



ISSUE 11 - July 1993

Introduction

In addition to information provided under the regular headings, this issue of Tax Briefing contains:

- Preliminary information regarding the “Amnesty” - see opposite
- A summary report, submitted by the Secretary of the Taxes Advisory Liaison Committee (TALC), on the activities of that body in the period from 1 January 1993 to 30 June 1993. It is intended to produce similar reports periodically.
- An update on the current situation in relation to Double Taxation negotiations with various countries, which are nearing completion or ongoing.

This issue also contains notes on the practice applied by Revenue in certain areas which give rise to frequent enquiry:

In particular

- Treatment of Keyman Insurance [para 1.4]
- Treatment of Insurance Proceeds in the case of Manufacturing Companies Act (10%) C.T. (para 2.3)

The Tax Amnesty Scheme 1993

The Waiver of Certain Tax, Interest and Penalties Act, 1993, became law on 14 July 1993. The Revenue Commissioners have prepared a booklet outlining the general terms of the scheme and how it will operate. A copy of this booklet is enclosed with this issue of Tax Briefing.

At this stage, the immediate points to note are:

- There are in effect to amnesties -
the “Incentive 15% Amnesty”
the “General Amnesty”
- Full Declarations must be made where appropriate by 30 November 1993, full payment must be made by 14 January 1994 and a correct 1992/93 Return of Income must be lodged by 31 January 1994.
- Self Assessment principles operate - it is up to a persons wishing to avail of the Amnesty to take the initiative and to ensure that they comply fully with the conditions of the relevant Amnesty.
- Details of Helplines at the Offices of the Chief Special Collector and of the Collector-General are contained in the booklet.
- Declarations Forms -
A2 (Income and Chargeable gains) -
A3 (Value-Added Tax)
are available from either of the above offices or from any Revenue office.
- **Self employed PRSI liability is not covered by the 15% Incentive Amnesty.** Separate arrangements are in place in the Department of Social Welfare in relation to payment of outstanding PRSI - see booklet for more detail

1 Income Tax

1.1 1992/93 Tax Return - Form 11 & Export Sales / Shannon Relieved Distributions

The phasing out of relief on export sales relieved distributions continues during 1992/93. The calculation of the “amount of relieved distributions to be disregarded” for 1992/93 is

The lower of

- 2/3rds of the relieved distributions received in 1992/93
and
- 125% of the average of the relieved distributions received in the four years 1987/88 to 1990/91 inclusive

Where such distributions are received from the more than one company, this calculation must be performed separately in respect of the distributions from each company.

However, in the case of ESR/Shannon distributions **received from public liability companies**, 2/3rds of the relieved distributions received from all such plc's may, for convenience, be taken as the amount of relieved distributions to be disregarded from such companies (this is in line with last year's treatment).

1.2 Review of Non-liaible Status

Certain individuals within the Self Assessment system has been accepted as not being liable to income tax for a number of years. This non-liaible status is subject to the individual advising of any change in circumstances that would change his or her non-liaible status and/or to a Revenue initiated periodic review.

The first such review is not taking place and Income Tax Review forms (form ITR) have been issued to individuals who have been treated as not liable for three or more years. These single page forms require a basis profile of individual's income/business activities so that their tax position can be kept in order.

1.3 Termination Payments - Office or Employment

Increase in exemption under Section 115, ITA 1967.

Section 8 of Finance Act 1993 made a significant change in the calculation of exemption under Section 115, ITA 1967, and in the calculation of the Standard Capital Superannuation Benefit (SCSB) in relation to payments to which Section 114, ITA 1967 applies.

Section 115 Exemption

The basic exemption of ú6,000 has been increased by ú500 for each **complete** year of service in the office or employment in respect of which the payments is made.

Example 1:

An individual received a lump-sum of £9,000 on the termination of employment on 30 June 1993 after ten years and three months service (i.e. ten years complete service) with the company. Sections 11 and 115, ITA 1967 apply.

The basic exemption is £6,000 + (£500 x 10) = £11,000

Accordingly, no tax is payable on the lump-sum on £9,000.

Example 2:

An individual receives a lump-sum of £14,000 on the termination of employment on 30 June 1993 after ten years complete service with the company. There was not superannuation fund or scheme, so there is no entitlement to any tax-free lump-sum. It is the employee's first such lump-sum. For the purpose of the example it is assumed that the SCSB is £9,000.

The exemption under Section 115 is:

Basic Exemption (as in example 1)	£11,000
Add increase for 1st claim (maximum)	<u>£ 4,000</u>
Total Exemption	£15,000
Accordingly, no tax is payable on the lump sum of	£14,000

Example 3:

The figures are the same as in example 2, except that the employee is additionally entitled to a lump-sum of ú3,000 from an approved superannuation fund.

The exemption under Section 115 is:

Basic Exemption	£11,000
Add increase (maximum)	£4,000
Less superannuation fund payment	<u>£3,000</u>
Total Exemption	£12,000

Accordingly, only £2,000 of the termination lump sum of £14,000 is chargeable to tax

Standard Capital Superannuation Benefit (SCSB)

The significant change is that the denominator in the formula for calculating the SCSB is reduced from 20 years to 15 years.

$$\text{Formula : SCSB} = \frac{(A \times B)}{15} - C$$

Example 1:

An individual received a lump-sum of £20,000 on termination of employment on 30 June 1993 after fourteen complete years of service ("B" in the formula). There is no entitlement to any pension lump-sum ("C" in the formula).

The average annual emoluments for the last three years of service is £24,000 ("A" in the formula).

$$\text{The SCSB is : } \frac{(24,000 \times 14)}{15} - 0 = £22,400$$

As the SCSB is greater than the termination payment, no tax is payable on the sum of £20,000.

Example 2:

The facts are as in example 1, except that the lump-sum pension entitlement is £8,000

$$\text{The SCSB is : } \frac{(24,000 \times 14)}{15} - £8,000 = £14,400$$

Accordingly the lump-sum of £20,000 is chargeable, as follows:

Lump-sum	£20,000
Less Basic Exemption	
[£6,000 + (500 x 14)]	<u>£13,000</u>
	£ 7,000

Less Excess of SCSB over	
Basic Exemption (14,400 - 13,000)	<u>£ 1,400</u>
Amount chargeable to tax	£ 5,600

1.4 Keyman Insurance

The tax treatment of what is generally known as "keyman" insurance is a topic which gives rise to regular enquiry. Keyman insurance is essentially insurance taken out by an employer in his/her own favour against the death, sickness or injury of an employee (the key man) whose services are vital to the success of the employer's business.

In practice, the term key man insurance may be used to refer to a range of policies not all of which give rise to admissible tax deductions/assessable receipts. The tax treatment of premiums paid and of sums received under any policy depends on the exact terms of the policy rather than on any description which an insurance company may attribute to it.

In general, premiums paid under policies insuring against loss of profit consequent upon certain contingencies will be treated as admissible deductions for tax purposes in the periods in which terms? are payable. Equally, all sums received by an employer under such policies will be treated as trading receipts for the period in which received. Policies, covering such contingencies as sickness, accident or death of an

employee, which may qualify under this heading are those where -

- the sole relationship is that of employer and employee
- the employee has not substantial proprietary interest in the business,
- the insurance is intended to meet loss of profit resulting from the loss of the services of the employee as distinct from the loss of goodwill or other capital loss, and
- in the case of insurance against death, the policy is a short term insurance providing only for a sum to be paid in the event of the death of the insured within a specified number of years.

In applying the conditions (a) to (d) above the following guidelines are followed:

- Reference to "Employee includes a director
- A person is regarded as having a "substantial proprietary interest" in a company if he or she directly or indirectly owns or is able to control more than 15% of the ordinary share capital of the company.
- The policy must be for a fixed term with no surrender value and no endowment or other investment content; it must not contain provisions whereby benefits could be paid to any person other than the employer
- The insurance must relate to loss of profits only and it will be necessary, if required, to satisfy the inspector of taxes that the contingency insured against will genuinely have an adverse effect on the employer's business. Premiums on policies taken out to cover loans or other outstanding debts which would become repayable on the death of an employee are not admissible deductions.
- In general, "short-term" means not exceeding five years. However, in practice, a fixed term policy exceeding five years will be accepted provided that all other conditions are met and the policy cannot extend beyond the employee's likely period of service with the employer e.g. for the period of the contract of service or to normal retirement age.

Any question as to the allowability as a business expense of premiums paid and the chargeability to tax of any benefits derived from a policy which does not satisfy the above conditions will be determined in accordance with established principles.

While the allowability of a premium or the chargeability of a benefit are strictly separate issues, it will usually be the case that, if the premium is allowable for tax purposes, the benefit is chargeable to tax and, if the premiums are not allowable, the benefit is not chargeable. However, it would not be accepted that a benefit is not chargeable to tax simply because an employer decided not to claim a tax deduction on the premium.

1.5 Revenue Audit Fees

The Revenue Commissioners are committed under the Charter of Rights to keeping compliance costs for taxpayers to a minimum.

Where a tax return is selected for audit, and the normal recurring professional fees in that case would be allowed as a deduction, any additional professional fees incurred by the taxpayers in consequence of the audit are allowable as a deductible expense provided that they are reasonable in the circumstances and do not relate to tax planning and/or avoidance matters.

Where, however, the audit takes on the attributes of a back-duty settlement (e.g. where the scope of the audit is extended back beyond two years), the existing practice, as set out hereunder, in regard to the allowability of professional fees will continue to apply.

Any part of professional fees incurred in connection with a back-duty settlement may be allowed as a tax deductible to the extent that they relate to the preparation accounts. However, any expenses applicable to the negotiation of a settlement are not allowable. Where necessary, fees should be apportioned so as to identify allowable and disallowable fees.

Where it appears unlikely that the fees charged in accounts exceed the aggregate of the sums which would have been charged, had accounts been prepared and presented annually, no part of the fees should be disallowed.

2. Corporation Tax

2.1 Companies' Tax Payment Dates (Finance Act 1993 Amendments)

The following changes were made to company tax payments dates for accounting periods ending on or after 1 May 1993.

- Preliminary Tax is due 6 months after the end of the accounting period (previously 7 months)
- Where, under the general rules for determining the payment date, Corporation Tax falls to be paid after the 28th day of a month, it is to be paid on or before the 28th day of that month.
- Where ACT which is payable 6 months after the end of the accounting period, is payable after the 28th day of a month, it is to be paid on or before the 28th day of that month.

2.2 Tax Treatment of Interest Paid/Received in a Pre-trading Period

Under Section 61, Income Tax Act 1967, only expenditure which is wholly and exclusively laid out or expended for the purposes of a trade, is allowable as a deduction in calculating the profits of the trade for tax purposes.

It is accepted by Revenue that interest paid in the period prior to commencement of trading, on sums borrowed to fund capital projects, may be set off against deposit interest arising in the same period from funds placed on deposit prior to the commencement of trading.

Similarly, interest received by a company is a pre-trading prior from the investment of the proceeds of a loan stock issue is allowed against the interest payable by the company on that issue.

2.3 Insurance Process & 10% Rate of CT

The following is an outline of the practice adopted in relation to insurance proceeds received by companies qualifying for the 10% rate of corporation tax.:

■ Receipts from Insuring Goods

Where the insurance compensation is for loss of stock, is calculated on the basis of the cost of the goods to the company and does not contain any "loss of profit" element, the compensation is treated as income from goods and is included in the computation of profits which qualify for the 10% rate of tax. The premium payable in respect of such insurance is an allowable tax deduction.

■ Loss of Profits Insurance

Any insurance recovery for the pure loss of profits is treated as a trading receipt and **not** as arising from the sale of goods. It is chargeable to corporation tax at 40% subject to any appropriate deduction for expenses. The premium payable in respect of such an insurance is an allowable tax deduction.

■ Loss of Tax Relief

Any insurance recover under a policy insuring against loss of tax relief is not regarded as a trading receipt for tax purposes and is not therefore chargeable to corporation tax. Any premium payable on such an insurance is **not** an allowable deduction for tax purposes.

3. Capital Taxes

3.1 Residential Property Tax

Valuation Date 5 April 1993

The income exemption for 1993 (year ended 4 April 1993) is £28,100 (not **£28,000** as reported in error in Issue 10 of Tax Briefing).

The market value exemption for 1993 (5 April) is **£91,000**.

Completed returns, together with payment of any tax due, should be delivered on or before 1 October 1993.

Certificate of Clearance

The Finance Act 1993 provides for the introduction of a Certificate of clearance on the sale of certain residential property. The measure takes effect in respect of contracts for sale on or after 1 August 1993. Thereafter, any person purchasing a residential property for a consideration in excess of the market value threshold (£91,000 in 1993) is obliged to deduct a specified amount from the consideration **unless** the vendor produces a certificate of clearance. This certificate will be issued to the vendor by the Revenue Commissioners if they are satisfied that all Residential Property Tax due by the vendor has been paid.

In the absence of a clearance certificate the amount to be deducted by the purchaser will be 1.5% of the difference between the sale price and the market value exemption limit (as at the previous 5 April), multiplied by the number of years that the vendor has owned the property up to a maximum of 5 years.

Example

X, who contracts to sell his house for £120,000 in September 1993, having owned it for 3 years, fails to produce a certificate of clearance on closure. The purchaser is obliged to make a deduction of £1,305 from the sale price. This is calculated as follows:

$$(\text{£}120,000 - \text{£}91,000) \times 1.5\% \times 3 = \text{£}1,305$$

This amount must be paid immediately by the purchaser to the Revenue Commissioners and will be treated as a payment on the account of the vendor's Residential Property Tax liability.

Practitioners are requested to advise clients to ensure that, on an ongoing basis, the best estimate of market value is used when completing the annual Residential Property Tax Return.

3.2 Companies Capital Duty

A new form will be introduced in the Autumn, which will replace the Form 26 currently used by the Revenue Commissioners and the Form B5 (formerly Form 45) used by the Companies Registration Office. The new form will combine the two forms thus eliminating some duplication. The new form (which will be called Form B5) will be delivered to the Revenue Commissioners who, having dealt with Capital Duty matters will deliver the form to the Companies Registration Office.

4. VAT Added Tax

4.1 VAT changes in Finance Act 1993

The Finance Act 1993, which became law on 17 June 1993 made a considerable number of changes to VAT law. The most significant changes deal with:

- The facility under which traders who are primarily engaged in making zero-rated intra-Community supplies of goods and exports will, from 1 August 1993, be able to:

- obtain supplies of goods,
- account on intra-Community acquisitions and
- make imports.

at zero-rate of VAT, Statement of Practice VAT/1/93 contains detailed information on this facility

- The abolition of the VAT registration threshold for certain services received from abroad.

- Flat-rate farmers and sea-fishermen making intra-Community acquisitions over the £32,000 threshold or in receipt of certain services from abroad are (unless they otherwise elect) taxable persons only in respect of such acquisitions and such Services. The flat-rate farmer will continue to be entitled to receive the flat-rate addition in respect of agricultural supplies to other taxable persons. Statement of Practice VAT/2/93 contains further details.

- Requirements of "distance sellers" to issue invoices,

- The issue of a credit note cancelling an invoice where a higher rate of VAT was incorrectly charged and the subsequent issue of a revised invoice.

- The requirement for certain taxable persons to make an advance payment on 1 December each year from 1 December 1993 onwards. The taxable person who must make advance payments are those whose total VAT liability for the preceding year ending on 30 June exceeds £120,000. The advance payment which must be made is an

amount equivalent to one-twelfth of the person's total VAT liability for the preceding year ending on 30 June.

- The zero-rating of supplies of goods for the fuelling and provisioning of vessels and aircraft for international routes.
- The storage of records by electronic means,
- A reduction in the VAT rate from 21% to 12.5% on poured concrete and concrete blocks with effect from 1 July 1993.
- That taxation of alcohol products held under a duty-suspension arrangement, primarily a bonded warehouse. From 1 August 1993 where a liability to VAT has arisen, VAT on the duty-inclusive price of the goods must be paid at the time of the removal of the goods from the duty-suspension arrangement.

The Finance Act 1993 also made a number of other technical amendments to VAT law.

4.2 Intra-Community Goods Transport

An addendum to Statement of Practice VAT/12/92, which deals with developments in relation to intra-Community goods transport services, has been issued.

4.3 Value-Added Tax (Refund of Tax) (No. 24) Order, 1993

This Order replaces S.I. Nos. 68 of 1986 and 262 of 1988. The new Order retails the scheme set out in the previous Orders in relation to certain touring coaches whereby the VAT in excess of the reduced rate is repayable. However, the new Order also covers the situation where the coach operator has to register for VAT because of his intra-Community acquisitions.

4.4 Property Transactions - "Multiplier" for Valuation of Interest in Property

The following are the appropriate "Multipliers" based on the redemption yield of the most recent National Loan Issues

Date of Issue	Multiplier
21 May 1991	10.75
24 January 1992	10.98
14 June 1993	13.57

[See VAT Leaflet 2 - Property Transactions (para 36) for circumstances in which used.]

5. Collector-General

5.1 Payment of tax by Bank Giro

In the region of £20 million is being paid each month to the Office of the Collector-General by taxpayers using the Giro option.

Form P30, which is used for remitting PAYE/PRSI, includes a Giro Payment option. Many taxpayers are availing of this option and Revenue would like to take this opportunity to thank them.

The redesigned form VAT3, which is used for remitting Value-Added Tax, also includes a Giro payment option. The use being made of this facilities very encouraging.

The Notice of Preliminary Tax (Income Tax) for the year 1993/94 will be in the same format as last year and it will contain a Giro payment option. The Giro option has been widely used in the last few years and we hope that this year will see a further expansion of its use. Other payment forms used in the Income Tax collection system also contains a Giro option.

The facility to pay Corporation Tax by Giro has been available since July, 1992. The Notice of Preliminary Tax (Corporation Tax 0 contains a GIRO payslip.

A major benefit for those using the Giro system is that the official receipt from the Collectors-General's Office is issued within 7 days of the receipt of the payment in the office.

Practitioners are reminded again of the importance of using the correct accounting document (e.g. P30) to accompany a payment. Information to bring a payment to account is now electronically read from the information than ever that the accounting document be correct. Even if the taxpayer information is correct, the form issued for the specific month must be correct.

The use of the correct form will ensure that the payment is brought to account correctly and will save taxpayer, practitioners and Revenue much inconvenience.

5.2 Payment of Tax by Direct Debit and Annual Accounting

The Office of the Collector-General introduced, in September 1992, systems for the payment of PAYE / PRSI and Value-Added Tax by means of Direct Debit through the banking system. Selected taxpayers were offered the facility and the response to date has been very satisfactory. At present a combined amount of ú6 million is being paid through this facility each month.

The offer of a direct debit facility is linked to a system of annual accounting. This of course relieves

taxpayers/practitioners of the need to make monthly/bi-monthly returns and also helps in cashflow planning. In the case of each tax all that is required is an annual return e.g. P35 for PAYE/PRSI and Annual Return for Value-Added Tax.

To join the scheme, all that is required is the completion of a simple direct debit instruction. Payments will be made on a monthly basis by means of Direct Debit and any shortfall of overpayments will be rectified at the end of the year.

This facility is now available to all taxpayers for PAYE/PRSI and Value-Added Tax provided certain limited criteria are met.

For further information contact our HELPLINE NUMBER
(01) 671 8011

This content is more than 5 years old.
Where still relevant it has been incorporated
into a Tax and Duty Manual
or other website text.