

TAX BRIEFING



ISSUE 9 - January 1993

Introduction

In this first Issue of 1993 we remind practitioners of the 31 January 1993 deadline for the filing of 1991/2 returns for both Income Tax & Capital Gains Tax and give other useful information under our regular headings.

We invite practitioners to offer suggestions on matters they consider might be appropriate for inclusion in **Tax Briefing** in the coming year.

We have also included in this issue an index of the subjects covered in Issues 1 to 8 of **Tax Briefing** which we hope practitioners will find useful.

Changing Address?

Following each Issue of Tax Briefing and other Revenue publications we get an extraordinary number returned to us by An Post, in respect of practitioners who move address and do not advise us. If you change address, don't forget to tell us. Otherwise, you will not receive future Revenue publications.

Joe Lynch

Editor-TAX BRIEFING
Office of the Chief Inspector of Taxes
Setanta Centre (1st Floor)
Nassau Street,
Dublin 2

CONTENTS

Income Tax
Corporation Tax
Capital Gains Tax
Revenue Audits
Capital Taxes
Value Added Tax
Collector General
(see overleaf for details)

Charter of Rights

The Charter of Rights outlines the entitlements of taxpayers (whether or not represented by an agent) in their dealings with Revenue officials. Revenue has committed all its officials to fulfilling the terms of the Charter of Rights.

Equally, it expects that taxpayers will provide all facts and give full co-operation to enable Revenue to deal effectively with their tax affairs and to fulfil its responsibilities in relation to compliance with the law.

If a practitioner considers the Charter of Rights is not being adhered to, Revenue wants to know.

The normal procedure for making complaints is to write to a senior official, outlining the complaint. Where the complaint arises at Tax District level, the District Inspector would normally be the person to whom it should be referred, in the first instance. If not satisfied that the complaint has been adequately dealt with at Tax District level, the District Inspector should be asked to refer the matter to the Regional Director in the Office of the Chief Inspector of Taxes.

Similarly, complaints arising in other Revenue offices should, in the first instance, be referred to the senior officer in the relevant office and, if not dealt with satisfactorily, that officer should be requested to refer the matter to his or her superior.

Should a practitioner experience difficulty in having a complaint dealt with locally, the matter may be referred directly to the Regional Director in the Chief Inspector's Office or to the Revenue Commissioners as appropriate.

1. Income Tax

1.1 1991/92 Return Filing

As the deadline (31 January 1993) for filing 1991/92 income tax and capital gains tax returns approaches we remind practitioners of the importance of ensuring that all income, gains deductions and claims for allowances and reliefs are included on returns, before they are submitted.

As 31 January 1993 falls on a Sunday, returns delivered to tax offices on Monday 1 February 1993 will be accepted as filed on time. On an ongoing basis, wherever the final date for the timely filing of a return falls on a non-working day, returns submitted on the next working day will be regarded as filed on time.

1.2 Assessments 1991/92 - Tax due 31 January 1993

We also remind practitioners with clients who filed 1991/92 returns some time ago and who have received assessments, that any balance of tax payable on foot of an assessment received will be payable by 31 January 1993 (where the amount of preliminary tax paid satisfied the 100% or 90% rules). Practitioners might wish to remind their clients accordingly.

1.3 Completion of Tax Returns

Revenue staff involved in processing 1991/92 Returns report that much the same errors as in previous years are arising. We ask practitioners and their staff to ensure that returns submitted by them are correctly completed. The following are the more common areas in which errors still arise:

- **Profit/Income** - the actual figure is required on the return - "per schedule", "per accounts", et. Are not acceptable
- **Losses** - if a trading loss arises, state clearly how it is intended to utilise the loss - e.g. "set against other income under Section 307, ITA 1967" or "carry forward under Section 309, ITA 1967". If it is intended to augment the loss under Section 318, ITA 1967 this should be made clear.
- **Irish Distributions** - Note the revised treatment applicable to distributions received before 29/1/92 and to those received on/after that date. The Explanatory Notes on completion of form 11 contain details and worked examples. Generally, Irish Dividends should be categorised separately - i.e.

Manufacturing, Export Sales/Shannon Relieved and Other Irish Distributions. The relevant details should be entered on form 11 under the headings set out.

- **Interest of Loans** - Interest paid on loans applied on or after 29/1/92 to acquire shares or other interest in quoted companies is no longer allowable. Interest claimed in respect of private residences should be supported by a certificate unless paid to one of the following: Irish Permanent Building Society, Educational Building Society, First National Building Society, Irish Nationwide Building Society, Dublin Corporation or Dublin County Council - the loan account number will be sufficient for these.
- **Withholding Tax** - Where credit for withholding tax is claimed for 1991/92, be aware that "credit period" is the client's "accounts year" ended in the year to 5/4/91 - Forms F45 for the relevant credit period are required with the return.
- **Separate Treatment Cases** - Each spouse must complete a return. Do not include the other spouse's income etc. on the return.
- **Separate Assessment** - If a separate returns are made, do not include the other spouse's income etc. on the return. Where on return only is made in respect of both spouses then, of course, both spouses' incomes etc. should be included.
- **Medical Expenses Claims** - Where relief is claimed in respect of allowable dental treatment, Form Med 2 (Dental), duly completed and signed by the dental practitioner, must be submitted with Form Med 1.
- **Partners** - The partnership profits and the partnership tax reference number should be entered on the return. Do not enter "per partnership a/cs"
- **Relief for Investment in Corporate Trades (B.E.S. Relief)** - The maximum amount of B.E.S. relief allowable in any year of assessment is £25,000. Any amount not relieved, by reason of exceeding this limit or of there being an insufficiency of total income, may be carried forward to the following year and treated as being an amount subscribed for eligible shares in that year. Relief must, accordingly, be claimed in the tax return for that subsequent year, not only in respect of any amounts actually invested in that year but also in respect of any amount not relieved in the preceding year. Finally, all income figures included on tax returns should be stated in IR£.

1.4 Farming - Death cases Commencement / Cessation

Where a spouse takes over farming (or other trade or profession) on the death of his or her spouse, Revenue do not seek to apply the usual cessation and commencement provisions. Instead, the spouse who takes over is regarded as continuing the farming activities of the deceased spouse. [This concession does not apply to other successors.]

Averaging

In farming cases, where a spouse takes over farming in the above circumstances and the deceased spouse had elected for "averaging", this can similarly continue without revision - assuming this is what the surviving spouse wants

Stock Relief

Where, on the death of a farmer, the farm passes to the surviving spouse or child * who continues to farm he or she elect within two years of the end of the year of assessment in which the succession takes place to treat the trade of farming as continuing for stock relief purposes - this will ensure that there will be no clawback of unrecovered stock relief arising solely because of the cessation of death. [This is provided for in Section 33 of Finance Act 1984.]

It should be noted that to qualify for this election, the entire farm and trading stock must be transferred to the sole successor (spouse or child*). Also, that person must not already have had stocks of an existing farming trade carried on by him/her.

- Child is defined in Section 27 of the Capital Gains Tax Act 1975 - which, extends the meaning of child to include a niece/nephew who has worked substantially on a full-time basis in carrying on, or assisting in carrying on, the trade of the deceased person for the five years immediately preceding the death.

1.5 Rental Income & Capital Allowances

In the case of furnished lettings, 10% wear & tear was concessionally allowed as a deduction in arriving at the assessable profit rent assessable under Case V of Schedule D.

In keeping with the change to a straight line basis of granting capital allowances introduced by Section 26 of

Finance Act 1992, the concessional granting of wear & tear on fittings acquired for furnished lettings will apply as follows, **in relation to items acquired since 6 April 1992.**

Rate of wear & Tear

15% of cost of time on a straight line basis
(years 1 to 6)

10% in year 7

the **alternative** flat rate deduction, based on one-twelfth of the gross rents, continues to apply subject to a **maximum aggregate deduction of £200 in any year of assessment**

1.6 Personal Injuries - Exemption of Income

Under Section 5 of Finance Act 1990, income derived from the investment of certain compensation payments is exempt from income tax. The compensation must arise from the institution by the individual of court proceedings, and the injury must be such that the individual is permanently and totally incapacitated from maintaining himself or herself.

The exemption only applies where the income derived from the investment of the compensation payment is the sole or main income of the individual. In this context, "sole or main" means more than 50%.

Where a person claims exemption under Section 5, an **invalidity pension** from the Department of Social Welfare will be disregarded for the purpose of calculating whether the investment income is the sole or main income of the individual, **provided** the injury or disability which gave rise to the payment of social welfare benefit/pension is the same injury or disability which gave rise to the payments of the compensation.

While this pension will not be taken into account for the purpose mentioned above, this does not affect the taxable status of the pension in the hands of the recipient for tax purposes.

1.7 Third Party Returns

All practitioners will by now have had an opportunity of reading the Statement of Practice on Third Party Returns recently issued by the Revenue Commissioners. Some further queries have been received from practitioners and we reproduce the answers to these queries in this Issue, so that they may be of benefit to practitioners generally.

• VAT exclusive or inclusive?

The Statement of Practice indicates that VAT exclusive figures should be returned by VAT registered persons. However, where there are difficulties in isolating the VAT exclusive figure, the VAT inclusive figure will be accepted, once it is made clear that it is VAT inclusive.

• Services involving the supply of goods

In order to limit the extent of the return where there is a mix of goods and services, the Statement of Practice states that, where the value of any goods included in a payment involving both goods & services exceeded 2/3rds of the overall payment, the payment need not be included in the return.

However, if isolating such payments causes difficulties, they may be included in the return.

• Period over which the services were provided

Where services have been provided over a long or intermittent period, it is unnecessary to give exact dates of each such period. A general description of the period over which the services were provided will suffice - e.g. year ended 31/12/93.

• When is the first Third Party Return due?

First returns are required in respect of payments made on or after 1/1/93 and are due as follows:

Company. The first return is required in respect of accounting periods ending on or after 6 April 1993 and must be made not later than 9 months from the end of the accounting period. For example, for an accounting period ending on 6 May 1993, the return is due on or before 6 February 1994 and should cover payments made from 1/1/93 to 6/5/93/

Individuals/Bodies of Persons. Where the return is prepared to 5 April 1993, it is due not later than 31 January 1994. Where the return is made to an accounts date (between 1/1/93 and 5/4/93) the return is also due on or before 31 January 1994.

Returns made to an accounts date after 5/4/93 and before 5/4/94, will be due not later than 31 January 1995.

• £3,000 limit - is it the payment exclusive of VAT that is relevant?

A person preparing a return on a VAT exclusive basis need not include details of transaction where the VAT exclusive amount is less than £3,000 (see example). However, a person preparing a return on a VAT inclusive basis must include details of payments where the VAT inclusive amount is in excess of £3,000.

EXAMPLE: Payment of £2,750.00 (before VAT)

VAT at 21%	£577.50
Total Payment	£ 3,327.50

A person making a VAT exclusive return need not include this payment, as the VAT exclusive amount is less than £3,000. However, a person making a VAT inclusive return must include the payment.

• Will computer-printed lists of payments etc. be accepted.

Yes - provided they are accompanied by the return on which the declaration is completed. Persons with computer systems may find it more convenient to submit details on diskette or tape (see Statement of Practice - Para 8.2).

- **Where payment is being made to a person or partnership which is not registered for VAT, what reference number should be supplied?**

A person's RSI (Revenue & Social Insurance) Number is acceptable. In the case of a partnership, it has a tax reference number (separate from the individual partners' RSI numbers) - this is the reference that should be supplied.

- **Is a single return, covering all payments within a group of companies, acceptable?**

Yes, One comprehensive submission for all companies in a group may be made by any one of the companies - provided that each of the companies in the group accepts responsibility for its part of the return.

- **Payments for services made by one company to another within the same group, must be returned.**
- **Non-residents**

A non-resident company with a permanent establishment (e.g. a branch) in the State must make a return in respect of payments for services made by the permanent establishments.

Generally, payments for services made to foreign suppliers need not be returned. However, if the payment is made in respect of services provided in the State by a permanent establishment of a foreign supplier, the payments should be returned.

- **Payments by a registered principal to a sub-contractor**

Third party returns are not required. These payments are required to be recorded on construction payments card or tax deduction card and returned separately.

- **Non-profit making/charitable bodies and other bodies not liable to tax**

Although these bodies may not have a liability to income tax, they are nevertheless subject to the Third Party Return making requirements.

- **Premiums on insurance policies**

Third party returns are not required in respect of life insurance premiums paid to a broker or by an employers under staff deduction schemes.

- **Change of Ownership of shares**

A vendor who disposes of shares of which he was the registered and beneficial owner need not make a return as a nominee shareholder on behalf of the new beneficial owners in the interval before the shares are registered in the purchaser's name.

- **Entertainment**

Returns of payments for entertainment services refers to payments for the services of entertainers / artistes etc., rather than to payments for "business entertainment".

2. Corporation Tax

Deposit Interest

Some companies continue to return Deposit Interest on an accrued basis. This offer gives rise to a considerable amount of correspondence, particularly when certificates of deposit interest are requested and these do not match the information given on the return. Practitioners are reminded that the amount of deposit interest to be included on the return for the accounting period is the actual amount paid or credited during the accounting period.

3. Capital Gains Tax

3.1 Self Assessment

Remember, Capital Gains Tax Returns for 1991/92 must be made by 31 January 1993, under the Self Assessment provisions, which apply to all taxpayers that have made chargeable gains.

For capital gains tax purposes, a return is made on taxpayers' normal Tax Returns (form 11, 12, Farm Profile Etc.)

3.2 Capital Gains Tax & Companies - Development Land

Companies are chargeable to Capital Gains to Tax on chargeable gains arising from disposals of development land. Where a liability to Capital Gains Tax arises, a company is obliged to pay Preliminary Tax (Capital Gains Tax) on 1 November in the year following the year of assessment in which the chargeable gain arises. It is also obliged to file a form CG1 on or before 31 January in the year following the year of assessment.

4. Revenue Audits

Voluntary Disclosure

Where a taxpayer makes a disclosure to Revenue of errors in or omissions from a return/accounts/computation or other submission, following the receipt from Revenue of a notification of intention to carry out an audit, he or she will be regarded as having made a voluntary disclosure, even where an audit has been initiated - **provided the disclosure is made prior to the commencement of any examination of books or records by Revenue.** For a disclosure to be regarded as voluntary it must be complete and must be followed by giving full co-operation to the inspector of taxes so that the correct liability can be determined.

5. Capital Taxes

5.1 Residential Property Tax

Have your clients made their Residential Property Tax Returns?

The deadline for submitting a timely return for 1992 was 1 October 1992.

If you have clients who have not made returns yet, they should do so immediately. A return (form RP1) must be made if a person's residential property was worth more than **£90,000** on 5 April 1992. This legal requirement applies even if the household income is below the income exemption limit of **£27,500**. If tax is payable, payment should be sent with the return. Interest on late payments is charged at 1.25% per month. The penalty for non-delivery of a return is £1,000 in addition to any tax accrued interest due.

The Revenue Commissioners will shortly be compiling a list of persons, who have not yet made a return for 5 April 1992, against whom legal proceedings for recovery of the penalty of £1,000 will be instituted.

5.2 Stamp duty

Woodlands Exemption

Section 120 of the Finance Act 1990 provided for a stamp duty exemption for certain transfers of commercial woodlands. Applications for this relief may be made on Form Adjn 17, copies of which may be obtained from Stamps Adjudication Section, Capital Taxes Branch, Dublin Castle, Dublin 2.

Disclaimers

A Statement of Practice, which will be available in January 1993, is being prepared on stamp duty liability arising where beneficiaries under a will or intestacy disclaim benefits. In certain cases the duty will be a fixed £10 charge only. The statement will also address the capital acquisitions tax position and the stamp duty liabilities of deeds of assent generally.

Levies

Payments in respect of the levy on collective investment undertakings and the levy on certain premiums of insurance for the quarter ending 31 December 1992 are due on or before 30 January 1993.

6. Value Added Tax

6.1 Regulations - Moneys Received Basis

The Revenue Commissioners have made the Value-Added Tax (Determination of Tax Due by Reference to Moneys Received) Regulations, 1992 (S.I. 306 of 1992). These regulations set out the terms and conditions relating to the operation of the moneys received basis of accounting, formerly contained in S.I. 298 of 1986.

Copies of the regulations are available from the Government Publications Sale Office, Sun Alliance House, Molesworth Street, Dublin 2. Price £1.10 (Postage 48p extra).

6.2 Statements of Practice

A number of additional statements of practice have been issued since the last issue of Tax Briefing. These are;

The Monthly Control Statement (SP VAT/7/92)

This deals with the terms and conditions for the issue of monthly control statements, with effect from 1 November 1992, in accordance with S.I. 230 of 1992.

Application of the zero-rate to sales and deliveries of good to other EC member States after 1 January 1993 (SP VAT/8/92)

Under the new EC VAT arrangements applicable from 1 January 1993 revised arrangements will be introduced in relation to zero-rating of goods supplied to other Member States of the EC. This statement outlines the new requirements to enable such supplies to be zero-rated.

Electronic Invoicing (E.D.I.) (SP VAT/9/92)

This deals with the requirements that must be satisfied by persons who wish to apply to use E.D.I.

Rates of VAT on food and drink from 1 November 1992 (SPVAT/10/92)

This statement deals with the application of the zero-rate of VAT to certain food and drink items and also with those food and drink items to which the zero-rate does not apply.

Government Departments, Local Authorities, Health Boards, Hospitals, Educational Bodies, and other non-taxable entities acquiring good from other EC Member States (SP VAT/11/92)

This statement outlines the revised arrangements applying with effect from 1 January 1993 in respect of goods acquired from other Member States of the EC insofar as they apply to non-taxable entities.

VAT treatment of goods, transport and ancillary services between EC countries, after 1 January 1993 (SP VAT/12/92).

This statement deals with the revised VAT arrangements that will apply to the intra-Community goods transport services and to related ancillary services with effect from 1 January 1993.

Financial Institutions, Insurance Companies, Theatres, Providers of passenger transport, and other exempt person acquiring goods from other EC Member States (SP VAT/13/92).

This statement outlines the revised arrangements, applying with effect from 1 January 1993, in respect of goods acquired from other Member States of the EC, insofar as they apply to exempt persons.

Distance Sales in the Single Market (SP VAT/14/92)

This statement deals with the special arrangements which are being introduced with effect from 1 January 1993 in relation to the delivery of goods by taxable person to non-taxable persons in other Member States e.g. distance and mail order sales.

Postponed Accounting and Intra-Community Acquisitions (SP VAT/15/92)

This statement deals with the manner in which intra-community acquisitions of goods will be accounted for through the VAT 3 return.

Moneys Received Basis of Accounting (SP VAT/16/92)

This statement deals with the changes to the moneys received (cash receipts) basis of accounting contained in S.I. No. 306 of 1992.

Further statements of practice are in preparation and will be advertised in due course.

7. Collector-General

7.1 GIRO Facility

The GIRO facility for payment of 1992/93 Preliminary Income Tax was availed of by 11,000 people during the peak intake period. Approximately 2,000 payments have so far been processed through the GIRO system in the first weeks of its availability on form P30 for the payment of PAYE/PRSI. In early 1993 the redesigned form VAT3 will also contain a GIRO option. Ultimately the Revenue Commissioners intend to have a GIRO form on all tax notices, demands etc.

The Collector-General's Office would like to thank all practitioners who recommended the GIRO facility to their clients as a method of making tax payments.

7.2 DIRECT DEBIT facility

A Direct Debit facility linked to a system of annual accounting was offered to selected taxpayers in recent months. The response has been very encouraging. By mid-November 1,357 traders had opted to use this method of payment for Value-Added Tax while 914 employers has opted to pay their monthly PAYE/PRSI by Direct Debit.

Under this system, payments are made on a monthly basis by Direct Debit and any shortfall or overpayment will be rectified at the end of the year.

The Office of the Collector-General plans to extend this facility to other groups of taxpayers.

7.3 New VAT Return Procedures

Existing VAT 3 returns should only be used for tax periods **up to and including November/December 1992.**

A new simplified VAT 3 return is being introduced from 1st January next and will take effect for the tax period January/February 1993 onwards.

The new VAT3 return will only require tax details for the period, along with the total value of goods sent to and brought from other EC States.

A GIRO Payslip will also be attached as a means of making secure payments through the banking system.

Annual Return of Trading

Trading details which are at present supplied on the bi-monthly VAT3 will in future be supplied by means of a new "**Annual Return of Trading**" Form. The new form requests details of trading activity, broken down by VAT rate, and will issue once a year, attached to the appropriate bi-monthly VAT3 return.

For traders on the Annual Accounting scheme, or the Direct Debit payment scheme, the annual return of Trading form will be attached to the July/August 1993 VAT3. For all other traders accounting bi-monthly, the Annual Return of Trading will be attached to the November/December 1993 VAT3 Return.

Intra EC Acquisitions

Any trader involved in Intra-EC Acquisitions should ensure that the necessary arrangements are made to record such acquisitions under the "Postponed Accounting" arrangement.