

FUNDS IN LIFE ASSURANCE PRODUCTS

Introduction

Revenue has announced a disclosure scheme for persons that have invested undisclosed funds in Life Assurance products. The terms of the scheme are set out in the explanatory note *Voluntary Disclosure of Undisclosed Funds Invested in Life Assurance Products* which is reproduced below. The new Revenue power to inspect records held by an insurance company will be used in the investigation (see note on *Section 140 FA 2005* on page 13)



Voluntary Disclosure of Undisclosed Funds Invested in Life Assurance Products

1. Introduction

The Revenue Commissioners have recently announced a voluntary disclosure scheme specifically aimed at the holders or past holders of Life Assurance products¹ that were funded with monies that were not previously disclosed for tax purposes.

There are two phases and two dates as follows:

- ◆ The notice of intention to disclose must be completed and submitted by 23 May 2005, and

- ◆ The disclosure and payment must be made by 22 July 2005.

More detailed information and the disclosure form is available on the Revenue website www.revenue.ie.

2. Treatment of Disclosure and Payment

Where, not later than 22 July 2005 (having made a notice of intention by 23 May 2005), a person makes a disclosure on the designated form and pays the tax due, subject to the conditions set out in Part 3, the disclosure will be treated as an unprompted qualifying disclosure as set out in the Code of Practice for Revenue Auditors. The following treatment will apply:

- ◆ The disclosure will be regarded for the purposes of section 1086 of the Taxes Consolidation Act 1997 as a **voluntary** disclosure - this means that the identity of the person involved and the details of the payment to Revenue will not be published

(Continued on page 3)

1. Persons who invested untaxed or undisclosed sums of money with a person who carried on an Assurance business as defined in Section 3 Insurance Act 1936, or who was the agent or broker of such a person in particular in life products as set out in Annex 1 and included in Classes I, II, III, VI, of S.I. Number 360/1994 European Communities (Life Assurance) Framework Regulations, 1994.

IN THIS ISSUE

Finance Act 2005

Treatment of Factoring VAT

Time Limits for Repayments

IT, CT & CGT

Nursing Homes

Residential Units

Revenue Internal Review Procedures

Betting Duty

Automated Collection

Amended Assessments

Income Tax

P35 End of Year Return 2004

Share Option Cases

Late Filing Surcharge

Code of Practice for Revenue Auditors

Clarification

...see inside for full listings

CONTENTS

	Page
Funds in Life Assurance Products (<i>Voluntary Disclosure</i>)	1
Finance Act 2005	5
Betting Duty (<i>Automated Collection</i>)	13
Amended Assessments (<i>Income Tax</i>)	14
Indexed Thresholds (<i>CAT</i>)	15
P35 End of Year Return (<i>2004</i>)	16
Conversion Rates (<i>2004</i>)	16
Time Limits for Repayments (<i>IT, CT & CGT</i>)	17
Employed Person Taking Care of an Incapacitated Individual	19
SSIA - Maturity Arrangements	19
Share Option Cases (<i>Late Filing Surcharge</i>)	20
Research & Development Tax Credit	20
Revenue Internal Review Procedures	20
Code of Practice for Revenue Auditors (<i>Clarification</i>)	21
Treatment of Factoring (<i>VAT</i>)	21
Nursing Homes (<i>Residential Units</i>)	24
ROS (<i>Update</i>)	25
Revenue News (<i>Update</i>)	27
Life Assurance Products (<i>Forms</i>)	28

Tax Briefing is produced by:
Operations Policy and Evaluation Division,
 Communications Policy & Evaluation Branch,
 Revenue Commissioners,
 Ardilaun House,
 St. Stephen's Green West,
 Dublin 2.

Editor: Allen Finnegan
Telephone: 01 - 647 5000, Ext. 48172
Assistant Editor: Bernard King
Telephone: 01 - 647 5000, Ext. 45515
Fax: 01 - 644 5580
E-mail: taxbrief@revenue.ie
Design: Ana Duncan

While every effort is made to ensure that the information given in this publication is accurate, it is not a legal document. Responsibility cannot be accepted for any liability incurred or loss suffered as a consequence of relying on any matter published herein.

KEY DATES

April 2005

- 14 PAYE/PRSI**
P30 monthly return and payment for March 2005
- 14 Dividend Withholding Tax**
Return and payment of DWT for March 2005
- 14 PSWT**
F30 monthly return and payment for March 2005
- 14 Relevant Contracts Tax**
RCT30 monthly return and payment for March 2005
- 1-21 Corporation Tax**
2nd Instalment PT for APs ending between 1-31 October 2004
1st Instalment PT for APs ending between 1-31 May 2005
Returns for APs ending between 1-31 July 2004
Pay balance on APs ending between 1-31 July 2004
- 1-30 Corporation Tax**
Returns of Third Party Information for APs ending between 1-31 July 2004

May

- 14 PAYE/PRSI**
P30 monthly return and payment for April 2005
- 14 Dividend Withholding Tax**
Return and payment of DWT for April 2005
- 14 PSWT**
F30 monthly return and payment for April 2005
- 14 Relevant Contracts Tax**
RCT30 monthly return and payment for April 2005
- 19 VAT**
VAT 3 return and payment for March/April 2005
- 1-21 Corporation Tax**
2nd Instalment PT for APs ending between 1-30 November 2004
1st Instalment PT for APs ending between 1-30 June 2005
Returns for APs ending between 1-31 August 2004
Pay balance on APs ending between 1-31 August 2004
- 23 Life Assurance Products**
Notice of intention to make a qualifying disclosure of a tax default relating to a Life Assurance Product
- 1-31 Corporation Tax**
Returns of Third Party Information for APs ending between 1-31 August 2004

June

- 14 PAYE/PRSI**
P30 monthly return and payment for May 2005
- 14 Dividend Withholding Tax**
Return and payment of DWT for May 2005
- 14 PSWT**
F30 monthly return and payment for May 2005
- 14 RCT**
RCT30 monthly return and payment for May 2005
- 1-21 Corporation Tax**
2nd Instalment PT for APs ending between 1-31 December 2004
1st Instalment PT for APs ending between 1-31 July 2005
Returns for APs ending between 1-30 September 2004
Pay balance on APs ending between 1-30 September 2004
- 1-30 Corporation Tax**
Returns of Third Party Information for APs ending between 1-30 September 2004

FUNDS IN LIFE ASSURANCE PRODUCTS Continued from Page 1



- ◆ Revenue will not take steps to initiate the prosecution of any offence that may have been committed by the taxpayer, in relation to the disclosure
- ◆ Penalties will be mitigated in accordance with the Code of Practice for Revenue Auditors.

3. Conditions which must be satisfied

The conditions, to be complied with in order to come within the treatment set out in Part 2, are as follows:

Eligibility Conditions

The treatment of disclosure and payment set out in Part 2 of this disclosure scheme will apply where the person making the disclosure and payment is not currently under Revenue investigation and,

- ◆ Has fulfilled, **not later than 22 July 2005**, the calculation, disclosure and payment conditions set out in this leaflet, **and**
- ◆ Does not come within the excluded categories set out below:

Holders of Bogus Non-Resident (BNR) accounts

Ansbacher and NIB / CMI enquiry cases

Persons previously required to make a disclosure relating to an offshore financial product

Persons who have come or may come under investigation arising from the Moriarty or Flood / Mahon tribunals.

The treatment of disclosure and payment set out in Part 2 will apply to corporate policy holders fulfilling the conditions set out in this Part (Part 3). That treatment, in accordance with Part 2, will also apply where a company fulfils all the other requirements of this Part, but the policy was held by a director of the company and was funded by untaxed moneys extracted from the company.

Calculation Conditions

The person making the disclosure must prepare,

- ◆ A computation of the amounts giving rise to any liability and a calculation of **all** tax (e.g. Income Tax, Value Added Tax, Capital Gains Tax, Capital

Acquisitions Tax or any other tax under Revenue's care and management), Duties, PRSI and Levies which are due, at the date of the submission of Form IPP1 (see Payment Conditions below), **and**

- ◆ A calculation of statutory interest and penalties (in accordance with the *Code of Practice for Revenue Auditors*).

The computations and calculations referred to above (together with supporting documentation) must be retained, for inspection on request by Revenue.

Disclosure Conditions

The person making the disclosure must, on the appropriate form (Form IPP1 - which can be downloaded from the Revenue website - www.revenue.ie):

- ◆ Submit a statement of the amounts of tax, duties, PRSI and Levies and of interest and penalties calculated to be due by the person in accordance with the **Calculation Conditions** above,
- ◆ Make a full disclosure of all sources of liability to tax, duties, PRSI and Levies which have not previously been declared to Revenue, whether invested in insurance products or otherwise,
- ◆ Include a statement as to background information, and
- ◆ Make a full disclosure of all investments in Life Assurance products funded by monies not previously disclosed (which should have been disclosed) by the person to Revenue and must identify, in those disclosures, each such policy (by the policy number, Life Assurance Company, amount invested, date of investment and date of birth).

Payment Conditions

The person making the voluntary disclosure must, **not later than 22 July 2005**, pay to Revenue the full Tax, Duties, PRSI and Levies, together with interest and penalties calculated in accordance with the **Calculation Conditions**.

4. Issues relating to Calculations

As set out above, a statement of the amounts calculated to be due must be submitted by the 22 July 2005 deadline in the appropriate form (Form IPP1) and detailed calculations and supporting documentation must be kept available for inspection (disclosure form and calculation sheets may be downloaded from the Revenue website - www.revenue.ie).

Calculation errors which are not significant will not invalidate the benefits of disclosure and payment: the treatment set out in Part 2 will continue to apply. To minimise the potential for such errors, the calculations of

(Continued on page 4)



FUNDS IN LIFE ASSURANCE PRODUCTS Continued from Page 4

tax, interest and penalties for periods prior to 1990/91 may, at the option of the person making the disclosure and payment, be carried out on the following basis:

- ◆ In relation to income tax, the liability for all years up to and including 1990/91 may be calculated on the basis that the aggregate undisclosed income of all years preceding 1990/91 was income chargeable for 1990/91 and not any other year; and,
- ◆ In relation to Value Added Tax, the liability for all taxable periods up to and including January / February 1991 may be treated on the basis that the total undisclosed taxable supplies for all periods preceding January / February 1991 arose in that January / February 1991 period and not in any other period.

5. Consequences of Failure to Disclose and Pay by 22 July 2005

Revenue is giving clear notice to every person who invested untaxed or undisclosed monies in insurance products and fails to avail of this scheme that, immediately after 22 July 2005 (deadline for disclosure and payment),

- We will use our new powers to identify these persons, and,
- We will then vigorously pursue these persons for their unpaid and undisclosed liabilities.

Where such persons do not make full disclosure and payment in the time specified

- We will target suitable cases for investigation with a view to initiating criminal proceedings,

- Subsequent monetary settlements will involve payment of increased penalties as set out in the Code of Practice for Revenue Auditors, and,
- In the ordinary course, the identity of these persons and their liabilities will be published in accordance with Section 1086 of the Taxes Consolidation Act 1997.

Further Information

A Revenue HELPLINE is available at:

Telephone: 01- 647 4818, Monday to Friday,
9.30 am to 1.00 pm &
2.00 pm to 5.00 pm

Fax: 01 647 4821

E-mail utproject@revenue.ie

Enquiries may also be addressed to:

*Office of the Revenue Commissioners,
Investigations & Prosecutions Division,
Underlying Tax (Insurance Products) Project,
4th Floor,
1 Clanwilliam Court,
Lower Mount Street,
Dublin 2.*

Supplies of this Explanatory leaflet and the subsequent disclosure form are available on the Revenue website at www.revenue.ie, or may be requested from:

Revenue Forms & Leaflets Service by faxing 01 842 3755
This service is available 24 hours a day, 7 days a week. ■

Notice of Intention to make a Qualifying Disclosure of a Tax Default relating to a Life Assurance Product

Please complete and return this form to the following address (use any envelope and write FREEPOST above the address):

Office of the Revenue Commissioners,
Investigations & Prosecutions Division,
Underlying Tax (Insurance Products) Project,
4th Floor,
1 Clanwilliam Court,
Lower Mount Street,
Dublin 2.

I hereby formally notify the Revenue Commissioners of my intention to make a Qualifying Disclosure in accordance with the Code of Practice for Revenue Auditors 2002 of any outstanding tax liabilities arising.

I undertake to submit computations and pay the tax, interest and penalty due by 22 July 2005.

NAME & ADDRESS (PLEASE USE BLOCK CAPITALS)

PPS Number / Tax Reference Number

My untaxed funds were invested in Life Assurance Product(s) in the institution(s) listed below:

Signed: _____ Date: _____

PLEASE NOTE: This form should be submitted by 23 May 2005

For your convenience we have reproduced both the *Disclosure and Statement of Amounts Due* and the *Notice of Intention to make a Qualifying Disclosure of a Tax Default relating to a Life Assurance Product* at the back of this publication. These forms are available on our website and from *Forms and Leaflets Service*, or these forms can be photocopied from this publication.

FINANCE ACT

2005

The 2005 Finance Act was enacted on 25 March 2005. The following pages highlight some of the changes introduced in the Act.

Income Tax

Section 5 continues until 31 December 2006 the special exemption from taxation of the unemployment benefit paid to systematic short-time workers.

Section 7 provides that, for the purpose of a charge to tax in respect of benefit-in-kind, the method used for calculating the taxable value of the use of lands will be the same as that for premises, i.e., the rent it might reasonably be expected to obtain on a letting from year to year. Currently, its valuation would be determined by reference to 5% of its market value.

Section 8 extends the benefit-in-kind tax exemption for employer-provided travel passes to include passes for travel on commuter ferries which operate within the State.

Section 9 amends *Section 122 TCA 1997* to confirm that the charge to tax under the section, in respect of the benefit-in-kind to an employee from an employer provided preferential loan, applies for each year in which there is a balance outstanding on the loan.

Section 10 provides, subject to conditions, for an exemption from a benefit-in-kind tax charge in circumstances where an employer incurs expense in providing a security asset or service for use by a director or employee. In order to qualify for the exemption there must be a credible and serious threat to the physical personal safety of the director or employee which arises wholly or mainly from his or her employment.

Section 11 exempts from income tax, payments made by the Health Service Executive to foster parents in respect of the care of foster children. In addition, the section exempts certain discretionary payments by the Health Service Executive to carers relating to the care of former foster children (those aged 18 or over) who suffer from a disability or until such persons reach 21 or complete their full-time education course. Finally, corresponding payments relating to foster children made in accordance with the law of another EU member state are also being exempted under the section.

Section 14 amends the definition of “chargeable person” for Self-Assessment purposes. Taxpayers who are solely PAYE taxpayers are not chargeable persons. Also, a PAYE taxpayer with non-PAYE income is not a chargeable person for a year if the non-PAYE income for that year is taken into account under the PAYE system. *Section 14* provides that in deciding whether to deal with non-PAYE income in this manner, the Revenue Commissioners may have regard to the (gross) amount of that income for the

year (or a previous year) before deductions, losses, allowances or reliefs.

Section 16 amends *Section 128 TCA 1997* which imposes an income tax charge on gains realised by directors or employees from the exercise of rights granted to them, by reason of their office or employment, to acquire shares or other assets in a company. The amendment extends the charge to cases where the recipient of the rights was not resident in the State when the rights were granted.

Share options are the rights that are mainly covered by *Section 128*. The entitlement of countries to tax gains from share options of internationally mobile employees and directors under double taxation agreements was the subject of a recent report approved by the Committee of Fiscal Affairs of the OECD. This amendment will allow Ireland to tax gains from share options in line with the taxation limits imposed under Ireland’s double taxation agreements and in line with OECD principles.

The result of the amendment, coupled with the acceptance of the OECD recommendation of a common approach in applying double taxation treaties in relation to the taxation of gains from share options, will be the elimination of double taxation that could otherwise arise and means that the income tax charge that arises on the exercise of a share option will be in proportion to the period of employment giving rise to the option which was exercised in Ireland.

This section is subject to a Commencement Order being made by the Minister.

Section 17 inserts a new section, *Section 81A*, into the Taxes Consolidation Act 1997. The new section seeks to align the timing of allowable deductions for employers in respect of contributions to employee benefit trusts with the time the benefit from those contributions becomes taxable in the hands of the employees. The provision does not apply to employers’ contributions to approved employee share schemes, approved pension arrangements or certain accident benefit schemes.

Section 18 amends *Section 130 TCA 1997* which is concerned with the classification of certain payments as distributions. Certain payments made by Employee Share Ownership Trusts (ESOTs) to beneficiaries will now be treated as distributions, subject to the deduction of dividend withholding tax at source, where there is an associated Approved Profit Sharing Scheme.

Section 19 makes changes in the provisions dealing with the taxation of lump sum payments made in relation to the termination of the holding of an office or employment.

The number of previous tax years taken into account in determining the average tax rate which applies in the formula for calculation of Top Slicing Relief is being

(Continued on page 6)



FINANCE ACT 2005

Continued from Page 5

reduced from five to three years. A requirement is also being introduced to report to the Revenue Commissioners any payment made on death, or on account of injury or disability.

Section 20 inserts a new Chapter 7 into Part 8 TCA 1997. The new provision deals with the tax rate applicable to certain deposit interest received by individuals who are taxable in Ireland. It provides that deposit interest received by individuals from lending institutions (banks, building societies, etc.) in other EU countries will be subject to tax at the same rate as deposit interest received by individuals from lending institutions in Ireland, provided that the tax on such interest is discharged by the return filing date for the year concerned.

This means that, where the liability on such interest is discharged by the return date, individuals who are taxable in Ireland and who receive interest income from other EU countries will, for the tax year 2005 and subsequent years, be taxed at the standard rate of income tax on the income instead of at the marginal rate of income tax as heretofore.

Section 21 amends Part 30 TCA 1997, which deals with the tax treatment of Revenue approved occupational pension schemes, retirement annuity contracts and PRSAs, by providing for tax relief for contributions to EU pension plans in certain circumstances.

The section allows for the approval by the Revenue Commissioners of occupational pension schemes provided to Irish employers/employees by pension providers based in other EU Member States (i.e. "overseas pension scheme"), which are structured other than on an irrevocable trust basis, so long as the standard approval conditions are met. The overseas pension scheme must be operated or managed by an Institution for Occupational Retirement Provision, within the meaning of the EU Pensions Directive, and must be established in an EU Member State which has implemented the Directive in its national law.

The section also removes the requirement that annuity contract providers must be established in the State and specifies that, where a provider is not so established, it must be an insurance undertaking authorised to transact such business in the State under the EU Life Directive.

It makes optional the present requirement for the administrator of an occupational pension scheme, a qualifying fund manager (in relation to an approved retirement fund) and a PRSA administrator, who are not established in the State, to appoint a person resident in the State to discharge all duties imposed under the legislation. However, where that option is not exercised, those

persons must enter into a contract with the Revenue Commissioners in relation to the discharge of those duties. The duties include the application of PAYE to pension payments or other payments or distributions made by those persons to Irish residents.

It allows the Revenue Commissioners to seek from any annuity provider, qualifying fund manager or PRSA administrator such information and particulars as they may reasonably require in relation to an annuity contract, approved retirement fund or a personal retirement savings account, including information relating to payments or distributions from those products.

All of the above changes will have effect as and from 1 January 2005.

The section also introduces a new Chapter 2B into the Taxes Consolidation Act 1997, which provides for a statutory scheme of relief for contributions paid by a migrant worker who comes to the State and who wishes to continue to contribute to a pre-existing "overseas pension plan" concluded with a pension provider in another EU Member State. To qualify for the relief, certain conditions and information requirements must be met as set out in the section.

The section provides that, where an Institution for Occupational Retirement Provision (IORP) established in the State is authorised and approved by the "competent authority" in the State (under the EU Pensions Directive) to accept contributions from an undertaking located in another EU Member State in respect of a retirement benefits scheme established under irrevocable trusts, then certain tax exemptions will apply in relation to the scheme. The term "undertaking" is defined broadly in the Directive and in the section, and includes any undertaking or other body, which acts as an employer, or as an association of, or representative body for, members of a particular trade or profession. Since the Pensions Directive has yet to be transposed into Irish law, these provisions will apply from a date to be specified in a Commencement Order.

Finally, the section makes it clear that an individual who exercises an option to have the value of an annuity paid to him or herself or into an approved retirement fund, must actually be in receipt of "specified income" of €12,700, as opposed to having a future entitlement to that income, if the requirement for part of the value of the annuity to be transferred to an approved minimum retirement fund or applied in the purchase of an annuity is to be avoided. The change takes effect in regard to the exercise of such an option on or after 3 February 2005.

FINANCE ACT

2005

**PAYE: Electronic and Telephone Communications**

Chapter 3 contains enabling legislation to facilitate the extension to PAYE taxpayers of the Revenue On-Line Service (ROS) which will enable them to file returns electronically and to avail of a range of electronic self-service options in relation to their tax affairs. In addition, in the context of an enhanced telephony service, a limited number of the self-service options are also being made available to PAYE taxpayers through an automated telephone system.

PAYE taxpayers using the extended ROS system will have the following self-service options made available to them:

- Amending personal details e.g. change of address;
- Amending tax credit details;
- Claiming additional tax credits;
- Re-allocating tax credits between employments;
- Re-allocating tax credits between spouses;
- Claiming repayments and making payments;
- Requesting balancing statements;
- Requesting forms and leaflets.

An automated telephonic self-service facility will enable PAYE taxpayers to order forms and leaflets and claim low risk tax credits.

Both the new electronic and telephone self-service will be available to PAYE taxpayers on a secure basis, 24 hours a day, 7 days a week.

The legislation also provides that the Revenue Commissioners may make automatic repayments of tax to PAYE taxpayers where they are satisfied on the basis of the information available to them that tax has been overpaid.

Income Tax, Corporation Tax and Capital Gains Tax

Section 28 makes a number of changes to Section 482 TCA 1997 which provides tax relief for certain expenditure on significant buildings and gardens. The changes are intended to improve the operation of the relief. In future, it is made clear that the owner or occupants of approved buildings and gardens must advertise the dates and

opening hours applicable to the satisfaction of the Revenue. Additionally, authorised officers of the Revenue Commissioners are being given the power to make unannounced visits to the approved buildings and gardens to ensure that the requirement of reasonable access to the property for the public - which is a key condition of the relief - is being met.

Section 29 inserts a new Section 657A into Chapter 1, Part 23, TCA 1997. The new section applies to individuals who are engaged in the trade of farming in the year of assessment 2005 and who are in receipt of payments under the new EU Single Payment Scheme for farmers and certain terminated FEOGA Scheme payments, both of which would otherwise be assessable in 2005. The new provisions do not apply to farmers who are already availing of farm income averaging under Section 657.

The new Section 657A provides that where these conditions are met and where the individual so opts, any payments received in 2005 under the terminated FEOGA schemes will be disregarded for tax purposes in 2005 and instead be deemed to arise in 3 equal instalments in 2005 and the 2 succeeding years of assessment and taxed accordingly. Should an individual permanently cease farming during that 3 year period, any of these instalment payments which have yet to be taxed will be brought into charge under Case IV of Schedule D for the year of cessation. Other than in a case of cessation, once an individual opts for this instalment arrangement, it cannot be altered during the three year period.

Section 30 amends Section 659 TCA 1997 which is concerned with the scheme of capital allowances for expenditure incurred on the construction of certain farm buildings and structures for the control of pollution. The current writing-down period of 7 years for qualifying expenditure is shortened to 3 years in respect of expenditure incurred after 1 January 2005 and the scheme is extended for a further 2 years until 31 December 2008. The option currently available to front-load capital allowances during the 7 year period is also provided for during the 3 year period.

Section 31 amends Section 666 TCA 1997. It provides for an extension of the existing 25 per cent scheme of stock relief for farmers for a further 2 years from 1 January 2005 until 31 December 2006.

Section 32 amends Section 667A TCA 1997. It continues the special incentive stock relief of 100 per cent for certain young trained farmers for a further 2 years from 1 January 2005 until 31 December 2006. The section provides that the extension to this relief will be commenced by an Order of the Minister for Finance.

Section 39 amends Section 817 TCA 1997. Section 817 is an anti-avoidance provision which counters schemes which enable profits of closely held companies to be transferred

(Continued on page 8)

FINANCE ACT 2005

Continued from Page 7



to shareholders by way of gains on disposals of shares without any significant reduction in ownership of the companies concerned. It recategorises these capital payments as distributions and so charges them to income tax instead of capital gains tax. *Section 39* refines the provisions relating to the description of arrangements to which *Section 817* applies.

Firstly, for the purposes of determining whether a person's interest in a business has significantly reduced following a disposal of shares, the interest of connected persons, such as family members, may also be taken into account.

Secondly, the disposal of a holding company by a person, without a significant reduction in their interest in the entire business, will now come within the ambit of *Section 817*.

Thirdly, a person's interest in a company is deemed not to have been significantly reduced following a disposal of shares in that company where any gain realised is wholly or mainly attributable to a prior transfer of value to that company from another company which is controlled by the same person, either directly or in association with persons connected to him or her.

Fourthly, a person's interest in a company is deemed not to have significantly reduced where-

- The person is, or could become, entitled to shares in the company which are held by a discretionary trust,
- The acquisition of the shares by the trust was directly or indirectly related to a disposal of such shares by the person, and
- The shares were acquired with the financial assistance of a company or companies under the control of the person, either alone or in association with other connected persons.

Transactions entered into for bona fide commercial reasons continue to be outside the ambit of *Section 817*.

Section 45 makes a number of changes to the tax regime relating to leasing of machinery and plant. Under that regime, the leasing of machinery or plant is regarded as a separate trade and losses of that trade which arise from

surplus capital allowances may not be offset against other income. The changes being made are-

- *Section 396A TCA 1997*, which provides for the offset of trading losses against trading income, is amended to ensure that that provision cannot be used to avoid the restrictions on the offset of leasing losses.
- The restriction on the offset of leasing losses is being relaxed so that losses incurred in a leasing trade by a company which is a member of a group may be offset against income of a leasing trade carried on by another company which is a member of the same group.

Section 47 makes a number of amendments to *Chapter 8A of Part 6 TCA 1997* which deals with dividend withholding tax. Subject to certain exemptions, DWT is deducted from dividends paid, and other distributions made, by Irish resident companies. The section exempts Personal Retirement Savings Accounts (PRSAs) and exempt unit trusts from dividend withholding tax (DWT). The new exemption will align the treatment of PRSAs with that which applies to similar bodies such as pension funds and qualifying managers of approved retirement funds. Exempt unit trusts are Revenue approved charities and pension schemes. Where all the units in the trust are held by capital gains tax exempt persons throughout a year of assessment the gains accruing in that year are not chargeable to capital gains tax. Furthermore, these trusts are not liable to income tax in that year. This section provides that distributions made to such trusts are now to be exempt from DWT. This will avoid such entities having to claim repayment from the Revenue Commissioners of DWT withheld from dividends received from Irish companies.

Corporation Tax

Section 48 provides for the tax implications of the move by companies to the new International Financial Reporting Standards.

All EU companies listed on a stock exchange will, for any period of account commencing on or after 1 January 2005, be required to prepare their consolidated financial statements for the group in accordance with a common set of accounting standards entitled - *International Financial Reporting Standards* (IFRS) instead of the Irish generally accepted accounting practice (GAAP). Individual accounts of companies may be prepared in accordance with IFRS. However, once a company moves to IFRS, it will be required to use IFRS for the future except in exceptional circumstances.

The starting point for calculating taxable trading income of a company is the profit of the company according to its accounts. Where a company prepares its individual company accounts on the basis of IFRS, the section

FINANCE ACT

2005

provides that such IFRS accounts will be used as the starting point for the calculation of taxable trading profits.

Section 49 makes three amendments to *Section 243 TCA 1997*, which provides for relief from corporation tax in respect of certain payments such as annuities, patent royalties, rents, and (to a limited extent) interest, paid by a company. These payments are known as charges on income, and are set against the total profits (i.e. income from all sources and chargeable gains) of the company and not against the particular source of income with which the payment is connected.

The first amendment deals with interest payments which may qualify as a charge. Under the current rules, such payments only qualify if they are payable to lending institutions carrying on a bona fide business in the State. The amendment provides that interest payable to a bank, building society, stockbroker or discount house carrying on business in other Member States of the EU will also come within the scope of the section. This will mean that companies who obtain loans from such institutions will not be excluded from the provisions of the section merely because the lender is not in the State. All other conditions in relation to eligibility of the interest as a charge will remain.

The second amendment corrects an anomaly in the wording in *Section 243(2)*, which arose following the introduction of additional methods for relieving group losses in recent years. The amendment clarifies that the reference to profits before any deduction for group relief applies only to relief under *Section 420* of the Act.

The third amendment concerns an inconsistency between *Section 243 TCA 1997* and the EU Interest and Royalties Directive. The Interest and Royalties Directive abolishes withholding taxes on certain interest and royalty payments made by a company resident in the State to an associated company resident in another Member State. However, *Section 243* denies a deduction for certain payments as a charge unless withholding tax is applied to the payments. The unintended result of this is that the payments, which are exempted from withholding tax under the Directive, will not be deductible as a charge. The amendment ensures that deductibility will not be denied by virtue of the Directive.

Capital Gains Tax

Section 56 amends *Section 980 TCA 1997*, which requires a purchaser of certain assets to deduct and remit to the Revenue Commissioners 15% of the consideration payable for such assets as an advance on a possible capital gains tax liability on the part of the vendor, unless the vendor produces a clearance certificate or the purchase price is equal to or less than €500,000.

Firstly, the legislation is brought into line with Revenue administrative practice by providing a statutory entitlement to a credit for a vendor (equal to the amount remitted to the Revenue Commissioners by the purchaser) against his or her possible capital gains tax liability when an asset purchased from him or her is paid for in non-monetary form (e.g. by way of an asset swap or a purchase with shares).

Secondly, the bodies specified in *Schedule 15, TCA Act 1997* (e.g. Local Authorities, Tourism Ireland) are being exempted from the provisions of *Section 980* as these bodies are already exempt from capital gains tax by virtue of *Section 610 TCA 1997*.

Finally, an incorrect reference in the definition of “house” is being rectified.

Section 57 amends *Schedule 15, TCA 1997*, which specifies a number of public bodies that are exempt from capital gains tax. The amendments are name changes to a number of the bodies to reflect their current titles. *Firstly*, the reference to the health boards is changed to the Health Service Executive because of the new health administration structure. *Secondly*, the reference to the various regional tourism organisations is changed as they have become regional tourism authorities.

Section 58 amends *Section 608 TCA 1997* by providing for an exemption from capital gains tax on gains arising from the disposal of investments held as part of the assets of an occupational pension scheme referred to in *Section 790B* (inserted by *Section 21 FA 2005*), where the trustees are exempt from income tax under that section.

Alcohol Products Tax

Section 62 consolidates and modernises the excise law in relation to illicit production and processing of alcohol products, and dealing in untaxed alcohol products.

The section provides for indictable offences for the illegal production and processing of alcohol products, knowingly dealing in such illegally produced products, and keeping or transporting equipment for illegal production and processing. These offences are already included under various existing excise provisions, with varying penalties applying. These will all now be subject to the standard penalties for the more serious excise offences.

The section also provides for temporary closure of any licensed premises or registered club involved in serious Alcohol Products Tax offences. This will replace an existing forfeiture of licence provision, which has proved ineffective.

To address a deficiency, provision is also made for forfeiture of all vehicles used in connection with an Alcohol Products Tax offence.

(Continued on page 10)

FINANCE ACT 2005

Continued from Page 9

Section 63 provides for a relief, by way of repayment, of half the Alcohol Products Tax paid on beer brewed by breweries which produce 20,000 hectolitres or less per annum. As required under EU law, the relief is confined to independent breweries with their own premises, and it does not apply to beer brewed under licence for another brewery. The relief will however apply to beer brewed under a licensing or other cooperation arrangement between small breweries, provided that the combined total annual production of those breweries does not exceed 40,000 hectolitres.

Mineral Oil Tax

Section 64 amends the rates of Mineral Oil Tax-

- By increasing the rates for auto-LPG, non-auto LPG and Fuel Oil by €10.58, €2.71 and €1.33 respectively, per 1,000 litres. These increases come into effect on 1 April 2005;
- By introducing rates for coal at €4.18 per tonne for business use and €8.36 per tonne for other use. This new tax on coal comes into effect by Commencement Order.

The introduction of mineral oil tax on coal, and increased rates for auto-LPG, non-auto LPG and Fuel Oil are required to comply with the EU Energy Tax Directive.

This section also introduces a differentiated rate for petrol with a sulphur content of more than 10 parts per million (ppm) which, when VAT is included, amounts to 5 cent per litre. In addition, the sulphur content for differentiating the rates on diesel is reduced from 50ppm to 10ppm. This provision comes into operation by Commencement Order.

Section 67 amends Mineral Oil Tax law to provide for relief from the tax-

- On reduced rate oil present in the fuel tank of certain special purpose vehicles or private pleasure craft, at the time of entry into the State, where use of such fuel is permitted by another Member State. This provision comes into effect on enactment;
- In respect of coal used for the generation of electricity, for dual use, in mineralogical processes, in combined heat and power generation, in trains, in agricultural, piscicultural or horticultural works, and in forestry, by households, by charities, and by businesses with greenhouse gas emissions permits. This provision comes into effect by Commencement Order.

Section 69 amends Mineral Oil Tax law to specify that liability to Mineral Oil Tax on coal arises when the coal is the subject of final delivery and that the tax is payable by the person who receives it, and to require every person who delivers coal, other than to households or charities, and every person who is liable to pay Mineral Oil Tax on coal, to register with the Revenue Commissioners, in

accordance with procedures prescribed or imposed by them.

This section comes into effect by Commencement Order.

Tobacco Products Tax

The purpose of this Chapter is to consolidate and modernise tobacco products excise legislation. This is a further stage in a project of consolidation and modernisation of excise legislation. The existing law in this area is contained mainly in a 1977 Act with a small body of different provisions in other legislation.

This Chapter does not introduce any new duties on tobacco products or any other significant changes in the operation of tobacco product taxes. The opportunity is taken, however, to update and word the replacement provisions in such a way as to make their meaning and application clear in a modern excise context. The opportunity is also taken to adopt a structure of law which is more in accordance with the structure of the EU Law governing tobacco products.

Miscellaneous Excise and Customs

Section 87 amends tobacco excise legislation so as to (1) redefine when excise duty liability arises as the time when the tobacco products are released for consumption and (2) provide for repayment of Irish duty where an irregularity occurs in another Member State giving rise to a payment of duty in that state. This will align domestic law more closely with EU law. This section comes into effect by Commencement Order.

Value-Added Tax

Section 109 amends *Section 26 VAT Act 1972* which deals with penalties. The amendment inserts a new subsection (3AA) into *Section 26 VAT Act 1972* to provide for a penalty of €1,265 for obstructing a person authorised by Revenue to value a property, or preventing such a person from inspecting a property.

Section 110 amends *Section 27 VAT Act 1972* which deals with fraudulent returns. Subsections (a), (b) and (c) apply the tax-gearred penalty of 100% to cases of VAT fraud instead of the existing 200% penalty.

Section 113 makes two amendments to the *Sixth Schedule to the VAT Act 1972* concerning goods and services chargeable at the VAT rate of 13.5%.

The first amendment ensures that the sale of food and drink which has been heated and is above the ambient air temperature when provided to the customer, remains liable to VAT at the reduced rate of 13.5% when purchased at a 'take-away' outlet, supermarket, garage, or other outlet.

The effect of the second amendment is to clarify that lettings in the short-term guest or holiday sector are

FINANCE ACT

2005

taxable at 13.5% while lettings of accommodation in the residential sector, including student accommodation, remain exempt from VAT.

The second amendment to *section 113* comes into effect on 1 July 2005.

Stamp Duties

Section 116 amends *Section 40 Stamp Duties Consolidation Act 1999* which provides for the calculation of ad valorem stamp duty where the consideration given for a conveyance on sale of any property consists of stock or securities. Where a non-marketable security is the consideration given for a conveyance on sale of any property, *Section 40* provides that the conveyance on sale is to be charged with ad valorem stamp duty in respect of the amount due on the day of the date of the conveyance for principal and interest on that security. In order to counter a purported attempt at avoidance of stamp duty, this amendment will ensure, in such situations, that ad valorem stamp duty will instead be payable in respect of the value of the property conveyed. The amendment applies to instruments executed on or after 2 March 2005.

Section 117 inserts a new *Section 45A into the Stamp Duties Consolidation Act 1999*. The purpose of this new section is to counteract avoidance whereby a house or an apartment is purchased by more than one purchaser and each purchaser takes a separate conveyance or transfer of an interest in the house or apartment in order to avail of lower stamp duty rates. This section, which extends to gifts made in a similar manner, applies to instruments executed on or after 3 February 2005.

Section 119 amends *Section 81 Stamp Duties Consolidation Act 1999* which exempts transfers of land to young trained farmers from stamp duty. There are clawback provisions contained in *section 81* and the amendment provides that where there is a disposal or part disposal of land to which relief applied, within 5 years from the date of execution of the instrument, a clawback of the relief, by way of the imposition of a penalty, will apply where any proceeds from the disposal are not re-invested in other land within one year of such disposal. The extent of the penalty will relate to the amount of the proceeds not re-invested and is calculated in accordance with the formula contained in the section. The change applies to disposals of land effected on or after 3 February 2005.

Section 120 amends *Section 81A Stamp Duties Consolidation Act 1999* which exempts transfers of land to young trained farmers where the instrument is executed on or after 25 March 2004. The amendment changes the clawback provisions contained in *section 81A* in a similar manner to *Section 119* in the case of disposals of land effected on or after 3 February 2005.

Section 121 inserts a new *Section 81B into the Stamp Duties Consolidation Act 1999* which gives effect to the Budget announcement to introduce a stamp duty relief for an exchange of farm land between two farmers for the purposes of consolidating each farmer's holding. The section provides that stamp duty will not be charged on an exchange of land where the lands exchanged are of equal value. In a case where the lands exchanged are not of equal value, stamp duty will be charged on the amount of the difference in the values of the land concerned. Where consideration is paid for the difference, it must be payable in cash.

The following main conditions must be satisfied before the relief will be granted by the Revenue Commissioners under the section:

- There must be a valid consolidation certificate issued by Teagasc in existence at the date of the exchange of lands which must be submitted to the Revenue Commissioners in support of an application for relief.
- The farmers involved in the exchange of land must each sign a declaration, for submission to the Revenue Commissioners, to the effect that each of them will remain a farmer (i.e. will spend not less than 50% of that person's normal working time farming) and will farm the land exchanged for a period of at least 5 years from the date of the exchange.
- All the joint owners of the land exchanged including the farmers must make a declaration, for submission to the Revenue Commissioners, to the effect that it is the intention of each of them to retain ownership of their interest in the land and to use the land for the purpose of farming, for at least 5 years from the date of the exchange.
- The instruments effecting the exchange of land must be submitted at the same time to the Revenue Commissioners for adjudication.

The section provides that the Minister for Agriculture and Food with the consent of the Minister for Finance may make the necessary guidelines in relation to how applications for consolidation certify Cates are to be made to Teagasc and setting out, inter alia, the conditions of such consolidation.

Finally, the section also provides for a clawback of the relief where the land or part of the land included in the exchange is disposed of or partly disposed of before the end of the 5 year holding period. A clawback of the relief will not occur where such land is compulsorily acquired or is the subject of another exchange of farmland to which *Section 81B* applies. In addition, the section provides for penalties to apply where a false declaration is made or where an invalid consolidation certificate is used to obtain

(Continued on page 12)

FINANCE ACT 2005

Continued from page 11

the relief. The section will apply to instruments executed on or after 1 July 2005 and on or before 30 June 2007.

Section 128 amends Part 9 of the Stamp Duties Consolidation Act 1999 to confirm changes announced in the Budget which provide for an exemption from a second or subsequent charge to stamp duty for financial cards such as credit cards, charge cards, ATM cards, Laser cards and combined cards arising from the switching of accounts within a financial institution, or from one financial institution to another, in the same year of charge. The change in relation to credit cards and charge cards will take effect from 2 April 2005, while the change in relation to ATM cards, Laser cards and combined cards will take effect from 1 January 2006.

Capital Acquisitions Tax

Section 131 amends *Section 48 Capital Acquisitions Tax Consolidation Act 2003*, which sets out the information required to be included in an Inland Revenue affidavit in respect of an estate of a deceased person. The amendment reflects the changes made to the capital acquisitions tax territoriality rules in the Finance Act 2000 and ensures that details of the assets of a deceased person must be included in the Inland Revenue affidavit in the case of a deceased person who, on the date of his or her death, was resident or ordinarily resident in the State and who was either domiciled in the State or, where non Irish-domiciled, had been resident in the State for the 5 consecutive years of assessment immediately preceding the year of assessment in which the date of death falls. This change applies to Inland Revenue affidavits in respect of estates of deceased persons where those persons died on or after 1 December 2004.

Section 137 amends *Section 107 Capital Acquisitions Tax Consolidation Act 2003* which grants a credit for foreign tax similar to estate duty, gift or inheritance tax, against Irish gift or inheritance tax, where a double taxation agreement does not exist between the State and the foreign territory imposing the tax. Under the existing legislation, a credit can only be given for foreign tax on property against gift or inheritance tax payable in the State where the property is situated in the territory in which the foreign tax is chargeable. However, this credit does not apply where the tax is levied in that country in respect of assets located in a third country. This amendment ensures that a credit can now be granted for foreign tax paid in any territory, irrespective of where the property is situated. This change applies to gifts or inheritances taken on or after 1 December 2004.

Miscellaneous

Section 140 inserts a new section into *Chapter 4 of Part 38 TCA 1997*. The new section empowers an authorised officer of the Revenue Commissioners to sample the

information (other than medical records) held by a life assurance company in respect of a class or classes of policies and their policyholders. The use of this power is subject to a Revenue Commissioner being satisfied that there are circumstances suggesting that such class or classes of policies have been used as an investment vehicle for untaxed funds. The information obtained by use of this sampling power can only be used to assist in making an application (under *Section 902A* of that Act) to a judge of the High Court for an order to have wider access to the information held by the life assurance company in relation to that class or those classes of policies and their policyholders.

Section 142 amends *Section 1078 TCA 1997*. *Section 1078* sets out what constitutes a revenue offence and the sanctions that can be imposed by a Court on a person found guilty of such an offence. This amendment inserts a new subsection into 1078 to create new offences of being knowingly concerned in the fraudulent evasion of tax or being knowingly concerned in, or being reckless as to whether or not one is concerned in, facilitating the fraudulent evasion of tax (or other Revenue offences under *Section 1078*). The section also amends *subsection (2) of Section 1078* which sets out a number of specific actions or failures that constitute an offence. This subsection is amended to update the legislative reference to tax required to be deducted by collective funds and to include a failure to deduct or remit relevant contracts tax. Finally *subsection (5) of Section 1078* is amended so that where a body corporate has committed a revenue offence, and the offence is shown to be attributable to any recklessness on the part of certain officers of the body corporate, those officers will be deemed to be guilty of that offence and may be proceeded against accordingly.

Section 143 amends *Section 1086 TCA 1997*. That section requires the Revenue Commissioners to publish details of certain settlements made with tax defaulters. Where the amount of tax, interest and penalties included in such a settlement does not exceed €12,700, then details of the settlement will not be published. This limit is being increased to €30,000 and provision is made to increase this amount by Ministerial order every five years by reference to the Consumer Price Index.

Section 145 and *Schedule 5* provide for a number of amendments to the legislation governing the payment of interest on certain overdue tax. The principal measure reduces the rate of interest applying to overdue assessed taxes (that is, income tax, capital gains tax, corporation tax, gift tax and inheritance tax) and stamp duties as respects periods of delay after 1 April 2005. The reduction will also apply as respects certain abolished taxes. The reduction will be from a rate of 0.0322 per cent for each day or part of a day of delay (about 11.75 per cent per year) to a rate of 0.0273 per cent for each day or part of a day of delay (just

Revenue

FINANCE ACT

2005

under 10 per cent per year). The measures will not apply to taxes such as PAYE, relevant contracts tax, professional fees withholding tax, DIRT and other withholding and exit taxes which are collected by employers and others on a fiduciary basis. Likewise, it will not apply to indirect taxes such as excise duties and VAT.

In addition to the reduction in rates, this section rationalises and simplifies the various provisions applying in this area so as to make them clearer and more user-friendly.

This section provides that, in the cases of income tax, corporation tax, capital gains tax, gift tax and inheritance tax, which remains unpaid on or after 1 April 2005, the basis for the calculation of interest will be by reference to a daily rate for all periods of delay whether before or after

1 April 2005 instead of a monthly basis for periods up to September 2002 and a daily basis thereafter. In the case of stamp duties, due to the variation in the rates which applied for various purposes in the past, the new rate will only apply for periods of delay arising on or after 1 April 2005. However, the 24 provisions imposing a charge to interest have been changed so that in future only one provision will need to be amended in the event of a future change in interest rate.

The section also provides that the 2 per cent per month or part of a month interest rate set out in *Section 1082 TCA 1997* in cases of fraud or neglect will cease as respects the year of assessment 2005 and subsequent years and accounting periods beginning on or after 1 January 2005. This provision will continue to apply as respects earlier years and periods. ■

BETTING DUTY

AUTOMATED COLLECTION

Changes have been introduced from 1 January 2005, which will affect the way in which Betting Duty is returned and paid. These changes include:

- ◆ Moving from a monthly return and payment to a quarterly system from 1 January 2005. The return and payment must be made by 15th of the month following the end of the quarter. For example, the first return for the quarter 1 January 2005 to 31 March 2005 must be returned, along with the appropriate payment by 15 April 2005.
- ◆ Groups will make a single return and payment for all betting premises in a Group.
- ◆ While the requirement for a Security Bond will still be retained in the Regulations, it is the intention to only request a Security Bond in cases where there is a history of late payment of duty. Cases which are required to have a security bond in place on 1 January, 2005 will be notified on or before 31 December, 2004 and thereafter as required by the Revenue Commissioners.
- ◆ Betting Duty can be paid through ROS from early 2005.
- ◆ For those who elect to file their return in paper format, all payments must be made using the Single Debit Authority (SDA) payslip (available from Lo Call 1890 20 30 70).
- ◆ Paper returns and SDA payment slips must be returned to the Collector-General's Division, Sarsfield House, Limerick.

Why are these changes being introduced?

Betting Duty will now be introduced into Revenue's Integrated Taxation System for business taxes. This will provide a more comprehensive range of services, including the central issue of Betting Duty returns and

the automated issue of receipts. These returns will be personalised and must only be used for the nominated business and for the specific quarter.

When will the first return and payment under the new arrangement be made?

The return and payment due for the 1st quarter of 2005 must be remitted by the 15 April 2005. This return covers Total duty payable for the quarter 1 January 2005 - 31 March 2005. The return and payment should be submitted to the Collector-General's Division, Sarsfield House, Francis Street, Limerick in the pre-paid return envelope provided. From 2005 onwards, betting duty return should be filed using the new return only.

How can Betting Duty be paid?

You can file and pay Betting Duty through the Revenue On-Line Service (ROS). If you are making a paper return you must pay using the Single Debit Authority (SDA). This is a once off instruction to your bank to pay the amount specified from a current account.

Will the annual registration renewal procedure for betting premises change?

No, the existing arrangements will continue whereby an application is made to the local Revenue District for the annual renewal of registration for the betting premises.

Payment Enquiries

Collector-General's Division
Sarsfield House
Francis Street
Limerick

LoCall 1890 20 30 70
E-Mail cg@revenue.ie ■



AMENDED ASSESSMENTS

IT

Introduction

At recent TALC meetings practitioners expressed concern about the level of 'incorrect' assessments received by them in recent weeks in respect of income tax returns filed on paper (i.e. 2003 income tax returns). This is currently under discussion with TALC and we will revert on the outcome of these discussions in a later edition of *Tax Briefing*. This is a topic that has risen time and time again in recent years and has been commented on in earlier Issues of *Tax Briefing* and TALC.

At this point Revenue would again reaffirm our commitment, as part of our ongoing policy of seeking to improve the quality of our service, to 'getting it right first time' and keeping the amount of human error on our side to a minimum. However, experience to date shows that practitioners too have a big part to play in helping us to get it right first time, as analysis from previous years experiences has shown. "Getting it right first time" benefits both practitioners and Revenue alike, avoiding inconvenience to all and freeing up scarce resources for both practitioners and Revenue.

Experience to Date & the way forward

Surveys carried out by Revenue in recent years indicate that there has been an annual rate of approximately 20% of assessments requiring amendment. The reasons for the amendments were attributed roughly 50:50 between practitioners/taxpayers and Revenue. There will, of course, be instances where amendments are unavoidable (for example a late decision by taxpayer to make contributions under an RAC, after the return is submitted) but, for the purpose of this exercise, we are concentrating on those areas where greater care in processing and/or completing returns can help us to get the right assessment out first time.

Through an increased usage of ROS, better completion of returns, improved manual processing **and** through focussing on the experiences of the past, the number of unnecessary contacts can be reduced significantly. Indeed, early indications suggest that the overall number of cases requiring amendment has dropped this year. For its part, Revenue will continue to take all possible steps to simplify returns and reduce manual processing errors, while continuing to promote ROS as the preferred way of filing. Practitioners are asked to ensure that returns are completed fully and that 'instalment filing' (returns being submitted without including all claims for relief etc) is avoided wherever possible. Revenue will also continue to cooperate fully with practitioners via TALC and other representative groups to help improve the situation.

The results of a Revenue survey of 2002 amended assessments is set out on page 16 and practitioners are asked to pay particular attention to those areas identified as giving rise to the issue of amended assessments when completing returns. As stated earlier, we are currently in

discussion with practitioners in connection with the 2003 assessments and we will also conduct a separate survey of the position for that year. We will come back to this again in a later edition of *Tax Briefing*, concentrating more closely on the specific areas that give rise to 'avoidable' amended assessments.

Benefits of On-Line filing Restated

While this article deals primarily with the 'processing' of paper returns, Revenue continue to promote electronic filing via ROS as the preferred method of filing - using ROS eliminates any Revenue human error factor altogether! In its first full year (2002 filing season) ROS accounted for 10% of all timely filed income tax returns and last year (2004 filing season) that increased to 53%. While practitioners have clearly already played a large part in delivering the increased uptake of ROS to date, Revenue would again urge those practitioners who are not currently using ROS to do so for the 2005 filing season. If you want more information on how to sign up to ROS contact the ROS Help Desk at LoCall 1890 201 106 or visit our website at www.revenue.ie.

Survey of Amended Assessments for 2002

The survey was carried out on the position as it was as at 11 May 2004. At that date amended assessments had issued for 21% of cases that filed paper returns and 7% for ROS filed returns. A random sample of the amended cases was then selected from each Tax District. The survey set out to establish the reasons amended assessments were necessary and also focused on whether the amendments were attributable to Revenue or to practitioners/taxpayers.

Results of Survey - 'paper returns'

The findings indicate that:

- ◆ 55% of amendments were attributable to Practitioner/Taxpayer
- ◆ 45% of amendments were attributable to Revenue

Table A on page 15 sets out the main areas that gave rise to amended assessments attributable to practitioner/taxpayer and these are briefly elaborated on immediately hereunder.

Reasons for amendments arising from the survey

Amendments attributed to practitioners/taxpayers arose mainly from items being omitted from returns, subsequent changes to figures originally declared/claimed on returns or claiming additional reliefs after the return was submitted ('instalment filing'). The main areas where amendments arose are; RAC/AVC/PRSA; PAYE details (typically, omitting to include PAYE income, claim for PAYE Credit, details of PAYE tax paid, details of PAYE repayments made by PAYE District but not reflected on return); Health Expenses, Mortgage Interest, Case I. [See Note on page 15]



AMENDED ASSESSMENTS

IT

Results of Survey - ROS Returns

Since there is no manual intervention by Revenue, manual processing errors do not feature with on-line filing. Over 95% of the amendments arose due to agent follow up contact, where claims were made, or amendments were advised, after the return was filed on-line. Table B below sets out the main areas that gave rise to amendments. RAC's, PAYE, Homecarers Tax Credit and Health Expenses are top of the list. The

comments for paper returns are largely equally relevant here. [See Note below]

[**Note:** As mentioned earlier in this article, it's accepted that there will be instances where amendments are unavoidable (for example a late decision by taxpayer to make contributions under an RAC, after the return is submitted) and the emphasis here is to identify those areas where greater care in processing and/or completing returns can help to get the right assessment out first time.]

Table A: Paper Returns

Summary of reasons for amendments attributable to practitioners/taxpayers

Amendments Due to:	Frequency
RAC / AVC/ PRSAs	14%
PAYE	14%
Health Expenses	11%
Mortgage Interest	7%
Case I	6%
Surcharge	5%
Loss	5%
Case V	5%
Other Tax Credits	4%
Schedule E	3%
Home Carers Allowance	3%
Age details	3%
Separate Assessment	3%
Capital Allowances	2%
Foreign Income	2%
Investment Income	2%
Personal details	2%
PSWT	2%
Other	7%
Total	100%

Table B: ROS Returns

Summary of reasons for amendments attributable to practitioners/taxpayers

Amendments Due to:	Frequency
RAC	12%
PAYE	12%
Homecarer's tax credit	10%
Health expenses	9%
PSWT	5%
Surcharge	5%
Capital allowances	4%
Other tax credits	4%
DSFA income	4%
Case I	3%
Case V	3%
Date of Birth	3%
Losses	3%
Personal details	3%
Duplicate return	2%
Other	18%
Total	100%

INDEXED THRESHOLDS

CAT

Capital Acquisitions Tax 2005

Gift and Inheritance Tax

For the purpose of Gift and Inheritance Tax, the relationship between the person who provided the gift or inheritance (i.e. the Disposer) and the person who received the gift or inheritance (i.e. the beneficiary), determines the maximum tax free threshold - known as the "group threshold". Three Group thresholds were introduced on 1 December 1999 in respect of gifts and inheritances taken between 1 December 1999 and 31 December 2000. The Group thresholds are indexed by reference to the Consumer Price Index and the indexation factor for 2005 (1 January 2004 to 31 December 2004 inclusive) is 1.225.

The indexed Group thresholds for 2003, 2004 and 2005 are set out in the table below.

Class	Relationship to Disposer	Group Threshold		
		2003 (after Indexation)	2004 (after Indexation)	2005 (after Indexation)
A	Son/ daughter	€441,198	€456,438	€466,725
B	Parent*/Brother/Sister Niece/Nephew/ Grandchild	€44,120	€45,644	€46,673
C	Relations other than Group A or B	€22,060	€22,822	€23,336

* In certain circumstances a parent taking an inheritance from a child can qualify for the Group A threshold.

Further information may be obtained from the Capital Taxes Division, Taxpayer Information Service, Dublin Castle - Telephone LoCall: 1890 20 11 04 ■



P35 END OF YEAR RETURN

2004

P35 Penalties

The deadline for making the P35 return for the tax year ended 31 December 2004 was the 15 February 2005. Employers who failed to file the return by the deadline should do so immediately to avoid the escalation of penalties or an increased possibility of a tax audit.

The Collector-General has begun to impose penalties and the amount increases for each month that the return remains outstanding to a maximum of €2,535.

Supplementary P35 Returns

If an employer discovers that s/he has made an incomplete or incorrect P35 return, it is important that a Supplementary or Amended Return is filed without delay.

A supplementary P35 return is required where an employee is not listed on the original P35 Return.

The simplest, quickest and most efficient method of filing a supplementary P35 Return is via the Revenue On-Line Service (ROS). Information on ROS is available from the Revenue Website at www.revenue.ie.

If submitting a Supplementary P35 Return on paper it is important to ensure that:

- ◆ The correct stationery is used,
- ◆ 'Supplementary' is clearly written on the Declaration,
- ◆ The Declaration is fully completed, and
- ◆ A P35L/P35LT form is completed for all supplementary returns.

Amendments to P35 Returns

An amendment changes the P35 declared liability and/or the employee details entered on the original P35 Return.

Where an employer or practitioner wishes to amend P35 employee details already submitted on paper or on disk, a

P35 Amendment Form should be completed and returned to:

*P35 Amendments Section,
Collector-General's Division,
Government Offices,
Nenagh,
Co. Tipperary.*

This form is available on the Revenue Website at: www.revenue.ie/services/tax_info/p35.htm

The form can also be obtained by ringing the Employer Help-line at LoCall 1890 25 45 65 and any queries in relation to the completion of this form should be directed to the Employer Help-line.

When submitting an amendment to a P35 Return it is important to ensure that:

- ◆ The tax year is specified, and
- ◆ The employers registration and employee PPS number are quoted.

As for supplementary P35 returns, a quick and efficient method for filing P35 amendments via ROS is available.

Use Correct Forms

The technology used by Revenue to process returns is designed to operate on the correct stationery only. The P35 Declaration is specific to each employer and must only be used by that employer. In addition, the form can vary from one year to the next to cater for legislative changes. Accordingly, in the case of P35 original and supplementary returns in respect of a particular year, it is important that the form used is the correct one for that year. Forms are available from the Employer Information and Customer Service Unit by calling the Help-line number at 1890 25 45 65.

With regard to the P35 amendment form, as these are not employer or year specific, they may be downloaded from the Revenue Website or obtained by contacting the Employer Help-line. ■

CONVERSION RATES

2004

Average Market Mid-Closing Exchange Rates v. Euro As Supplied By The Central Bank

	2003	2004
U S dollar	1.1312	1.2439
Sterling	0.6919	0.6786
Danish krone	7.4307	7.4399
Japanese yen	130.97	134.44
Swiss franc	1.5212	1.5438
Swedish krona	9.1242	9.1243
Norwegian krone	8.0033	8.3697
Canadian dollar	1.5817	1.6167
Australian dollar	1.7379	1.6905

Lloyds Conversion Rate

For accounts closed in the calendar year 2004 the conversion rate of sterling to euro should be calculated by reference to the sterling mid-closing rate supplied by the Central Bank.

2004 Stg £1 = Euro 1.4183

TIME LIMITS FOR REPAYMENTS

IT, CT & CGT

Time Limits for Repayments of Income Tax, Corporation Tax and Capital Gains Tax.

Payment of Interest on Repayments of Tax arising from a Mistaken Assumption by Revenue.

Overview

Issue 56 of *Tax Briefing* carried an article on the new regime of tax repayments, interest and time limits arising from *Section 17 Finance Act, 2003*. The purpose of this article is to provide further clarification of a number of issues, including circumstances in which repayments of tax might arise due to a **mistaken assumption in the application of a provision by Revenue**.

Section 17(1)(a) TCA 1997 replaced the existing *Section 865 TCA, 1997* with effect from 31 October, 2003. The new section provides for a general right to repayment of tax (income tax, corporation tax or capital gains tax). Specific entitlement to repayment may arise under various provisions of the Tax Acts - these entitlements are unaffected by this general right to repayment but all entitlements to repayment are made subject to the time limits contained in *Section 865*.

Who is entitled to repayment?

The new *Section 865(2)* provides that a person who has paid tax which is not due, or which but for an error or mistake in the person's return would not have been due, is entitled to repayment of that tax.

The reference to tax which is not due is to be taken as including tax that has been charged in an assessment which has become final and conclusive but which is later found to have been charged incorrectly. This may arise where, for instance, the Appeal Commissioners or the Higher Courts find in another case, with similar facts, that the tax is not chargeable and the Revenue Commissioners decide not to appeal against that decision. It may also arise where the Revenue Commissioners accept, in a case with similar facts, without going to appeal, that a different interpretation of the law than that adopted in other cases is correct.

Time Limits

Time limit for making a claim for repayment

Section 865(4) provides new time limits for the making of claims. In general, a valid claim to repayment must be made within 4 years after the end of the chargeable period to which the claim relates. All claims under the new general repayment provision, *Section 865(2)*, must be made within this time limit.

Transitional provision

In the case of claims under any provision of the Tax Acts or the CGT Act, other than the new *Section 865(2)*,

- For any chargeable period ended on or before 31 December 2002,
- and
- Where the claim was made by 31 December 2004,

a ten year time limit will apply.

Claims under specific provisions containing their own time limits

Where a claim arises under a provision which contains a shorter time limit than the time limit mentioned above - 4 years or 10 years - which would otherwise apply, that shorter period will be the time limit. On the other hand, where a claim arises under a provision which contains a longer time limit than the 4 year time limit mentioned above, the 4 year time limit will apply. For example, if a claim relating to the year 2004 arises under a provision which includes a 6 year time limit, the 4 year time limit in *Section 865* will apply. But if the time limit in the particular provision is 2 years, that shorter time limit will prevail.

Claims for Repayment

Valid Claims

Section 865(3) provides that the Revenue Commissioners may not make a repayment of tax referred to in *Section 865(2)* unless a **valid claim to repayment** has been made. A valid claim must contain all the information the Revenue Commissioners may reasonably require to determine if and to what extent a repayment is due.

Return or statement may be a valid claim

A return or statement which a person is required to deliver under the Acts and which contains all the information that the Revenue Commissioners may reasonably require to determine if and to what extent a repayment is due is regarded as a valid claim. Where such information is not contained in a return or statement, a claim to repayment is not regarded as a valid claim until that information is furnished.

Example

A taxpayer filed his return of income Form 11 for 2004 on 31.10.2005. The return correctly stated the amount of each item of income to be taxed and full and correct details of all deductions, tax credits and reliefs claimed for the chargeable period. On receipt of the return the inspector made an assessment based on the return, which resulted in a repayment of income tax. The taxpayer's return is taken as a valid claim for a repayment and is effective from 31.10.2005.

(Continued on page 18)

TIME LIMITS FOR REPAYMENTS

Continued from page 17

Practical issues relating to time limits and valid claims

Repayment arising from error or mistake in a return

Where the repayment arises because of an error or mistake in a return or statement, the return or statement will not constitute a valid claim until the return or statement is corrected. This is so, irrespective of the reason why the taxpayer made an error or mistake in the return.

For example, where a taxpayer fails to claim some deduction in calculating profits for tax purposes and it is found later, in a case with similar facts, that the deduction is due, the return would not constitute a valid claim. The taxpayer would have to provide all the information necessary to determine if and to what extent a repayment is due before that taxpayer would have made a valid claim.

Repayment arising from mistaken view taken by Revenue

Where the repayment arises as a result of a mistaken view taken by Revenue of the tax treatment of some item, and that item had either been correctly dealt with in the return or statement or correctly excluded from the return or statement, the return or statement should be regarded as a valid claim for the purposes of the time limit for claims.

An example of an item correctly contained in a return or statement giving rise to a repayment, would be where Revenue disallowed a claim to relief claimed in a return and the relief is subsequently found to be due - the return would be regarded as a valid claim, assuming the return contained the information necessary to quantify the relief.

For practical purposes, a return should be regarded as containing all the information that Revenue may

reasonably require to determine if and to what extent a repayment is due if either assessing in accordance with the figures contained in the return or amending the assessment made to bring it into line with the figures contained in the return would result in the repayment concerned becoming due.

Example

On the basis that Ms Greene was a chargeable person, Revenue applied a surcharge which she paid. Subsequently, in a case with similar facts, it was found that a surcharge was not due, because the taxpayer was not a chargeable person. Amending the assessment in accordance with the return would result in the repayment to Ms Greene of the surcharge incorrectly applied. Ms Green's return is therefore regarded as a valid claim.

Payment of interest on repayments arising from a mistaken assumption by Revenue

Relevance of mistaken assumption in the context of interest

The relevance of a mistaken assumption by Revenue is that the interest regime differs depending on whether a repayment arises because of a mistaken assumption by Revenue or arises for some other reason. In cases of mistaken assumption giving rise to repayments of income tax, corporation tax or capital gains tax¹, interest is payable from the day after the end of the chargeable period for which the repayment is due or the date on which the tax was paid, whichever is the later.

In all other repayment cases² not involving a mistaken assumption by Revenue, interest becomes payable from a day which is 6 months after

the day on which a valid claim for the repayment is made.

When does Mistaken Assumption arise?

Whether or not a repayment of tax arises from a mistaken assumption in the application of the law by Revenue can only be determined by reference to the relevant facts and circumstances surrounding that repayment. Such a repayment can only arise where the overpaid tax was originally paid because of a position adopted or a ruling made by Revenue in a particular case or because of a published interpretation of the law by Revenue and the position, ruling or interpretation was subsequently revised or found, for whatever reason, to be incorrect. The fact that Revenue processed a return or statement that contained a mistaken treatment of some item by the person making the return does not make any repayment subsequently arising from the correction of that mistake a mistaken assumption repayment.

Revenue will, therefore, accept that a mistaken assumption is established where, for instance, repayments arise because -

- The High Court or the Supreme Court or the European Court of Justice has found against Revenue's interpretation of the law
- Revenue accepted a ruling of the Circuit Court or of the Appeal Commissioners that they had incorrectly interpreted a particular provision
- Revenue accepted a recommendation of the Ombudsman that they had applied the law incorrectly in a particular case

1 Where the mistaken assumption arises in a VAT case, interest is payable:

- ◆ in the case of an overpaid amount from the date of receipt of that amount by Revenue, and
- ◆ in the case of any other refundable amount, either -
 - from the 19th of the month following the taxable period in which the claimant would have been entitled to receive the amount;
 - or where a VAT return is required, from the date of its receipt by Revenue.

2 Including VAT cases.



TIME LIMITS

(Continued)

- Revenue otherwise revised its published interpretation of a particular provision or a position adopted, or ruling made, in a particular case. Mistaken assumption would not, however, apply where, in a particular case, Revenue, for whatever reason, settled that case and agreed to repay tax without prejudice to its view of the meaning of a particular legal provision underlying the case.

Apart from the situations indicated above, it is difficult to be more specific. Essentially, repayments will have to be looked at on a case by case basis to determine whether they arise because of a mistaken assumption in the application of the law by Revenue or whether they arise for some other reason. ■

INCAPACITATED INDIVIDUAL Deduction

Employed Person Taking Care of an Incapacitated Individual

Introduction

Section 467 TCA 1997 provides for a tax deduction at the individual's highest rate of tax in respect of the costs incurred by an individual of employing another person (including a person whose services are provided by or through an agency) to take care of him/herself, a spouse or a relative who, throughout the relevant tax year, is totally incapacitated by reason of physical or mental infirmity.

Revised Procedures

While the words "throughout the year of assessment" prohibit the claiming of the allowance for the year during which the individual became totally incapacitated, with effect from 1 January 2004, relief may be allowed for the tax year during which the individual became totally incapacitated. The deduction for such tax year will be the lower of either

- (a) The actual cost incurred, or

- (b) The maximum deduction of €30,000 as apportioned by reference to the number of months during which the individual was permanently incapacitated in the commencement year.

Example

Mrs. A. has employed at a cost of €3,000 per month, a person to take care of her incapacitated husband who became totally incapacitated on 1 May 2004. The tax deduction due for 2004 will be the lower of

- (i) The actual cost incurred
[i.e. €3,000 x 8 months
= €24,000], or
- (ii) The maximum deduction of €30,000 as apportioned by reference to the number of months during which the individual was permanently incapacitated
[i.e. €30,000 x 8/12ths
= €20,000]

In this example, the tax deduction due is €20,000 @ the taxpayer's marginal rate of tax. ■

SSIA MATURITY ARRANGEMENTS

The Revenue Commissioners have reassured holders of SSIA's that they will receive instructions in plenty of time to ensure that any paperwork can be completed in order to mature their accounts in accordance with SSIA regulations.

Revenue are aware that some holders of SSIA's may have concerns about the procedures which they will have to follow at the end of the

five year savings period in order to mature their accounts.

There is no cause for concern: the first SSIA's will not mature until 31 May 2006, depending on when accounts were commenced, they will mature on a monthly basis thereafter until 30 April 2007. This means that the earliest date on which a maturity declaration can be returned is 1 March 2006. Savers don't have to do anything in the meantime.

Revenue are currently in discussions with the financial institutions to finalise the arrangements to ensure all paperwork can be completed and returned within the timeframe set out in the regulations.

Guidelines on termination arrangements for SSIA's will be issued by Revenue in good time. These will be designed to make sure that the formalities are as easy as possible for everyone concerned. ■



SHARE OPTION CASES

LATE FILING SURCHARGE

Years 2000/2001 onwards

Section 27 Finance Act 2000 amended *Section 128 TCA 1997* with effect from 6 April 2000. The amendment provides that persons exercising, assigning or releasing rights, including share options, are 'chargeable persons' and therefore within the Pay and File (Self Assessment) System. As a consequence, the late filing surcharge provided by *Section 1084 TCA 1997* applies where the income tax return is not submitted by the relevant due date for the relevant tax year even where all the person's other income is solely within PAYE. The tax years 2000/2001 onwards are not affected by the *Crowley v Forde* decision referred to below.

Years 1999/2000 and prior

In the case of *Crowley v Forde* (2004) - the High Court found that a person whose total income for the year 1999/2000 consisted only of -

(a) Income to which PAYE applies; and

(b) Gains arising from the exercise of share options chargeable under Schedule E by virtue of *section 128 TCA 1997*;

is not a 'chargeable person' for that year and therefore the late filing surcharge referred to in *Section 1084 TCA 1997* does not apply for that year. Revenue did not appeal the High Court decision in the *Forde* case.

In cases where the facts are similar to the *Forde* case, the late filing surcharge incorrectly applied for the year 1999/2000 and prior years (but not any later years) will be repaid together with interest or offset (as appropriate). Practitioners with cases in this category may apply to the relevant Revenue office for the necessary refund or offset (as appropriate). ■

R&D - TAX CREDIT

Research & Development Tax Credit

For the purposes of determining the amounts of expenditure on plant and machinery to be included in any computation of tax credit due under *Section 766 TCA, 1997*, Revenue are prepared to accept that expenditure on plant and machinery may be treated as incurred on either (1) the date the plant and machinery is first brought into use for the purposes of a trade or (2) the date the expenditure becomes payable. This latter option is subject to a condition that the credit will be clawed back if the plant or machinery is not brought into use for the purpose of a trade within two years of the expenditure becoming payable. ■

REVENUE INTERNAL REVIEW PROCEDURES

Revenue's Internal Review Procedures (detailed in *Statement of Practice SP-GEN/2/99*) have been updated with effect from January 2005, to reflect Revenue's new integrated structure and to make it clear that all Revenue customers can avail of the terms of the Internal Review Procedures regardless of what aspect of tax or customs administration they may wish to have reviewed. [*Statement of Practice SP-GEN/2/99* has been updated to reflect the changes.]

The revised *Statement of Practice* also clarifies that, as publication is a consequence of certain

audit/investigation settlements, a request for review on the issue of publication cannot be accepted once the terms of settlement have been agreed. This is because such publication, within three months of the settlement, is a legal requirement. Accordingly, if a taxpayer disputes that publication is appropriate and requires the issue to be reviewed, an application for review must be made **before the terms of settlement are finally agreed**.

The revised *Statement of Practice* is available on www.revenue.ie/doc/gen02-99.doc ■



CODE OF PRACTICE FOR REVENUE AUDITORS

Clarification

Clarification on Code of Practice Second Qualifying Disclosure and Mitigation of Penalties

The purpose of this note is to clarify Revenue's policy on the mitigation of penalties on foot of a second qualifying disclosure. Current practice on this issue is contained in Revenue's Code of Practice for Revenue Auditors at paragraph 10.4 of page 34 and is reproduced below:

"It is inappropriate that penalties should be mitigated on foot of disclosures of recurring defaults in the categories of deliberate default or gross carelessness.

- *The mitigation of penalties, for a disclosure which is the second qualifying disclosure made by a taxpayer disclosing tax defaults in these categories, is to be restricted by 50%".*

Confusion has arisen amongst practitioners on the practical application of this 50% restriction in the case of a second qualifying disclosure in these categories. This is clarified below.

Where a disclosure, which is a qualifying disclosure for the purpose of mitigation of penalties, is made by a taxpayer in the category of deliberate default or gross carelessness, the net penalty after mitigation is as set out in the table in paragraph 9.4, at page 26 of the Code of Practice. The relevant parts of that table which apply to a first qualifying disclosure in these categories are as follows:

Category of Tax Default	Net Penalty after mitigation where there is:	Net Penalty after mitigation where there is:
	Co-operation and a Prompted Qualifying Disclosure	Co-operation and an Unprompted Qualifying Disclosure
Deliberate Default	50%	10%
Gross Carelessness	20%	5%

Where there is a second qualifying disclosure in these categories mitigation of the net penalty is restricted by 50%, and is as follows:

Category of Tax Default	Net Penalty after mitigation where there is:	Net Penalty after mitigation where there is:
	Co-operation and a Prompted Qualifying Disclosure	Co-operation and an Unprompted Qualifying Disclosure
Deliberate Default	75%	55%
Gross Carelessness	60%	52.5%

TREATMENT OF FACTORING

VAT

VAT treatment of factoring following European Court of Justice ruling in the MKG-Kraftfahrzeuge-Fabrik GmbH (case C-305/01).

Introduction

This article examines the effect of the MKG European Court of Justice ruling on various transactions, principally true and quasi-factoring, and invoice discounting. These terms are often used imprecisely which can sometimes mislead, so it is important to ascertain the nature of the transaction itself and not how it is described in order to determine the VAT treatment.

In brief, the Court held that true factoring in which a business purchases debts assuming the risk of the debtors' default is an economic activity for the purposes of Articles 2 and 4 of the Sixth Directive which does not come within the exemption for certain financial transactions and is therefore a taxable activity with the right to deduct VAT on inputs.

The concept of making a supply for the purposes of VAT is not necessarily identical with the performance of an obligation for the purposes of the law of contract. The nature and reality of the supply must be looked at, as the true construction of a contractual document may not always answer the VAT treatment, although it is usually helpful.

In this context it may be useful to quote from Laws J. of the UK Queen's Bench Division, in the case of Customs and Excise Commissioners v Reed Personnel Services Ltd. (1995) STC 588.

- "in principle, the nature of a VAT supply is to be ascertained from the whole facts of the case"
- "many of the cases which have caused difficulty in the VAT field, requiring resolution by the higher courts, have concerned situations involving three parties"
- "the concept of VAT supply is not coterminous with the concept of contractual duty".

These quotes are particularly apt in interpreting this judgement, which raises very difficult issues in its application.

(Continued on page 22)

TREATMENT OF FACTORING

Continued from page 21

VAT treatment of debt factoring

Article 13(B) of the Sixth VAT Directive provides for exemption for transactions concerning debts and other negotiable instruments, but excluding debt collection and factoring. This exemption is transposed into paragraph (i) (c) of the First Schedule to the VAT Act 1972, as amended.

Revenue had always accepted that pure debt collection, including a charge for debt collection or administration provided in accordance with a debt factoring contract, did not come within the terms of the exemption and was a taxable activity with the right to deduction. However, Revenue regarded true factoring as being a financing operation, being essentially the granting of credit by the debt factor and, as such, exempt without the right to deduction.

As indicated above the European Court of Justice considered the treatment of true factoring for VAT purposes in the case of *MKG-Kraftfahrzeuge - Factory GmbH, case C-305/01*. Revenue is implementing the judgement but understands that there may be a need to provide guidance for practitioners and taxpayers as to how it will interpret the judgement.

Where the factoring arrangements mirror the scenario outlined in the judgement Revenue accepts that these are taxable activities with the right to deductibility. However, difficulties arise as to whether certain transactions are debt factoring for the purposes of the Sixth Directive.

What is debt factoring?

The judgement related essentially to true factoring, which is where the factor purchases debts owed to his client without enjoying a right of recourse against the client if the debtors default and which in turn invoices its clients in respect of commission. This activity was held to be a taxable economic activity.

The Court ruled that

"...a business which purchases debts, assuming the risk of the debtors default, and which in return, invoices its clients in respect of commission pursues an economic activity for the purposes of Articles 2 and 4 of that directive, so that it has the status of taxable person and thus enjoys the right to deduct tax under Article 17 thereof".

In arriving at its conclusion the court observed (paragraphs 77 and 78) that:

"the term debt collection must be interpreted as encompassing all forms of factoring. In accordance with its objective character, the essential aim of factoring is the recovery and collection of debts owed

to a third party. Therefore, factoring must be regarded as constituting merely a variant of the more general concept of debt collection, whatever the manner in which it is carried out.

Moreover, the term debt collection refers to clearly circumscribed financial transactions, designed to obtain payment of a pecuniary debt, which are clearly different in nature from the exemptions set out in the first part of Article 13 B(d)(3) of the Sixth Directive".

True and Quasi-Factoring

The case which was the subject of the judgement related to a true factoring agreement however reference was made also to quasi-factoring.

Both of these types of agreement are similar to the extent that the services the factor provides are essentially the same i.e. managing and recovery of the debts owed to their clients. As stated at paragraph 13 of the judgement, quoting from the German guidelines "the activities carried out by the factor for the client in cases of quasi-factoring are the grant of credit, assessment of debtor solvency, management of debtor accounts, preparation of analyses and statistical material and debt collection. This involves the provision of a number of principal services."

In the case of true factoring there may not be a grant of credit but all the other aspects of factoring, i.e., assessment of debtor solvency, management of debtor accounts etc. would be expected. The essential distinction between true factoring and quasi-factoring is that true factoring is done on a non-recourse basis (the factor assumes the risk of the debtors' default) and quasi-factoring is carried out on a recourse basis (the factor has recourse against the original supplier in the event of non-payment by the debtor).

From the judgement in relation to true factoring and from what was stated in the judgement in relation to quasi factoring both are considered to be taxable activities with VAT deductibility allowed in relation to inputs attributed directly to the factoring services.

The Court considered at paragraph 54 that

"first of all there is no valid justification for treating true factoring and quasi-factoring differently from the point of view of VAT, given that in both cases the factor makes supplies to the client for consideration and accordingly pursues an economic activity. Any other interpretation would draw an arbitrary distinction between those two categories of factoring and would make the business concerned bear, in the course of certain of its economic activities, the cost of the VAT without giving it the possibility of deducting that cost in accordance with Article 17 of the Sixth Directive"



TREATMENT OF FACTORING

VAT

It is important to bear in mind that it is the actual activity carried out which determines the VAT treatment, as the term factoring may be used in agreements to describe a variety of different services. As indicated in paragraph 64 of the judgement, it is necessary to have regard to the objective character of the transaction in question in applying the exemption provided for in Article 13.

Revenue's view of what constitutes debt factoring

Revenue's interpretation of the judgement is that for a transaction to be debt factoring and therefore to come within the terms of the judgement, there must be a clear nexus between the factor and the debtor. The factor, as envisaged by the ECJ judgement, must have the possibility of collecting the debts itself.

It has been suggested that an arrangement, involving the **contractual** purchasing of the debt but with the **actual** collection being outsourced back to the vendor, who would then act as agent for the purchaser, comes within the scope of the judgement. Revenue accept that the purchaser of the debts, by relieving the vendor of the risk of default, is carrying on an economic activity but regards this as an exempt financial service. The purchaser of the debts is the recipient of a debt collection service from the vendor. The purchaser of the debts is not engaged in debt factoring or debt collection. The debt collection service provided by the vendor as agent for the purchaser is a taxable service but the VAT on that supply is not deductible in the hands of the purchaser.

The granting of credit

The question of interest charged in relation to the granting of credit, although part of the MKG case, was not addressed by the Court. Revenue is of the view that where, as part of a factoring agreement, the factor grants its client credit and charges interest on this advance the grant of credit constitutes an exempt supply. The granting of credit element of the factoring agreement must not be regarded as ancillary to a "debt collection" service but rather as another principal supply which is exempt under the provision of the First Schedule.

VAT deductibility

VAT deductibility arises in both true and quasi-factoring transactions as described above where the factor provides services in relation to the management and recovery of its clients debts.

Where there is a granting of credit for which interest is charged an apportionment of the factor's inputs will be required.

In deriving a correct apportionment, any interest accruing to the factor should be included in the denominator (the Revenue Guide to Apportionment of input tax is available on the Revenue website www.revenue.ie/pdf/guideapp.pdf and may be useful in this regard).

Naturally, where an undertaking is involved in both factoring and invoice discounting operations or purchase of debts without provision of a factoring service then there will also be an apportionment and the practitioner should discuss this with the appropriate local Revenue official.

Invoice Discounting

Invoice discounting is not factoring and does not mirror the true factoring model which was the subject of the ECJ judgement. From an economic point of view, factoring and invoice discounting can appear to be similar economic services. They target similar business needs and are often services offered by the same providers.

However, a factoring agreement completely discharges the customer from managing his debts, an invoice discounting agreement does not. This is the essential difference between the two. **The invoice discounter does not provide the customer with an actual debt collection service (see paragraphs 77 & 78 of the ECJ judgment quoted above).** On the contrary, the principal service being provided with invoice discounting is the provision of credit, which is an exempt activity. The invoice discounter has no involvement in the collection of the debts or the sales ledger and credit control function.

Revenue is of the view that such transactions remain exempt, as was the practice until now, and that the ECJ ruling does not affect the existing VAT treatment. Invoice discounting is not considered to be a variant of debt collection.

Further queries

Queries regarding the general application of the principles laid down in the MKG judgement as outlined here should be referred to:

*VAT Interpretation Branch (Property and Financial Services),
Indirect Taxes Division,
Dublin Castle.*

Telephone: 674 8648 or 674 8353.

Queries regarding specific cases should be addressed to the Revenue office dealing with the case. ■

NURSING HOMES



Section 268 TCA 1997 provides capital allowances for capital expenditure incurred on registered nursing homes and associated residential units that are constructed on the site of, or on a site immediately adjacent to the site of, the nursing home. The expenditure may be written off over 7 years at the rate of 15% per annum for the first six years and 10% in the final year. It is open to investors, who need not be connected with the nursing home, to purchase a residential unit. Capital allowances are not available for owner-occupiers. The intention in granting the capital allowances was that the residential units would essentially be used as an extension of the nursing home itself in the provision of an enhanced service to its elderly or infirm clientele. It is expected that investors in residential units would lease those units to the nursing home in return for a rent paid to them by the nursing home. The legislation requires the nursing home to assume responsibility for **the operation or management** of the residential units

and to provide back-up medical care, including nursing care for occupants of the residential units.

Revenue is concerned at the way in which some of the nursing home residential unit developments are being marketed. They are being marketed as retirement villages for people over 55 years of age. It should be noted that the residential units must be designed and constructed to meet the needs of persons with disabilities, including in particular the needs of persons who are confined to wheelchairs. The occupant of a residential unit must be medically certified as requiring such accommodation because of old age or infirmity. It is not sufficient for an occupant to be merely over 55 years of age; he or she must have the appropriate medical certification. It should also be noted that it is possible to be less than 55 years of age and to be medically certified as infirm.

A second concern is that the residential units are being marketed as being available for purchasers' own elderly relatives. **It should be noted that, in order to come within the definition of "qualifying residential unit", residential units must be managed or operated by the relevant nursing home.**

Revenue takes the view that the operation or management of a residential unit includes the letting of that unit and the selection of occupants for it by the nursing home. It is not open to the purchasers of residential units to select occupants

Residential Units

for them. It should also be noted that the following further conditions apply;

- At least 20% of the residential units in a development must be made available for renting to persons who are eligible for a rent subsidy from a Health Service Executive (formerly known as a Health Board), and
- The rent charged for such units cannot exceed 90% of the rent which is charged for units used by persons not eligible for a rent subsidy.

It is important to note that if these latter requirements are not met, residential units are not qualifying units. In such a situation, none of the units in a development would qualify for capital allowances. Where, in respect of residential units, a nursing home is unable to show that these requirements are being met, Revenue will take the view that the residential units in question are **not being operated or managed** by the nursing home and that they are not, therefore, entitled to capital allowances.

Enquiries on this article should be addressed to -

*Business Income Tax Unit
Direct Taxes Interpretation and
International Division
Stamping Building
Dublin Castle
Dublin 2 ■*



ROS

Update

P35 Filing

Customers usage of ROS grew significantly for the filing of 2004 Form P35 as can be seen from the following statistics. By the end of February 2005, approximately 20,000 employers filed P35 returns through ROS accounting for over 500,000 employments. This represents a 108% increase in the number of returns received and a 391% increase in ROS employments compared to the same period last year.

As the P35 diskette it now being phased out, ROS will then be the only method for electronic filing of P35s for 2006 and later.

ROS CGT Assessments

In December 2004 Revenue announced that CGT details included in ROS Income Tax Forms 11 for 2003 and subsequent years would be assessed automatically and that CGT assessments in such cases would in future be posted to practitioners' ROS Inboxes.

As a result of technical difficulties, it was not possible to provide these assessments until early March. When these difficulties were resolved, any ROS CGT assessments which had been held back since late October 2004, were subsequently processed in the week ended 4 March 2005.

More than 11,000 CGT assessments were processed in this way and were posted to practitioners' inboxes.

Practitioners who wish to query or discuss the content of these CGT Assessments should contact the client's Revenue office in the usual way. Queries directly relating to ROS can be directed to your local ROS Liaison Officer.

Capital Acquisitions Tax (CAT) - Form IT38

The Law Society has withdrawn its concerns in relation to the payment facility when filing IT38 Forms by

solicitors and has advised their members accordingly.

Unlike the position for other taxes, it is not possible for an agent filing a Form IT38 to prepare a ROS Debit Instruction (RDI) to be paid from the client's bank account. This means that any CAT payment will have to come from an account owned by the person/firm making the return/payment. Practitioners who hold ROS Digital Certificates under their Tax Advisors Identification No. (TAIN) are unable to make CAT payments using a ROS Debit Instruction and may only use Laser to make their payments. Solicitors who hold ROS Digital Certificates under other tax registration numbers e.g. VAT will be able to set up an RDI using the firm's client account.

A dual signature facility has been made available for IT38 filing since December 2004. The statutory regulations governing use of the Solicitor Firm's Client Account require that cheques carry two signatures in all practices where there are two or more partners. This requirement will also apply to payments set up using the ROS Debit Instruction and such firms will use the ROS Dual Signature facility in order to comply with these regulations when filing Forms IT38.

ROS Payments and auditor independence (US SEC Regulations)

A number of audit firms raised concerns with Revenue that the ROS Debit Instruction (RDI) facility for payments of liabilities could conflict with the independence requirements of the United States Securities & Exchange Commission (US SEC). As a result, audit firms whose clients included companies that are themselves listed or related to a company listed on the New York Stock Exchange, were reluctant to use ROS. The main reason for this is that the RDI facility is viewed as

potentially constituting a prohibited management service as against an allowed tax service under the SEC rules.

Following discussions at TALC and subsequent meetings between Revenue and representatives of the larger audit firms, facilitated by the Irish Taxation Institute, a proposal has emerged to address the independence issue and still allow access to ROS services for audit firms with SEC clients. This involves the use of a separate Tax Advisor Identification Number (TAIN) for SEC clients and the development of a new facility, at ROS registration stage, which will, by selection, block access to any payments functionality on ROS.

Development

The development to block access to payment functionality at ROS registration stage can be achieved by current holders of ROS Administrator's digital certificates through a system of revoking their current digital certificate and applying for a new digital certificate.

A non-payment digital certificate under either of the options outlined below will not allow the administrator or any sub-certificate holder to create an RDI online, prepare any ROS payment instructions pages, or allow any offline payments file to be submitted. Audit firms who select this non-payment option at registration stage will still be able to file returns for SEC clients and will have access to the full range of Customer Information Services (CIS) on ROS.

In order to cater for additional audit committee decisions in other jurisdictions, the ROS administrator can use the 'permissions' facilities in ROS to restrict services for individual clients or individual taxheads as required.

(Continued on page 26)



ROS

Continued from page 25

This new non-payment Development on ROS registration will be available in May 2005.

To assist practitioners who have both SEC and non-SEC clients Revenue will arrange to issue a second TAIN to facilitate payment options for non-SEC clients and to block payments for SEC clients.

Form 11 Returns for Non-Residents

Practitioners are reminded that ROS does not provide a facility to file Income Tax returns in non-resident cases. Such returns should be filed in paper form only to allow for the manual calculation of the tax credits due.

The EU Savings Directive Return

A facility to file EU Savings Directive Returns on ROS will be introduced in early May. This Directive came into effect on 1 January 2004 and relates to the return of interest income in respect of interest payments made to a Beneficial Owner or a Residual Entity.

A Paying Agent should complete the online EU Savings Directive return for a Beneficial Owner or a Residual Entity. A 'Paying Agent' is one who in the course of business, makes payments or secures interest payments for the immediate benefit of a 'Beneficial Owner' or a 'Residual Entity'. A 'Beneficial Owner' is an individual who is resident in another EU state including dependant and associated territories of that State. A 'Residual Entity' is any grouping of individuals other than a company and must report interest payments received on behalf of a Beneficial Owner or a Residual Entity.

The return will require the Paying Agent to specify the name and address, residence country, tax identification number or date and place of birth, interest payment type and amount and account numbers of the Beneficial Owners or Residual Entities.

The first EU Savings Directive return due to Revenue is in respect of the period **1 July 2005 to 31 December 2005**. The first return is due on or before **31 March 2006**. Subsequent annual returns will be due by 31 March of the following year.

Paying Agents who are not existing ROS customers should sign up to ROS now by accessing the Revenue website at www.revenue.ie and clicking on the ROS icon. For further information on how to become a ROS customer please contact the ROS Technical Helpline at 1890 201106 and for information on the EU Savings Directive please contact Ellen at 042 935 3450.

Corporation Tax - Form CT1 2005

Form CT1 for accounts periods ending in 2005 will be available on ROS in late May/early June 2005.

Pay and File deadline

This year, as was the case in 2004, Revenue have announced an extension to the Pay and File deadline for Revenue On-Line Service (ROS) Income Tax customers who **both** pay **and** file online through ROS.

The date for making the return and the date of payment will be extended to 17 November 2005, where both the return and payment are made through ROS. If the return is made through ROS before 17 November and the payment is being made through ROS, then the payment will not be debited until 17 November 2005, unless otherwise stated.

The deadline of 31 October 2005 applies to all other customers. ■

REVENUE NEWS

Update

Revenue eBrief

A list of Revenue eBriefs which issued since the last issue of *Tax Briefing* Issue 58 (December 2004) follows. These, together with earlier eBriefs can be accessed on the Revenue website www.revenue.ie on the Practitioners page.

2004

- No 43 Budget 2005, 1 December 2004
- No 44 Revenue On-Line Service (ROS)
- No 45 Headquarter and Holding Companies
- No 46 Christmas arrangements for Revenue offices
- No 47 Revenue Contact list for representative bodies

2005

- No 1 Revenue Contacts
- No 2 Average Market Mid-Closing Exchange Rates v Euro (as supplied by the Central Bank)
- No 3 2003 Income Tax assessments
- No 4 Re-Revenue eBrief No 02/2005
- No 5 ROS payments and auditor independence (US SEC Regulations)
- No 6 ROS CGT Assessments
- No 7 Pay & File - Extension of filing date in 2005 - Revenue Online Service (ROS)
- No 8 VAT liability regarding "back office" services to the Insurance Industry
- No 9 Company Compliance Reporting Obligations
- No 10 Revenue investigation into undisclosed funds invested in Life Assurance products
- No 11 Company Compliance Reporting Obligation - clarification

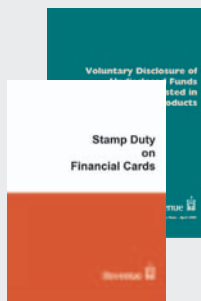
If you would like to receive Revenue eBrief forward your e-mail address to eBrief@revenue.ie

New and Updated Leaflets

New Leaflets

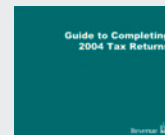
The following new information leaflets have been published:

Stamp Duty on Financial Cards
Voluntary Disclosure of Undisclosed Funds Invested in Life Assurance Products
Moving to Ireland



Updated Leaflets

Guide to Completion of 2004 Tax Returns



- Leaflet IT 2** - *Taxation of Married Persons*
Gearradh Cánach ar Dhaoine Pósta
- Leaflet IT 6** - *Faoiseamh ar Chostais Sláinte/Liachta*
- Leaflet IT 8** - *Tax Exemption and Marginal Relief for 2005*
- Leaflet IT 9** - *Creidmheas Cánach Teaghligh Aontuismitheora*
- Leaflet IT 15** - *The Seed Capital Scheme: Tax Refunds for New Enterprises*
- Leaflet IT 16** - *Third Party Returns (Automatic Return of Certain Information)*
- Leaflet IT 55** - *The Business Expansion Scheme: Relief for Investment in Corporate Trades*
- Leaflet IT 57** - *Relief for Investment in Films*
- Leaflet IT 61** - *Eolaí Treorach na gCoimisinéirí Ioncaim maidir le Cáin Iarchoimeáda ar Sheirbhísí Gairmiúla do Dhaoine Cuntasacha agus Dhaoine Sonraithe*
- Leaflet IT 67** - *First Job - A Guide for First Time Entrants to the PAYE Tax System*

Copies of these leaflets are available from *Revenue Forms & Leaflets Service* at 1890 306 706, any tax office or on the Revenue Website at www.revenue.ie.

Technical Guidelines

Revenue has just published two documents on *Section 23-Type Relief* and *Residential Owner-Occupier Relief* on the Revenue website - www.revenue.ie. These are available under Publications/Technical Guidelines. Enquires on the documents should be addressed to Business Income Tax Unit, Direct Taxes Interpretation and International Division, Stamping Building, Dublin Castle, Dublin 2.

Reduced Motor Mileage Rates

A number of tax practitioners have contacted Revenue to query the circumstances in which the reduced, rather than the standard, motor mileage rates apply. The Revenue Commissioners have now confirmed that the standard motor mileage rates may be applied in all circumstances where individuals are obliged to use their own cars for business purposes (subject, of course, to the conditions set out in Revenue's Explanatory Leaflet IT 51). www.revenue.ie/publications/leaflets/it51.htm

Notice of Intention to make a Qualifying Disclosure of a Tax Default relating to a Life Assurance Product

Please complete and return this form to the following address (there is no postage stamp required);

**Office of the Revenue Commissioners,
Investigations & Prosecutions Division,
Underlying Tax (Insurance Products) Project,
4th Floor,
1 Clanwilliam Court,
Lower Mount Street,
Freepost 3992,
Dublin 2.**

I hereby formally notify the Revenue Commissioners of my intention to make a Qualifying Disclosure in accordance with the Code of Practice for Revenue Auditors 2002 of any outstanding tax liabilities arising.

I undertake to submit computations and pay the tax, interest and penalty due by
22 July 2005.

NAME & ADDRESS (PLEASE USE BLOCK CAPITALS)

PPS Number / Tax Reference Number

--	--	--	--	--	--	--	--	--	--

My untaxed funds were invested in Life Assurance Product(s) in the institution(s) listed below;

Signed: _____

Date: _____

PLEASE NOTE: This form should be submitted by 23 May 2005

Disclosure and Statement of Amounts Due

Please return this form to;

Office of the Revenue Commissioners,
Investigations & Prosecutions Division,
Underlying Tax (Insurance Products) Project,
4th Floor,
1 Clanwilliam Court,
Lower Mount Street,
Freepost 3992,
Dublin 2.

- ▲ This form must be completed and returned not later than **22 July 2005**
- ▲ The Declaration in section 6 must be signed and dated

1. Basic Details (complete in BLOCK CAPITALS)

Surname

of the person making the disclosure

First Name(s)

of the person making the disclosure

Address

of the person making the disclosure

Personal Public Service (PPS) Number

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------

Name of Tax Adviser (if any)

Tax Adviser Telephone Number

Tax Adviser Identification Number (TAIN)

(Form IPP 1)

2. Statement of Amounts of Tax, Interest and Penalties Due

An alternative version of this page, which includes an on-screen calculation facility, is available from the Revenue website.

Total Payment Due is €

Period Ended	Income Tax			Value Added Tax			Other Tax (please specify)					
	Tax	Interest	Penalties	Total	Tax	Interest	Penalties	Total	Tax	Interest	Penalties	Total
05/04/91												
05/04/92												
05/04/93												
05/04/94												
05/04/95												
05/04/96												
05/04/97												
05/04/98												
05/04/99												
05/04/00												
05/04/01												
31/12/01												
Total												
Euro Conversion												
31/12/02												
31/12/03												
Total												

3. Sources of Previously Undisclosed Liabilities

Please tick the most appropriate box below (from the list of items shown)

- ▲ **Suppressed Sales**
- ▲ **Rebates & Commissions**
- ▲ **Asset Disposal**
- ▲ **Inheritance / Gifts**
- ▲ **Untaxed Remuneration**
- ▲ **Other**

4. Statement as to Background Information

Details	Date of Liability or Date Source Commenced

5. Particulars of Life Assurance Product

Name of Insurance Company	Policy Number	Amount Invested	Date of Investment	Date of Birth (dd/mm/yyyy)

6. Declaration

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.

Remittance for the total sum due by me is enclosed

€

Signed: _____

Date: _____

Full Name (in BLOCK CAPITALS): _____