

TAX BRIEFING



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Introduction

The general issue of 1993/94 tax returns is now nearing completion.

The style and layout of some forms has been changed but the contents are otherwise unchanged (apart from the necessary annual updating). The changes are designed to make completion easier. In particular, the VSA computation page on the Form 11 has undergone significant change with a view to simplification for taxpayers who wish to use the facility.

At the request of practitioner's representatives, Third Party Returns for 1993/94 have been issued directly to taxpayers and other relevant parties rather than practitioners, as was done last year.

This issue of Tax Briefing contains an updated list of agreed flat-rate Schedule E expenses for 1994/95 and a list of Stg£/IR£ Exchange Rates for the year ended 5 April 1994.

This issue also contains updated Directories of Principal Inspector assignments in the Office of the Chief Inspector of Taxes, and of the new Dublin PAYE Districts.

Due to changes in assignments in the Office of the Chief Inspector of Taxes, this is the last issue of Tax Brief which I will edit.

I would like to take this opportunity to thank all practitioners who have written to me to express their views, support and suggestions as regards content etc. since Tax Briefing was first published in December 1990.

I am sure my successor, Ms. Maureen Moore, will welcome your continued support because, as I have regularly mentioned in the past, your support and suggestions influence the material contained in Tax Briefing, thereby helping it to remain relevant to your needs.

Joe Lynch
Editor - TAX BRIEFING

Revenue Audit and Taxpayers' Rights

The rights of a taxpayer are not in anyway diminished by reason of the taxpayer being selected for Revenue Audit.

Should any taxpayer feel that the findings of a Revenue Audit are not based on a reasonable interpretation of the facts or feel aggrieved at the manner in which a Revenue official carries out an audit, there are procedures whereby the case can be reviewed. These procedures have been outlined in general terms in Issue 9 of Tax Briefing under the heading "Charter of Rights". Practitioners / Taxpayers should have no fears about using these procedures where they feel they have a grievance.

Revenue officials are required to carry out audits in a professional, objective manner and without personalising matters. Their brief is to carry out a thorough examination of the matter which is the subject of the audit and reach a conclusion as speedily as possible. They are required to seek additional tax liability only where the facts warrant it.

The quality of an audit is not measured by reference to tax recovered. In this regard it is worth noting that approximately 25% of full audits are terminated without any additional tax being required.

Guidelines for Practitioners on Making Enquiries to Revenue Offices.

We remind practitioners of the guidelines contained in Issue 12 of Tax Briefing and ask them to ensure that their staff are aware of them because, from the calls being received, it appears that many staff do not see Tax Briefing and are not therefore aware of the guidelines.

May routine enquiries are still being received and enquiries that are not routine are not being made in accordance with the guidelines issued. To facilitate practitioners in the transitional period following issue of the guidelines. Districts have generally responded to these enquiries. The period of transition, which has lasted for six months, must now be coming to an end and we will have to be somewhat more insistent that the guidelines be followed from now on.

1. Income Tax

1.1 Motor Mileage allowances

While expense payments made by employers to employees and directors are chargeable to tax as emoluments, there is provision whereby an inspector of taxes can permit an employer to pay them without deduction of tax.

Motor mileage allowances are probably the most common expense payments in respect of which approval to pay without deduction of tax is sought. The circumstance in which they may be paid without deduction of tax is **where an employee/director genuinely uses his/her own car in the course of the employment or office and in the process incurs allowable expenditure equivalent to the amount paid by the employer towards these expenses.**

In the past, Approval to pay mileage allowances tax-free was given on the basis that adequate controls and records were in place, without seeking any specific assurances in this regard. In the course of our audit operations, we have been disappointed to find that it is not always possible to be fully satisfied that mileage allowances are paid in respect of actual business travel only.

In view of the unsatisfactory level of control and records currently being operated by some employers in relation to motor mileage allowances generally, it has been decided to set down standard procedures which must be in future be followed, before payments can be made without deduction of tax.

These procedures include:

- Initial written application by employer to tax office outlining the circumstances in which the employee's/director's cars are used for business purposes
- An undertaking by employers that certain conditions will be adhered to.
- A requirement that each employee/director submits a claim to the employer, certified as correct by a supervisor, in respect of allowances claimed at intervals normally not longer than one month from the date of the journey to which the claim relates.
- Employer to keep all such records for inspection.

Approval will not be given for payments of allowances which exceed the Civil Service Rates. An overall average rate of allowance may be approved, provided the total payments made do not exceed what would be paid if the Civil Service Rates structure had been applied.

Employers will be subject to audit on an ongoing basis to ensure that payments and that the necessary controls are in place and observed.

1.2 Benefit-in-kind - Loans to Participators

Districts advise that some directors who are participators have not been returning the benefit-in-kind arising where they obtain loans from the companies at a preferential rate.

In view of the Self Assessment provisions - including surcharge - which now apply to directors, practitioners are reminded of the importance of ensuring that their clients do not overlook these or any other income sources when completing their annual returns.

1.3 Farming - Taxation of "Mulder" Compensation

In recognition of the unique circumstances applicable to the payment of Mulder compensation (named after the Dutch farmer who took legal action against the EC decision not to allocate milk quotas to farmers who had taken part in previous temporary milk cessation schemes), the following are the taxation arrangements which are being applied to compensation and interest received under the scheme.

Compensation

The compensation is assessable for the year of assessment in which it is received.

The amount of compensation received will initially be reduced by one-quarter.

The remaining three-quarters is reduced by 1/5th or £10,000, whichever is the greater.

This reduced amount is chargeable under Case 1 of the Schedule D in the year in which the compensation is received. Levies and PRSI are also payable.

Examples	A	B
Mulder Compensation	20,000	80,000
Less 1/4th	<u>5,000</u>	<u>20,000</u>
Balance	15,000	60,000
Less 1/5th or £10,000	<u>10,000</u>	<u>12,000</u>
Amount Chargeable	5,000	48,000

Interest. Interest on the compensation is accruing from the date of the European Court of Justice judgement on 18 May 1992.

This interest is chargeable under Case III of Schedule D in the year in which it accrued. However, it has been agreed that farmers need not pay income tax on this interest until after they actually receive the interest.

As regard 1992/93, once interest is declared and the tax due on it paid within three months of receipt, Revenue will not charge interest on the late payment or impose surcharges because the interest was not included in the original return.

Agent's Fees. Where the compensation payment includes reimbursement of agent's fees, the amount will not be taxable provided the fees were not claimed for tax purposes in farmer's accounts in the first instance. If they were claimed, the fees reimbursed must be included as part of the assessable compensation (on which the adjustments mentioned above are carried out).

Amnesty. Since the compensation and interest are chargeable for post-Amnesty years the terms of the 1993 Amnesty could not apply to them. Any farmer who, mistakenly, included Mulder compensation and/or related interest in calculating tax payable under the Amnesties should ensure that these incomes are now correctly returned, as outlined above.

Credit will be given for any tax paid in respect of such income under the Amnesty.

2. Revenue Audit

2.1 Practitioners' Linking Papers

Some practitioners are not producing linking papers to Revenue officials at the commencement of an audit. Practitioners are requested to ensure that the linking papers (including the nominal ledger), together with the other records, are made available on the first day of an audit. This will eliminate unnecessary delay for all parties involved in an audit.

2.2 Voluntary Disclosure & Publication

Many practitioners do not appear to be familiar with the provisions of Section 23, Finance Act 1983 and with the benefits which voluntary disclosure can have for their clients. An indication of this is that for 1992 details of over 400 cases, involving tax, interest and penalties of over £21 million (of which over £6 million was interest/penalties), were published.

What are the benefits?

- Avoidance of adverse publicity arising from the mandatory publication of his/her name and address, where the amount of tax/interest/penalty involved exceeds £10,000.
- Mitigation of penalties otherwise incurred.
- Avoidance of disruption to business by reducing the length of Revenue Audit.

When a client has been given notice that a Revenue audit is to take place, we strongly recommend that practitioners discuss with their clients, before the audit commences, whether there

are any matters which would make a voluntary disclosure appropriate.

2.3 Taxes subject to Publications.

To date, publication has largely been confined to cases involving income tax or corporation tax. It should, however, be noted that publication applies not only to income tax / corporation tax but also to VAT, Employer's PAYE, Income Levy, CAT and residential Property Tax and to interest/penalties imposed in respect of these taxes. Practitioners should note, now that Revenue audit programmes are fully operational in all Districts, that publication will in future apply to all cases where any one or more of these taxes is involved.

As mentioned in a previous issue of Tax Briefing, a voluntary disclosure can be made at any time prior to the actual commencement by a Revenue official of the examination of books and records.

While inspectors will not seek to declare a voluntary disclosure in effective by reference to additional immaterial matters, which may raise during and audit and which were not disclosed as part of the voluntary disclosure, if any material non-disclosure comes to light it will not be accepted that there was voluntary disclosure.

Accordingly, voluntary disclosure must be:

- complete (partial disclosure is not acceptable), and
- ongoing (full co-operation during the establishment of correct liability is required).

Of course, voluntary disclosure should not be confined to cases where a client is selected for audit. If a practitioner becomes aware of any error or omission in a client's account he/she should recommend immediate disclosure by the client.

3. Corporation Tax

3.1 Tax Returns to be Made by Liquidators

It is understood that some liquidators experience problems in relation to the preparation and submission of tax returns on forms CT1 for periods prior to their appointment as liquidators.

The main difficulty appears to arise from the fact that there may be inadequacies in the business records maintained by the company prior to the appointment of the liquidator. Liquidators in these circumstances fear that Revenue would regard them as having made a false return based on the records available, where for example, additional liability was found to be due following a revenue audit.

Revenue wishes to clear the air on this issue:

- Revenue accepts returns made by a liquidator in good faith and to the best of his/her knowledge. Should there be special circumstances, the outcome of which could affect some aspect of the return, the facility for making a return subject to the "expression of doubt" (Section 14(4), FA 1988) can be availed of to protect the liquidator.
- As it may not be clear to all liquidators why revenue insists on the submission of tax returns for periods prior to the appointment of a liquidator, we would like to point out that, apart from the legal obligation to make such returns, no adjustment of tax liability - which could lead to a more accurate indication of Revenue's position as creditor - can be effected by Revenue without receipt of such return(s).

3.2 Repayments of Preliminary Tax arising from Loss Relief

Prior to the introduction of Self Assessment, there was no entitlement to interest on repayments arising from claims for loss relief under Section 16, CTA 1976. With the introduction of Self Assessment the position has changed and interest is now payable on refunds of preliminary tax arising from Section 16(2) and 16A(3) loss claims (and from any other claim giving rise to a refund of preliminary tax - other than where the repayment arises under Section 98(4), CTA 1976, on which interest is specifically excluded by Section 12(7), FA 1988)

Some Tax Districts have not been allowing interest on repayments of preliminary tax in the circumstances mentioned above. Practitioners who can identify clients who have not received interest on such repayments should contact the relevant Tax District who will arrange the appropriate refund.

3.3 Section 25, Finance Act 1989 - Attribution of distributions to accounting periods.

Where, on or after 6 April 1989, a company makes a distribution not of manufacturing profits it may, by giving notice in writing to the Inspector within 6 months of the end of the accounting period in which the distribution is made, specify the accounting period for which it is made.

This notice in writing should be given by the company. However, it may be given by a person acting on the authority of the company. If such notice is made by the company's tax advisers, the authority under which the notice is being given should be stated.

Practitioners are reminded that the legislation does not provide for the extension of the time limit of 6 months.

3.4 Group/Consortium Relief

Where a claim for Group/consortium Relief is being made **at the time of submission of the return** for the accounting period, completion of Panel 29 of the Form CT1 will satisfy the requirement to notify the Inspector of Taxes in connection with the claim/surrender.

Where a claim for Group/Consortium Relief is being made after the return for the accounting period has been submitted, the relevant claim and surrender forms should be submitted, duly completed and signed by the claimant and surrendering companies.

3.5 Capital Allowances on Video Tapes

Some practitioners appear to be unclear as to whether video tapes should be classified as fixed assets or as stock in trade in the accounts of a video retailer and/or renter. This is essentially an accountancy matter to which the ordinary rules of commercial accounting apply. The tax treatment will follow the accountancy classification.

Where the video tapes are used in a video rental business, accountancy practice would require the video tapes to be treated as fixed assets - on which capital allowances may be claimed.

Where the video tapes are used in a video retailing business, they would be treated as stock in trade on which capital allowances would not be due.

Sale of ex-rental video has become a feature of video rental businesses. Where this happens, the correct accountancy adjustments and capital allowance adjustments must be followed to reflect the change from fixed asset status to trading stock status.

4. Capital Taxes

4.1 Stamp Duty

Levy and Stamp Duty

Payments in respect of the levy on certain premiums of insurance (non-life) for the quarter ending 31 March 1994, were due on or before 30 April 1994.

Payments in respect of the stamp duty on credit and charge cards are due on or before 30 June 1994.

4.2 Capital Acquisitions Tax

The Finance Act of 1990 introduced indexation for the purposes of calculating CAT liabilities. A Statement of Practice (SP-CAT/2/90) explained the indexation process in detail.

A further Statement of Practice (SP-CAT/1/94) is now available which specifies the indexation factors to be employed. In summary, the threshold amounts should be multiplied by an indexation factor of:

- 1.104 where the taxable gift/inheritance is taken in the year 1990
- 1.076 where the taxable gift/inheritance is taken in the year 1991
- 1.109 where the taxable gift/inheritance is taken in the year 1992
- 1.145 where the taxable gift/inheritance is taken in the year 1993
- 1.16 where the taxable gift/inheritance is taken in the year 1994

The Finance Act of 1993 also introduced indexation in respect of the exemption threshold for Probate Tax. The exemption threshold for Probate Tax purposes (i.e. £10,000) should be multiplied by 1.015 in respect of persons dying in 1994.

5. VAT

5.1 The Minister For Finance, in his Financial Statement of 26 January 1994, announced the following proposed VAT changes:-

- (i) With effect from 1 July 1994, the VAT registration threshold will be increased from £15,000 to £20,000 for services, and from £32,000 to £40,000 for goods.
- (ii) With effect from 1 September 1994, the services of loss adjusters will become taxable at the standard rate.
- (iii) With effect from 1 July 1994, the cash receipts basis of accounting will be available to traders whose annual turnover does not exceed £250,000. This will apply to all sectors.

These changes are provided for in the Finance Bill.

5.2 Zero-rating of Goods and Services [Section 13A of the VAT Act] - Issue of Authorisation.

In order to facilitate suppliers of authorised persons it has been decided that authorisations, for whatever period issued, will in all cases expire on a single date - 31 October - in the year of expiry.

[For background information, see Statement of Practice SP-VAT/1/93, titled "Zero-rating of Goods and Services 13 A of the VAT Act"]

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