevant claims, documents etc, submitted together so that only one assessment is required to finalise liability each year.

3) We, in Revenue, are looking closely at our own procedures to ensure that the amendments attributable to use are reduced.

4) A number of tax districts have taken the initiative of organising workshops in which tax practitioners’ staff are advised about the completion of returns and in which the main problem areas experienced to date have been dealt with. The response to these workshops has been very positive and we look forward to seeing them bearing fruit in the form of increased accuracy of return filing in the future.

REMINDER

Return filing date for 1990/91
Tax Returns is 31 January 1992

Make sure your clients don’t incur a surcharge!

1.2 Assessments 1990/91 - Tax due 31 January 1992

Practitioners might wish to remind clients who have received 1990/91 assessments, some time ago, that any balance of 1990/91 tax due is payable by 31 January 1992, where adequate Preliminary Tax was paid.

1.3 Expression of Doubt - Clarification - Section 14(4) Finance Act 1988

Where a genuine expression of doubt is made in accordance with Section 14(4), Finance Act 1988, and it is subsequently found that the view taken by the taxpayer was incorrect, the taxpayer will nevertheless be regarded as having a full and true disclosure. This means that any additional tax due by reason of the correction of the error, will be due and payable within one month of the date on which the assessment is amended.

The expression of doubt provision accordingly affords protection from interest charges, in the circumstances outlined. This protection would not, of course, be afforded where expression of doubt are made which are not genuine.

Details of the main areas which gave rise to amendments attributable to tax practitioners

The following, listed in order of frequency, are the main categories of amendments which arose as a result of practitioner error/omission.

CASE 1/ 11 ERRORS - figures entered on Return incorrect, “Corresponding Period” figure, averaging calculation, etc. incorrect.

CAPITAL ALLOWANCES - these included allowances not being claimed when return submitted, allowances wrongly calculated, revised claims, etc.

LOSSES - Section 307 losses not claimed when return was submitted.

HEALTH EXPENSES - MED I forms not submitted with Form 11.

RETIREMENT ANNUITY - Relief wrongly calculated. Relief not claimed on return.

DEPOSIT INTEREST - Interest omitted from return. Figures entered on return were incorrect.

CASE 111 - Figures wrongly entered or omitted altogether,. Figures entered in foreign currency without identifying this fact.

TAXED INCOME / SCH. F - Details requested on return not supplied. Manufacturing relief wrongly calculated. Estimate figures used.

INTEREST PAID - Figures on return were incorrect. Not claimed on return and submitted later.

PAYE INCOME - Details returned were incorrect. BIK omitted. PAYE details not included.

EXEMPTIONS CLAIMS - Dependent children details were not supplied on return.

WITHHOLDING TAX - Details not included

B E S RELIEF - Not claimed on return and submitted later.

AGE ALLOWANCE - Taxpayers' dates of birth no given.

LIFE INSURANCE / MEDICAL INSURANCE - Details not given or wrongly given

LIFE INSURANCE / MEDICAL INSURANCE - Details not given or wrongly given

BALANCING CHARGES - Not entered on return

COVENANTS - Not included on return.

1.4 Pension Scheme for Doctors in GMS - Tax Treatment of contributions.

We dealt with this matter in Issue 3 - para 2.3 and in Issue 4 - para 1.4. However, we are advised that some practitioners continue to calculate retirement annuity relief on clients' total profits without restricting them for the fact that the GMS fees are not longer relevant earnings for retirement annuity purposes. This can lead to significant additional liability and exposure to interest charges for clients. Accordingly, we would ask practitioners to refer to the earlier issues of Tax Briefing again and ensure the correct treatment is applied.

Incidentally, in some copies of Tax Briefing 3 an incorrect fraction was used in the example given in relation to GMS fees and retirement annuity relief. In case this was not noticed, we are reproducing the example, with the correct fraction!

Example

Doctor with gross GMS fees of £50,000 (net of 10% health Board Contribution) and with gross private practice fees of £15,000. His overall practice expenses were (say) £25,000, leaving a net income from the practice of £40,000. Maximum retirement annuity relief for 1989/90 may have been claimed by reference to 15% of £40,000 whereas the greater part of this £40,000 does not consist of net relevant earnings.

Under the revised procedure, the maximum retirement annuity relief allowable in relation to private practice is calculated as follows:

$$\begin{aligned} &\text{Net relevant earnings} \\ &\text{£40,000} \times \frac{15,000}{65,000} = 9,230 \end{aligned}$$

$$\begin{aligned} &\text{Maximum retirement annuity relief} = 9,230 \times \\ &15\% = 1,385 \end{aligned}$$

* i.e. the total gross fees (50,000 GMS + 15,000 private)

Neither the income nor the contributions in respect of the Pension Scheme for doctors in the GMS come into the reckoning. If retirement annuity premiums in excess of £1,385 were paid for 1989/90 any balance above the 15% maximum can be carried forward.

1.5 Retirement Annuity Relief and “Net Relevant Earnings”

We have been asked how “Net Relevant Earnings” interact with such matters as Capital Allowances, Mortgage Interest, Deposit Interest, B E S Investment, Covenanted Payments/Receipts.

The terms “Relevant Earnings” and “Net Relevant Earnings” are defined in Sections 235(7) & 236(4), ITA 1967 and presumably do not require further elaboration.

“**Relevant Earnings**” consist, essentially, of income which is “earned” by an individual in the course of a trade, profession, vocation, non-pensionable office / employment and includes certain income from patent rights (Section 2(2)(c), ITA 1967) and balancing charges.

The following are not relevant earnings: Profits from a trade etc. in which the individual is not actively engaged (e.g. sleeping partner), income from a pensionable office /employment (including pensions),

deposit interest, dividends, rents or other investment income and income received under a deed of covenant.

“**Net Relevant Earnings**” are relevant earnings less deductions which would be made in computing “total income” for tax purposes. These deductions include losses and capital allowances as in Section 33, Finance Act 1975 (i.e. the standard meaning of capital allowances, where that term is used in the Income Tax Acts.).

It should be remembered that if an individual has relevant earnings and other income, the deductions mentioned above as being deductible in arriving at net relevant earnings (other than capital allowances and losses arising from the trade, profession etc.) are first set against the other income and only any balance set against relevant earnings. Losses and capital allowances from the trade, profession, etc. are set primarily against relevant earnings. Apart from capital allowances and losses, other deductions would include such items as mortgage interest, payments made under a deed of covenant, annuities, royalties etc.

Deductions for items such as B E S Investments, Medical Insurance, Life Assurance, etc. in respect of which specific relief is available under the Tax Acts are made, not in computing total income but, in arriving at taxable income. These items accordingly are not deducted in arriving at net relevant earnings.

2. Capital Gains Tax- Self Assessment

2.1 1990/91 Return of chargeable gains

With the extension of self assessment to capital gains tax from 1990/91 a return of chargeable gains made in 1990/91 must be filed by 31 January 1992. Most persons who are “chargeable persons” for capital gains tax return on their normal Tax Returns (forms 11, 12, Farm Profile etc.)

With the changeover to the current year basis for income tax, a chargeable person is required to have filed both the 1990 Income Tax Return by 31 January 1991 and the Tax Return 1990/1 by 31 January 1992 to avoid a surcharge on 1990/91 income tax.

For capital gains tax purposes, however, a tax return for 1990/91 only is required to avoid a surcharge on any capital gains tax liability due for 1990/91. [Any chargeable gains made for 1989/90 should of course have been returned in the normal way under the pre-self assessment provisions that apply for that year.]

2.2 Applicable to all person

Practitioners are reminded that all persons who made chargeable gains from 1990/91 onwards (not just those who are chargeable persons for income tax purposes) are subject to the Self Assessment provisions for Capital Gains Tax.

3. Corporation Tax

3.1 Losses

Where relief is being claimed in respect of trading losses brought forward from a previous accounting period, the amount of the claim must be entered in the form CT1 at Code S6 on Panel 4. The amount of the claim must not exceed the amount of the related trading income for the accounting period. Where a claim is being made under Section 16(2) of the Corporation Tax Act 1976 to have a trading loss of the accounting period set against other profits of the same accounting period, the amount of that claim must be entered in Panel 14 at Code H1.

3.2 Repayments

When a notice of assessment issues showing overpayment of tax, the overpayment will be dealt with by the Tax Office as soon as possible. It is not necessary telephone or

write to the Tax office to claim the repayment. Such contact will not expedite the repayment process.

3.3 Change of Accounting Date.

If a company changes the date of which it makes up accounts, it should notify the relevant Tax Office of the change as soon as possible. This will help to ensure that, where possible, the form CT1 and the Preliminary Tax Notice will issue for the correct accounting period, and payments made will be correctly brought to account.

4. Capital Taxes

4.1 Residential Property Tax

Payments of tax in respect of the valuation date 5 April 1991, were due on or before 1 October 1991. Interest on late payments is charged at the rate of 1.25% per month.

Persons who have not yet delivered completed returns of their residential property are liable to a penalty of £1,000 in addition to any tax and accrued interest due. Lists of persons who have incurred the penalty are now being prepared for legal proceedings in the Courts.

4.2 Capital Acquisitions Tax.

Amnesty

The Capital Acquisitions Tax amnesty concluded on 30 September 1991. In total, some 2,000 taxpayers availed of the amnesty which resulted in the payment of £13 million. The expiry of the amnesty deadline was followed by a period during which all payments were brought to account against the appropriate liabilities, and cases were finalised.

The 1991 Finance Act, which provided for the CAT amnesty, also introduced new powers of enforcement (sheriff and

attachment) in respect of CAT. These powers are now being employed to address cases with outstanding liabilities and it is anticipated that the year 1992 will see the referral of a considerable number of these cases to the sheriff.

The conclusion of the CAT amnesty also marks the commencement of a stepped-up programme of audit. This programme, which will have both a desk and a field dimension, will be applied to selected cases following a screening of all returns.

4.3 Stamp Duty

Adjudication

The Stamp Duty Office in Dublin is now operating an over-the-counter adjudication service for instruments.

The Cork Office has augmented its range of services with an adjudication service which will handle all but the most complicated cases. An over-the-counter adjudication service is also available.

Penalty for late payment of duty

From 1 December 1991, instruments presented for stamping more than thirty days after the date of execution will be liable to a penalty equal to 10% of the duty payable. This penalty will be imposed in addition to the statutory penalty for the late payment of duty of £20 plus 1.25% per month or part of a month.

The 10% penalty will be imposed as a matter of general practice and will not be reserved for cases of serious delay.

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 ending 31 December 1991 are due on or before 30 January 1992.

Payments in respect of Stamp Duty on Certain Statements of Interest (Section 94 Finance Act, 1986) for the half year ending 31 January 1992 are due on or before 1 March 1992.

5. VAT

5.1 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% on 1 January 1992. A Statement of Practice (SP-VAT/3/91) is available on request from VAT Branch, Castle House, South Great George's Street, Dublin 2

Phone 6792777 Extns. 2440-2443

6. Collector-General

6.1 1991/92 Preliminary Tax Payments

The Collector-General's Office would like to thank tax practitioners for their assistance in ensuring the timely payment of 1991/92 Preliminary Tax by their clients.

6.2 GIRO Facility

The GIRO facility for payment of 1991/92 Preliminary Tax has been well received with 10,000 people availing of the option to pay by this means.

In common with GIRO forms issued by other organisations, tax practitioners are reminded that the forms are unique to the person for whom they are issued. This is important to note because, when these forms are received in the banking system they are processed not by reference to the name or address of the taxpayer that may be written on the form but by reference to the coded (OCR) information

contained on the form. This OCR information is not capable of being manually amended and any other amendments to forms (such as changing person names, references etc.) are totally ineffective and the payment accompanying the GIRO form will still be credited by reference to the OCR information.

Attempted changes to GIRO forms or giving incomplete or incorrect accounting instructions can lead to problems for taxpayers, as seen by the following:-

- In October/November we found a number of cases where practitioners used the Preliminary Tax (Income Tax) form relating to one taxpayer to pay the tax of another taxpayer. The result was that payments were initially credited and receipts were issued to the incorrect taxpayer. These payments have now been identified and have been appropriated to the correct taxpayer records.

- In other instances, payments proper to 1991/92 were accompanied by Notices of Assessment (revised charges) for 1990/91 rather than Preliminary Tax Payslips and were credited by reference to the accompanying document which was incorrect.

- It was necessary for the Collector-General's Office to screen all Capital Gains Tax payments because of the number of cases where the C.G.T. payslip was used to accompany Income Tax Payments.

Some cases where those errors arise only come to light when the Collector-General issues demands and it is discovered that payments have been credited by reference to incorrect accompanying documents.

So, the message for practitioners is : Whether paying tax by GIRO or otherwise, the correct forms must accompany payments. Never use any taxpayer's preprinted GIRO form or payslip for anyone other than the taxpayer for whom it was issued.

The success for the GIRO system for the Preliminary Tax (Income Tax) will lead to its extension to other taxes in 1992. The Notice of Preliminary Tax for Corporation Tax will have a GIRO option early in 1992.

Ultimately the Revenue Commissioners intend to have a GIRO form on all tax notices, demands etc.

A major benefit from using the GIRO system is that the official receipt from the Collector-General's Office is issued immediately.

6.3 P35 Return on Diskette

With the increasing usage of Personal Computer based payroll systems the Revenue Commissioner have received numerous requests from employers to accept P35 returns on diskettes. To satisfy this demand and improve the level of service to taxpayers, we have now upgraded our computer systems to provide this facility. Diskette files will replace the return details normally sent to the Collector-General on Form P35L.

It is envisaged that an employer making a return on diskette for the year ending 5 April 1992 will in turn be eligible to receive a diskette containing Tax Free allowance details for employees for the year commencing 6 April 1993. This feature should be of great benefit to employers as it would eliminate the need to manually enter employees' Tax Free Allowance details onto their payroll system.

A Guide to the Diskette Return System is available which gives technical details of the format on the diskette. Tax practitioners may obtain copies of the Guide or further details on the operation by contacting:

P35 Diskette Return Section
Office of the Collector-General
6th Floor, 4-5 Harcourt Road,
Dublin 2.
Telephone (01) 784111 extn 1369
Fax. (01) 756265

6.4 Instalment or Phased Payment Arrangement

Taxpayers who allow arrears of tax to accumulate leave themselves open to enforcement action by way of Sheriffs, Court proceedings, Attachment, Bankruptcy or winding up under Section 214 of the Companies Act, 1963.

Each of those sanctions involves extra costs for the taxpayer over and above the amount of the tax debt owned.

It would be helpful therefore if practitioners advised their clients, that where the collector-General agrees, as a concession, in certain circumstances, to accept payment of arrears on a phased basis, as an alternative to enforcement action, such a concession must entail compliance by the taxpayer with certain conditions. These are as follows:-

- provision must be made for payment of statutorily imposed interest charges, and
- current taxes must be paid during the term of the phased payment arrangement.

6.5 Interest Pursuit Programme

The new Interest Pursuit Programme commenced activities in September and interest demands have been sent to several thousand taxpayers who had a pattern of late payment.

The programme is already having a positive effect and analysis of payment patterns for recent months shows a noticeable increase in the number of taxpayers paying on time.

Further demands for interest will be issuing on an on-going basis to taxpayers who continue to pay late.

7. Farming

7.1 Stock Relief and the Relevant Clawback Period

Under Section 11 of Finance Act 1989, exposure to stock relief clawback has been limited to seven years in respect of stock increases arising in accounting periods ending on or after 6 April 1989. For stock increases which arose in accounting periods ending prior to 6 April 1989 the ten year limit still applies for clawback purposes.

The first tax year, therefore, in which the seven year limit can have effect in relation to restricting a stock relief clawback, is 1996/97. The ten year limit will continue to apply until 1998/99, in relation to stock increases, which arose prior to 6 April 1989.