



15 - July 1994

Introduction

In this edition of Tax Briefing we focus, inter alia, on new and amended legislation introduced by the 1994 Finance Act. As a result, it will be no surprise to find related words such as resident/residence/residential featured in a number of articles. For instance, in addition to enclosing leaflet RES. 1 on the new residence provisions for an individual, we include an article about it which we believe will be of particular interest to practitioners.

We also include a feature on the unrelated topic of Residential Property Tax, and deal in some detail with the mortgage relief available to "first time buyers" of a private residence.

Included also is the second of our reports on the activities of "TALC". It is intended that such reports will feature as standard in future editions of Tax Briefing.

New to the back page of Tax Briefing is the cut off Mailing List Update. This is provided to help you to keep our Mailing List up to date. Obviously, we can all benefit from reduced handling costs associated with undelivered mail and responding to requests for re-issue of Tax Briefing and other Revenue publications.

Finally, Joe Lynch my predecessor has asked me to thank you for your best wishes to him in his new appointment, and your thanks to him for his work as the founding editor of Tax Briefing. While extending my own best wishes to Joe, I wish to take this opportunity of saying that I am pleased and honoured to have been asked to be the new editor of Tax Briefing and I look forward to receiving your suggestions on topics you would like to see covered from time to time in the bulletin.

Maureen Moore,
Editor - Tax Briefing

SINGLE REGISTRATION FORMS

We are pleased to advise practitioners that Single Registration Forms are now available to simplify tax compliance and thereby reduce costs for all new enterprises. Two separate forms have been designed; one to meet the needs of persons other than companies called TR1, and a second form called TR2 to meet the separate and different needs of companies.

Where the enterprise is located in Dublin or surrounding counties, these forms may be obtained from:

Taxes Central Registration Office
Arus Brugha
Cathedral Street
Dublin 2.

Telephone : (01) 874 6821
Fax: (01) 874 6078

Where the enterprise is located elsewhere, these forms can be obtained from:

The District Tax Office to which returns for the enterprise will be made.

Forms TR1 and TR2 will enable registration for Income Tax/Corporation Tax respectively as well as VAT and PAYE in one single operation. In addition, the forms can be used to register an establishment enterprise for any of these taxes.

1. Third Party Returns

Tax Reference Number

In completing a third party return, it is essential to include the tax reference number of that third party. This matter has been referred to as paragraph 9.1 in Statement of Practice SP-IT/1/92, wherein it is stated:

“Relevant persons required to make third party returns should ensure that they get tax reference numbers from people to whom they make payments for services, act for in opening accounts etc., before they finalise their dealings. [All traders engaged in the provision of services and all professional persons already have an obligation under Section 22 of the Finance Act 1983 to state their tax reference number on all documents (invoices, receipts, etc) issued in connection with their businesses in respect of amounts of £5 or more]”

A Tax Reference Number is either a Revenue and Social Insurance (RSI) Number or a VAT Registered Number.

2. Notice

Credit Unions Dividends/Interest Earned by Members

We have been requested to remind practitioners that dividends and deposit interest paid by Credit Unions are chargeable to income tax in the hands of those recipients at the rates relevant to those individual recipients (including the higher rate where appropriate).

3. Residence of Individuals

Introduction

Practitioners will be aware that the Finance Act 1994 introduced significant changes in the rules governing residence of individuals. A copy of leaflet RES.1 recently produced by the Revenue Commissioners is included with this edition of Tax Briefing. It sets out those changes in general terms. It was felt, however, that a more precise statement on aspects of those changes might be useful to practitioners.

Sec. 151 Finance Act 1994 - “Ordinary Residence”

Section 151 F.A. 1994 deals with “ordinary residence” of an individual for 1994/95 and subsequent years.

The “ordinary resident” status of an individual for the year 1993/94 is however a further determining factor in deciding the “ordinary resident” status for 1994/95 and subsequent years. For instance, where an individual was “ordinarily resident” for 1993/94 and subsequent years, unless the individual was resident for each of the three preceding tax years.

The above sets out the general position. However, that does not apply in the case of an individual who left the State on or before 5 April 1994 with the intention of making a permanent home in another country. Under the old rules, such an individual provisionally ceased to be “ordinarily resident” from the date of departure. This status is unaffected by the new provisions (notwithstanding the contrary impression, which might arise by reading section 151(1) in isolation) provided the individual remains non-resident in the three years following the year of departure. At the end of that period, the cessation of “ordinary residence” is confirmed and the individual will be treated as not having been “ordinarily resident” for each of those three years. If, however, the individual becomes resident in any one of the three years following the year of departure, “ordinary residence” is deemed never to have ceased and in such circumstances the provisions of section 151(2) will then apply in determining the individual’s “ordinary residence” status for 1994-95 et seq.

Residence and Ordinary Residence 1994/95 and Subsequent Years

The table below show how an individual's RESIDENCE and ORDINARY RESIDENCE status for tax year 1994/95 and subsequent years can be effected by the record of RESIDENCE AND ORDINARY RESIDENCE in years 1991-1994.

	Position under old rules for 3 years prior to	Position for 1994/95 and subsequent years
Year	91/92 92/93 93/94	94/95 95/96 96/97 97/98 98/99 99/00
Status	R NOR R NOR R NOR	NR OR NR OR R OR R OR R OR R OR
Status	NR NOR NR NOR R NOR	R NOR R NOR R OR R OR R OR R OR
Status	R OR R OR R OR	NR OR NR OR NR OR R NOR R NOR R NOR
Status	R OR R OR R OR	NR OR NR OR R OR R OR R OR R OR
	SPECIAL CASE OF AN INDIVIDUAL WHO	EMIGRATED IN YEAR 1993/94 AND
Status	R OR R OR R OR	NR NOR NR NOR NR NOR R NOR R NOR R NOR
	SPECIAL CASE OF AN INDIVIDUAL WHO	EMIGRATED IN YEAR 1993/94 BUT
Status	R OR R OR R OR	NR OR NR OR R OR R OR R OR R OR
		RETURNED WITHIN THREE YEARS

Repeal of Section 76(4) 1967 by Section 157 F.A. 1994

Section 157 FA 1994 has repealed Section 76(4) ITA 1967 in respect of the year 1994/95 and later years. Subsection (2) of the section provides for a transitional relief to apply where the Revenue Commissioners are satisfied that the repeal of Section 76(4) would cause hardship.

Relief under Section 76(4) ITA applied in respect of income chargeable to tax under Case III Schedule D from an employment exercised wholly outside the State.

In practice, the relief under Section 76(4) was allowed by confining the tax charge to the element of such income remitted to the State. It must be emphasised, that the new relief is distinct from the relief which applied in practice under Section 76(4).

Application of Section 157(2) F.A. 1994

Section 157(2) gives a measure of flexibility so as to allow relief, for 1994/95 only to a person who as a result of the repeal of Section 76(4) suffers hardship. In practice, where the terms of an existing contract between an employer and employee are such that either party suffers hardship by loss of relief under Section 76(4), relief for that hardship may be claimed by the employee under Section 157(2). In calculating the maximum relief which will be allowed under Section 157(2) the disallowance of the first 15 qualifying days (provided for in Section 154 F.A. 1994) will be applied on a pro rata basis, thus if the number of qualifying days in 1994/95 is 60, the restriction will be two thirds of 15 i.e. 10 days.

The relief will be given by repayment of tax at the end of the tax year, but approval in principle may be obtained in advance, where claims are based on already agreed contracts. Claims should be made to the PAYE District dealing with the employer's PAYE affairs. Details of the hardship claimed to have been suffered by the repeal of Section 76(4) must be provided. Such details would normally include evidence that the contract terms agreed assumed the availability of relief under Section 76(4).

4. Income Tax

4.1 Professional services - withholding Tax - Contracts performed abroad by Non-Residents

The strict position is that withholding tax applies to all payments for professional services made by accountable persons. However, the Revenue Commissioners have accepted that withholding tax need not be deducted from payments by a foreign-based branch or agency of an Irish resident company which is an accountable person, where:

- i) the payment is made abroad by the branch,
- ii) the payment is for professional services provided abroad to the branch, and
- iii) the person providing the professional service (the payee) is resident abroad.

The legislation does not provide for a clearance mechanism for recipients resident in tax treaty countries.

4.2 Mortgage Interest Relief - First-Time Buyers

Practitioners will be aware that “first-time buyers” are entitled (for a period of five years) to more favourable tax relief than is generally available on the payment of mortgage relief.

By “first-time buyer” we mean an individual not previously entitled to relief in respect of interest paid on a loan used for the purchase, improvement, etc of a sole or main residence (a qualifying residence).

We have received a number of questions in relation to the application of this relief. The following are the answers to the main queries received.:

Sale and purchase within first five years

Where, within the first five years a person buys a “qualifying residence”, sells it and buys another qualifying residence he/she will qualify as a

first-time buyer in relation to the second qualifying residence - in respect of the remainder of the five year period, which commenced on taking out the loan for the first qualifying residence.

Interval Between Sale and Purchase

The “five-year” period refers to the first five years in which interest is paid on a qualifying residence. In cases where a gap of (say) two years occurs between the first residence being sold and the second residence being acquired, these two years are not counted in the five year period, so that in such cases interest paid in years six and seven qualify for relief.

Replacing Inherited “Qualifying Residence”

Where an individual inherits a house, uses it as a first qualifying residence, sell it and purchases another qualifying residence financed by a mortgage, the individual is a first-time buyer for the purposes of mortgage interest relief on the new qualifying residence.

Married Couples Jointly/Separately Assessed

Where a house is purchased jointly by a married couple, who are jointly or separately assessed, any previous purchase of a qualifying residence, eligible for mortgage interest relief, by either spouse will be relevant in determining whether they are “first-time buyers” and when the five year span commenced.

Thus, if one spouse owned a qualifying residence solely in (say) 1991/92 and, on marriage, sold it and purchased a new qualifying residence jointly in (say) 1994/95, both spouses will be regarded as first-time buyers from 1991/92.

Joint Ownership by Individuals who are unmarried or are separately treated

Where a house is purchased jointly by persons who are not married, or by a couple who are married but elect to be assessed to tax under separate treatment, each person’s entitlement to mortgage interest relief will be reference to their separate circumstances.

4.3 Deposit Interest

In response to a number of enquiries in connection with certain Deposit Interest, we set out below details of the return requirements and the tax treatment which applies for 1993/94.

Special Savings Accounts (SSA’s)

Deposit Interest Retention Tax (D.I.R.T) in respect of interest on SSA’s is chargeable at 10% and no further tax is chargeable in respect of the interest.

The interest is not part of the individual’s total income and the individual is not required to include the interest on his/her return of income. The usual conditions regarding repayment of D.I.R.T apply in relation to SSA interest. For the purpose of computing a repayment, the interest is created as part of the individual’s total income. However, this will not result in any additional tax, PRSI or levies becoming due by the claimant.

Other Accounts Liable to D.I.R.T.

With effect from 1993/94, interest paid or credited to individuals on accounts in respect of which D.I.R.T. is charged at the standard rate is not chargeable to income tax at the higher rates. However, it does continue to be part of the individual’s total income. The interest must be included in the recipients’ returns of income and is chargeable to PRSI and levies.

To ensure administratively that no further tax liability arises in respect of individuals’ relevant interest which has been subjected to D.I.R.T. at the standard rate, Section 15, Finance Act 1993, provides that:

- (i) For the year 1993/94, except for the purposes of a claim to repayment, the exemption limits are extended by the amount of such relevant interest.

For example, a married couple on aggregation, both aged under 65, have the following income for 1993/94:

Relevant interest: £2,000
Other income: £8,000

Their exemption limit for 1993/94 is £9,200 (i.e. the standard £7,200 + £2,000 interest). The cut off point for marginal relief is twice this exemption limit (£18,400).

Marginal relief is calculated in the ordinary way by reference to this exemption limit i.e. the liability cannot exceed £384.

$[(£10,000 - £9,200) @ 48\%]$.

NOTE:

Certain changes to the above have been introduced by the Finance Act 1994 as respects the years 1994/95 and later.

These changes will be dealt with in a later issue of Tax Briefing.

- (ii) For the years 1993/94 and later, the standard rate band is extended by the amount of such relevant interest.

For example, a married couple on aggregation, both aged under 65, whose 1993/94 income includes relevant interest of £3,000 are chargeable as follows:

First £18,350 (i.e. £15,350 + £3,000) of taxable income @27%

Balance of taxable income @48%.

NOTE

- (i) standard rate band is extended for all purposes, including repayment calculations
- (ii) This applies only to relevant interest which has been subjected to tax at the standard rate; it does not apply to SSA interest.

Repayments of D.I.R.T. to Individuals

- (i) The categories of individuals who qualify for repayment of D.I.R.T. are unchanged, viz:

*self or spouse over 65 at any time during the tax year,

or

*self or spouse permanently incapacitated prior to the end of the tax year.

As noted in paragraph 2, the extension of the exemption limits does not apply for the purposes of a claim to repayment.

- (ii) Below is a detailed example of a 1993/94 computation of repayment of D.I.R.T. It includes repayment of D.I.R.T. on SSA interest. That tax chargeable takes account of the appropriate exemption limit (including marginal relief).

Computation 1:

	£
Relevant Interest (D.I.R.T. 27%)	1,000
PAYE Income	10,000
Total Income	11,000

Personal Allowance	4,350
PAYE Allowance	800
Age Allowance	400
Taxable @ 27%	5,450
Tax chargeable	1,471.50
Marginal Relief	1,183.50
Tax Payable	288
Credit Non-Repayable D.I.R.T.	270
Net Tax Payable	18
Credit Tax paid PAYE	1,000
Repay	982

Marginal Relief

	£
Total Income	11,000
Exemption Limit	10,400
Tax not to exceed	600
@ 48%	= 288

Computation 2:

	£
Tax chargeable (as above)	1,471.50
Marginal Relief	703.50
Tax Payable	768
Credit D.I.R.T.	270
PAYE	1,000
Repay	502

Marginal Relief

	£
Total Income	11,000
Exemption Limit	9,400
Tax Not to Exceed	1,600
@ 48%	=768

Computation 3.

	£
Income as above	1,000
SSA Interest	1,000
Total Income	12,000
Personal Allowances	5,550
Taxable @ 27%	6,450
Tax chargeable	1,741.50
Marginal Relief	493.50
Tax Payable	1,248
Credit D.I.R.T.	370
PAYE	1,000
Repay	122

Marginal Relief

	£
Total Income	12,000
Exemption Limit	9,400
Tax Not to Exceed	2,600
@48%	=1,248

The repayment which is more beneficial to the claimant of computation 1, 2 and 3 is made: viz £982.

NOTES TO THE EXAMPLE;

- (1) A claim to repayment of D.I.R.T. cannot result in an increased charge to tax on the claimant. Accordingly, the computation showing the largest repayment is used.
- (2) In "computation 1", the appropriate exemption limit is increased by the amount of the relevant interest, other than SSA interest. Since the limits may not be increased for the purposes of computing repayments, the D.I.R.T. is treated as a non-repayable credit. Thus, if the claimant has no liability (apart from the D.I.R.T.) the credit shown from D.I.R.T. would be zero.
- (3) In "computation 2", the D.I.R.T. is treated as repayable credit. Since this computation has been prepared for the purposes of deciding if repayment of D.I.R.T. arises, the ordinary exemption limit applies.
- (4) In "computation 3", SSA interest is treated as part of the claimants' total income for the purpose of deciding if repayment of the D.I.R.T. On this interest is due. The ordinary exemption limit applies. Note also that a claim to repayment of

D.I.R.T. Deducted from SSA interest cannot result in any additional tax, PRSI or levies becoming due by the claimant.

Computations 2 and 3, in treating D.I.R.T. as a repayable credit, assume that the conditions in paragraph 3.1 are satisfied. If they were not satisfied, then only computation 1 would apply.

5. Self Assessment - Income Tax 1993/94

5.1 Preliminary Tax 1993/94

Practitioners are reminded to advise their clients that where Preliminary Tax 1993/94 was not adequately paid or was not paid on time, the balance unpaid becomes due on the issue of the Notice of Assessment and interest will accrue from 1/11/1993. [See chart on back page Issue 4 of Tax Briefing dated October 1991]

5.2 Notices of Assessment and amended notices for 1993/94

Panel 8 of the Notices will include, inter alia, Gross repayable credits together with the 1993/94 Credits refunded/offset during that year:

EXAMPLE

Gross Repayable Credits	£10,000
Refund/Offset	(5,000)
Net repayable credits	£5,000

5.3 Filing Requirements

With the issue of 1993/94 Tax Return forms, practitioners are reminded of Return filing requirements. References to this subject have already been made in several previous Issues of Tax Briefing and to those who do not need this reminder, we apologise. To those who do need the reminder, we urge you once again to ensure that at the time of submission the Tax return is complete in all respects. It should therefore include the:

- completed Return Form
- accounts
- schedules of relevant items
- claims for allowances and reliefs

so that tax liability for the year can be finalised in one assessment.

As has been indicated on previous occasions we recommend, and would welcome, early submissions of complete returns to ease the usual pressure for both sides around filing date. We again stress that a complete return is essential whether filed early or at filing date.

6. Corporation Tax

6.1 Late Submission of Returns - Restriction of Claims to Relief.

This topic has already featured at paragraph 3.1 in Issue 13 - January 1994 of Tax Briefing.

We have however again been requested by Inspectors to bring the restrictions imposed by Section 55 Finance Act 1992 to your attention as it is a matter of concern that, where returns are not filed on time, a number of practitioners fail to apply the restrictions imposed by the said Section 55.

6.2 Insolvency

Revised formats on insolvency practice have been agreed between the Insolvency Committee (South) - ICS - of the Consultative Committee of Accountancy and the Revenue. The main features of the agreement are as follows:

Revenue Claims

Revenue have confirmed that Inspectors of Taxes have been instructed to deal with returns and other submissions related to insolvency matters without delay.

Where the insolvency practitioner stipulates Revenue claims, or portion of claims, to which particular payments are to be set against Revenue will follow that stipulation. Where monies are remitted in respect of a number of claims across various tax heads without specific direction from the insolvency practitioner, such payments will be appointed on a pro-rata basis across the taxes within the class to which they refer. Such appropriation will be detailed on the receipts issued for those remittances.

Self Assessment

Where, based on available information, Revenue do not intend to take audit or other action regarding the pre-insolvency submissions by the company concerned, they will so inform the insolvency practitioner. If the case is being noted for Revenue audit, the insolvency practitioner will be so advised. A similar approach will be adopted in respect of returns and other submissions relating to the period of the insolvency practitioner's appointment.

Revenue emphasise that this clearance procedure will not cover situations where underpayments of taxes has arisen because of fraud or malpractice by directors of the company or by the insolvency practitioner.

VAT

Application by liquidators for VAT registration will be accepted by the Inspector of Taxes where he/she is satisfied that a positive VAT charge will arise in the case.

The liquidator should submit a copy of the opening Statement of Affairs, together with any necessary details of the company's assets, in support of the application for VAT registration.

The Inspector of Taxes will monitor the progress of liquidation where VAT registration has been granted to decide whether registration requires to be cancelled.

Set-Off

Questions of set-off have not arisen in the Irish Courts.

The revenue has relied on its right to set-off on the basis of mutual debts, which is provided by Section 251 of the Irish Bankrupt and Insolvent Act, 1857 (incorporated into the First Schedule, Paragraph 17, of the Bankruptcy Act, 1988), as applied to the winding-up of insolvent companies by Section 284(1) of the Companies Act, 1963, and has been supported in this view by legal opinion.

Funding Policy

Revenue will not generally be willing to guarantee funding to liquidators on request, unless they consider that there are goods prospects of a sufficient return to them as creditors so as to justify their risk exposure in commercial terms. Therefore, it is important that the insolvency practitioner has prepared a schedule of the company's debt recovery prospects, including legal advice where relevant, prior to approaching the Revenue with a request that they fund the liquidation.

Once a court liquidation has been initiated, the Revenue view is that it should proceed to finalisation. Where there are not assets and no further action is feasible, an application, with the support of the Revenue in their capacity as representative creditor, should be made to the Court for either a Final Order, or for an Order staying proceedings under Section 34 of the Companies Act, 1963.

Conduct of Liquidators

If the Revenue consider that a nominee for liquidator has failed in a previous Court liquidation, they will take suitable action regarding such nomination.

The court regard the Revenue as a representative creditor. In this capacity, the Revenue will take whatever action it considers appropriate to ensure that existing/proposed liquidators act in accordance with their statutory duties. Where Revenue is of the opinion that a liquidator may be guilty of professional misconduct, that opinion may be brought to the attention of the relevant professional body.

7. Income Tax/Corporation Tax

7.1 Farmers - Stock Relief

The question has arisen as to whether the time limit for a stock relief claim can be extended in circumstances where an assessment on a farmer is amended in accordance with the provisions of Section 14 Finance Act 1988. This article sets out the position.

Individuals - Years of assessment up to and including 1992/1993.

Companies - Accounting periods up to and including period ending 5/4/1993

- The time limit for a (restricted) claim to stock relief may be extended where a valid appeal has been made against an amendment to an assessment.
- An appeal will be valid if made against the amended "elements" (additions or alterations) in an assessment by a person who has
 - i) made a Return of Income,
 - and
 - ii) paid the tax due in accordance with that Return
- the claim for stock relief must be made during the subsistence of such valid appeal i.e. before the assessment becomes final and conclusive.
- The claim for stock relief cannot affect the profits assessed for tax charged in the assessment, prior to its amendments.

Example:

Return of Income submitted by farmer

	£
Case I Profit	12,000
Assessment issued in accordance with return	12,000
Tax paid in accordance with Return	
Profit uplift following Revenue Audit	4,000
Amended assessment Case I profit	16,000
Appeal lodged against the increase of	4,000
Stock Relief claim $4,000 \times 110\%$	<u>4,400</u>
Unused Stock Relief	400

The unused stock relief cannot be offset against the Case 1 profit of £12,000 as the assessment containing that profit was final and conclusive before the claim materialised.

Individual - Years of assessments 1993/1994 - 1994/1992

Companies - Accounting periods ending on or after 6/4/1993 and on or before 5/4/1995

- Section 28 Finance Act 1993 amended the provisions relating to relief in respect of an increase in stock value. In order to qualify for stock relief a claim thereto must have been made by the specified return filing date within the meaning of Section 9 Finance Act 1988 i.e. for an individual by 31 January following the end of the tax year, and in the case of a company 9 months after the end of an accounting period.
- Where a timely stock relief claim is in place, and an assessment is increased by amendment following an audit, a claim for stock relief is allowable against the additional profits included in the assessment.

Example:

Return of Income submitted by farmer

	£
Case I Profit (net of Stock Relief	12,000
Profit uplift following Revenue Audit	4,000
Amended assessment Case 1 profit	16,000
Stock Relief claim 4,000 x 25%	1,000

7.2 Double Taxation Relief - Foreign Effective Rates

The method for computing the foreign effective rate for double taxation agreement purposes has been set out in Paragraph 2.5 of Issue 13 Tax Briefing - January 1994. A number of double taxation agreements provide for credit in respect of the underlying tax paid in respect of profits out of which a dividend was paid. In general, the rate to be used should be based on the actual foreign tax paid, including underlying tax.

As an alternative to the rate determined by the method set out in Issue 13 of the Tax Briefing, the Revenue Commissioners are prepared to accept that for:

- 1993/1994 and following years for income tax,
- and
- accounting periods ending on or after the 1 January 1994 for corporation tax.

the following approximate foreign effective rates may be used in the case of portfolio investors:

Country	Foreign Effective Rate
Austria	41%
Belgium	48%
Canada	47%
France	43%
Germany	40%
Italy	46%
Japan	43%
Luxembourg	43%
Norway	35%
USA	38%

8. VAT

8.1 Section 97 Finance Act 1994

Section 97 of the Finance Act 1994 introduced a new provision with effect from 1 July 1994 whereby, traders whose annual turnover from taxable supplies does not exceed £250,000 may opt for the cash basis of accounting irrespective of the taxable status of their customers.

Traders who wish to opt for the cash basis of accounting must apply to their local Inspector of Taxes for the necessary authorisation, and must provide details of their turnover from taxable supplies in the 12 months prior to the date of application together with a declaration that this figure is not likely to exceed £250,000 during the 12 months following the date of the application.

The existing conditions for using the cash basis (i.e. not less than 90% of taxable supplies are made to unregistered persons) continue to apply to traders whose turnover from taxable supplies exceeds £250,000.

8.2 Exempt Coach Operators

Value Added tax (Refund of Tax) (No. 26) Order, 1994, (S.I. No. 165 of 1994).

This order replaces S.I. No. 134 of 1993. The order provides for a full repayment of VAT to exempt coach operators, subject to certain conditions, in respect of the tax paid on touring coaches of certain age and dimensions.

9. Collector General

9.1 Payments For

- Income Tax
- Corporation Tax
- Advance Corporation Tax
- Capital Gains Tax
- Residential Property Tax.

As part of the programme for the decentralisation of the Office of the Collector General to Limerick, the processing of all payments of Income Tax, Corporation Tax, Advance Corporation Tax, Capital Gains Tax and Residential Property Tax (with certain exceptions) is now being dealt with as:

Office of the Collector-General
Sarsfield House
Francis Street
Limerick

Telephone (061) 310310
Fax (061) 410267

All payments of these taxes should (unless specifically instructed to the contrary) be forwarded to that address in future.

As a further part of the on-going decentralisation process, payment of other taxes will also be directed to Limerick over the coming months. The following is the envisaged timetable for such transfer.

PAYE/PRSI

Monthly (P30):

Month ended 5 September 1994 et seq (due 14 September 1994)

Value Added Tax:

Early 1995

Practitioners will be kept fully up to date of these changes in later issues of Tax Briefing.

9.2 Automated Remittance Processing

In order 1993, as part of its drive to improve customer service to both taxpayer and practitioner alike, the Office of the Collector-general installed an Automated Remittance Processing (ARP) system in its Cash Office at Apollo House, Dublin. This system permits high speed processing of remittances by reading encoded information from both taxpayers cheques and accompanying GIRO payslips. This enables Revenue to update its taxpayers files rapidly and issue receipts to taxpayers with minimum delay. In June 1994 a similar system was installed in the Cash Office at Sarsfield House, Limerick.

Practitioners can assist Revenue staff in maintaining this improved speedy service, both to their clients and themselves in the following manner:

- 1) Always return clients returns with the GIRO payslip attached. The payslip contains encoded information vital to providing rapid file updating and receipting. The GIRO payslip must also be returned with NIL return in all cases.
- 2) When completing the GIRO payslip, ensure that the scan line section at the foot of the payslip is not written on, marked, bent or folded. Special care should be taken to avoid infringing the scan line area when signing declarations on either part of the payslip.
- 3) Never use on client's payslip to pay another client's tax. Similarly, you should not use the payslip for one taxable period to pay tax for another period, even for the same client. The coded scanline at the foot of the GIRO payslip contains information unique to a specific taxpayer, specific tax type and specific tax period. To use the payslip for any other purpose can cause serious difficulties for both Revenue and taxpayers alike.

9.3 Forms P35

At a recent seminar some Tax Practitioners asked when blank P35 forms cannot be issued on demand.

The reason for non-issue is that P35 forms are now pre-coded by Revenue showing details of the taxpayer, tax year and bank giro sort details. In cases where the original computer coded P35 form is lost or mislaid, a replacement form (which is part coded manually) is issued on request.

Use of these forms by the taxpayer or agent facilitates the automated processing of both returns and accompanying remittances. This expedites the accounting and lodgement processes, improves the accuracy and security of payment processing and enables prompt updating of taxpayer records.

Past experience has shown that where blank P35 forms were issued vital information was frequently incomplete, thus resulting in difficult and often time consuming investigations to establish the correct taxpayer or the period in respect of which a return or payment was made.

Because of the advantages which use of the pre-coded P35 brings for both taxpayers and Revenue, it is regretted that the policy of not issuing blank P35 forms must continue. Any inconvenience which this may cause tax practitioners is regretted but it is felt that the overall benefits are greatly to the advantage of all concerned.

10 Capital Taxes

10.1 Residential Property Tax

Changes in the Residential property Tax were announced in the 1994 Budget and were modified in the Finance Act 1994. The main changes, which relate to the valuation date 6 April 1994, are as follows:

- The market value exemption threshold is reduced to £75,000 (from £91,000);
- The income exemption threshold is reduced to £25,000 (from £28,100);
- There are now three (progressive) rates of tax which apply to the excess over the market value exemption threshold:
 - 1% for values up to £100,000
 - 1.5% for values between £100,000 and £150,000
 - 2% of any balance over £150,000.

Values between £75,000 and £100,000 are in fact “banded”, with a flat rate charge for each band of value. This flat rate ranges from £25 to £225 are as follows:

Value band (£)		Tax Charge (£)
Exceeding	Not Exceeding	
75,000	80,000	25
80,000	85,000	75
85,000	90,000	125
90,000	95,000	175
95,000	100,000	225

- Where any owner/occupier elderly (i.e. 65 years or over), the “household” income (for purposes of income exemption) is confined to the owner/occupiers only;
- Where a household includes an elderly or incapacitated resident who is not an owner/occupier, the income of that person is not counted for the purposes of household income;
- Where any owner/occupier is permanently incapacitated, the income of a person, who is not owner/occupier, and who resides in the household as a result of the incapacity of the owner/occupier, is ignored for the purposes of household income;
- Where the owner/occupier is a widowed person, the income of a person (who is not an owner) residing in the house as a result of the owner having dependent children is excluded for the purposes of household income;
- Marginal relief applies where the household income is in the range £25,000 to £35,000. Where the owner/occupier is elderly, the range extends to £40,000. The relief amounts to a deduction of 10% for each £1,000 below £35,000 and 1/15th for each £1,000 below £40,000 in the case of elderly owner/occupiers;
- Alterations or improvements made to a property to cater for an incapacitated resident will not be counted in assessing the market value of the property;
- Child relief stays the same: tax is reduced by 10% for each dependent child;
- There is a phased payment option; pay 25% on 1 October and pay the balance (plus 5%) in 10 monthly instalments;

Completed returns, together with any tax due should be delivered on or before 1 October 1994.

Certificate of Clearance

The Finance Act 1993 provided for the introduction of a certificate of clearance on the sale of residential property where the consideration exceeds £91,000. (See Issue 12, October 1993, of Tax Briefing). Since 23 May 1994, the date of the passing of the Finance Act 1994 the threshold has been reduced to 75,000 (the general exemption limit in effect since 6 April 1994).

For help and further information write or call in person to:

Residential Property Tax Section

Stamping Building

Dublin Castle

Dublin 2

Telephone: (01) 6792777

Exts: 4626/4628/4090

Fax: (01) 6794115

10.2 Stamp Duty

Surcharges - Section 103 of the Finance Act, 1994 amends Section 103 of the Finance Act, 1991, which introduced surcharges in respect of property transferred by voluntary disposition inter vivos (e.g. by gift) where a submitted statement of value is substantially incorrect. Surcharges will now be triggered where the value ascertained by the Commissioners exceed the submitted value by 15% (formerly 10%). The rates of surcharge have been halved as follows:

Difference between Submitted And Ascertained Values	Rate of Surcharge (as % of duty)
15% but <30%	25%
30% but <50%	50%
50%	100%

These provisions relate to relevant instruments executed after 23 May 1994.

Particular Delivered

Section 107 broadens the scope of the regulations which may be made by the Revenue Commissioners concerning the particulars to be delivered in relation to sales and leases of land and buildings. The provisions will also apply to voluntary dispositions inter vivos. A new particulars delivered form and new regulations are currently being drafted.

Stamp Duty and VAT

Section 108 provides that stamp duty on a conveyance, transfer or lease of property executed on or after 11 April 1994 will be chargeable on the consideration exclusive of any VAT. It also deems instruments to have been correctly stamped where they were stamped on a VAT exclusive basis prior to 11 April 1994. There is no provision for refunds in respect of instruments stamped before 11 April 1994 on a VAT-inclusive basis.

Appeals

Section 109 replaces Section 13 of the Stamp Act, 1891, and provides for a right of appeal by an accountable person to the Appeal Commissioners - provided the stamp duty has been paid in advance. The new procedures will apply to instruments executed after 23 May 1994.

Young Trained Farmers

Section 112 provides for a relief from stamp duty on the transfer of agricultural land (including buildings) to young trained farmers who meet certain conditions. The relief will apply to sales and gifts and will amount to a reduction of two-thirds in the amount of stamp duty which would otherwise be chargeable. The relief applies to deeds executed on or after 7 January 1994 and on or before 31 December 1996.

The following conditions must be met before relief will be granted. The transferee must:-

- Be a young trained farmer ("young" is defined as under 35 years of age on the date of execution of the deed of transfer. A farmer is deemed to be "trained" if he or she holds a specified qualifications)
- Furnish a declaration to the effect that he or she will, for a period of five years from the date of execution of the deed of transfer.
- Spend not less than 50% of his or her normal working time farming the land,

and

- Retain ownership of the land

and

- Furnish his or her RSI number.

In addition, the deed of transfer must contain a certificate to the effect that the provisions of Section 112 Finance Act, 1994, apply to the transfer.

To apply for the relief, applicants must forward a completed application form together with

- A completed adjudication warring
- An original and copy deed of transfer
- An original and copy certificate from Teageasc (or ACOT) where appropriate

To either of the addressees below. Application forms, which are incorporated in an explanatory leaflet SD2, are also available from these addresses:

Capital Taxes Office
(Stamp Duties)
Stamping Building
Dublin Castle
Dublin 2

Tel: (01) 6792777 Exts. 4558/4610
Fax. (01) 6790636

The Stamp Duty Office
Government Buildings
Sullivan's Quay
Cork

Tel. (021) 968783
Fax. (021) 968010

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.

11. Capital Acquisitions Tax

11.1 Main Changes

The main changes introduced in the Finance Act, 1994, are as follows:

- **Business Property**

Sections 124 to 135 provide for relief for business property acquired by gift or inheritance. The relief is granted by reducing the taxable value of the relevant business property by 50% in respect of the first £250,000 acquired by a donee or successor, and by 25% on the balance. All gifts and inheritances of qualifying business property taken on or after 11 April 1993 are taken into account for the purpose of the £250,000 limit.

- **Agricultural Land/Buildings**

Existing relief for agricultural land and buildings to be replaced by the following:

For gifts: value of agricultural land and buildings to be reduced by 80% in respect for the first £300,000 taken from a disponent and by 30% in respect of the balance

For inheritances: the reduction applied will be 65% on the first £300,000 and 30% on the balance. Other farming assets (e.g. livestock, machinery etc.) will qualify for 25% relief for gifts or inheritances.

- **Elderly Brothers and Sisters**

Relief for elderly brothers and sisters living together to be increased from 50% to 60% (up to a ceiling of £60,000)

The tax rate structure to be replaced by the following:

Up to the threshold amount	Nil
Next £10,000	20%
Next £30,000	30%
Balance	40%
Gifts:	75% of the above rates

- Indexation legislation amended to remove anomalies
- Introduction of requirement for a CAT clearance certificate for applications for registration of title based on long possession.
- Exclusion of genuine arm's length sales from provisions of Sections 121 and 123 of the Finance Act, 1993, which were introduced to counter certain avoidance practices in relation to the transfer of private company shares.

11.2 Probate Tax

With effect from the introduction of the tax on 18 June 1993, the share of an estate passing to a surviving spouse will be fully exempted from probate tax.

The market value of agricultural land and buildings, for the purpose of probate tax, has been reduced by 30% with effect from the introduction of the tax on 18 June 1993.

11.3 Discretionary Trust Tax

The initial once-off charge on property in a discretionary trust is increased from 3% to 6%. Provision is made for a refund of the increase in certain circumstances.

12 International Section

The following is a report on current double taxation treaty work:

12.1 New Treaties/Protocols in Force:

Denmark - The new treaty was ratified on 8/10/93 (S.I. 286 of 1993).

Finland - The new treaty was ratified on 26/11/93 (S.I. 289 of 1993).

Sweden - The Protocol amending the 1986 treaty was ratified on 21/12/93, (S.I. 398 of 1993).

In addition, the EC Convention on the Elimination of Double Taxation in connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC) (Arbitration Convention) was ratified by Ireland on 17/05/94 (S.I. 88 of 1994). It will enter into force when all 12 Member States have ratified it.

12.2 New Treaties Signed:

Portugal - A treaty was signed on 1 June 1993. Both countries have now completed their internal ratification procedures and the instruments of ratification are due to be exchanged in July (S.I. 102 of 1994).

Russia - A treaty was signed on 29 April 1994. It is hoped that it will be ratified later in the year.

Spain - A treaty was signed on 10 February 1994, and has recently been approved by the Dáil. It is expected that it will be ratified in the coming months.

12.3 New and Ongoing Negotiations/ Renegotiations:

Austria - Talks have taken place on a Protocol to amend the existing treaty.

Belgium - Talks on a Protocol to amend the existing treaty have been requested and it is expected that they will commence in the Autumn.

Canada - A new treaty to replace the current one has still to be finalised.

Czech Republic - A first round of negotiation took place in May this year. A second round has been arranged for late August 1994.

France - A new treaty replacing the existing one still has to be finalised.

Greece - Negotiations on a new treaty are at an advanced stage.

Hungary - It is expected that a new treaty will be signed later this year.

Israel - A second round of negotiations took place in June, and much progress was made.

Italy - It is hoped that a new treaty to replace the existing one will be signed later this year.

Mexico - Negotiations on a new treaty are due to commence in Autumn 1994.

Norway - Talks on a new treaty to replace the existing one have taken place.

Poland - It is expected that a new treaty will be signed later this year.

United Kingdom - It is hoped that a Protocol, dealing with pension scheme contributions, will be signed shortly and ratified later in 1994.

Copies of signed and/or ratified treaties, may be obtained from the Government Publications Sales Office.

Representations regarding proposed new treaties or treaties under negotiation may be made to:

International Unit,
Office of the Revenue Commissioners,
Dublin Castle
Dublin 2.

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.