

TAX BRIEFING



ISSUE 17 No 1, 1995

Introduction

In this, the first issue of Tax Briefing for the year 1995, we feature a wide range of topics. These include matters as diverse as the CGT position for individuals effected by the **ICI/Zeneca Demerger, to the VAT treatment of second-hand goods.**

We also address issues such as the **Residence** provisions as they apply in more complex cases and the present position on Covenant relief for individuals.

The relief available for expenditure on approved buildings and gardens in the State which will be of particular interest to some practitioners is also covered.

The Tax Calendar enclosed is a quick reference guide to remind you of key tax dates in the coming tax year.

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Residential Property Tax

Have your clients Made their Residential Property Tax Returns?

The deadline for submitting a timely return for 1994 was **1 October 1994.**

If you have clients who have not yet made returns, they should do so immediately. A return (Form RP1) must be made if a person's residential property was worth more than £75,000 on 6 April 1994.

This legal requirement applies even if the household income is below the income exemption limit of £25,000. If tax is payable, payment should be sent with the return.

Interest on late payments is charged at the rate of 1.25% per month. The penalty for non-delivery of a return is £1,200 in addition to any tax and accrued interest due.

Information on all aspects of Residential Property Tax is available from the Capital Taxes Division in Dublin Castle

Telephone (01) 6792777, Exts : 4089, 4626 and 4628

Fax No. (01) 6794115.

1. Income Tax

1.1 Covenant Relief - 1995 Budget

Introduction

The Minister for Finance announced substantial changes in relation to tax relief for covenants in his Budget Speech. Since then one of the changes made has been modified. This article outlines the changes as they now stand and shows how they will affect tax relief available to individuals on covenants which were in existence before Budget date and those which were made or entered into on or after Budget date.

Reference in the article to:

Budget Date

Means 8 February 1995

New Covenants

Means those made or entered into on or after Budget date.

Existing Covenants

means those made or entered into before Budget date.

Minor means

an individual under 18 years and unmarried.

Unrestricted Tax Relief

means mainly that the 5% income restriction does not apply.

5% Income Restriction

means where a covenant has a covenant to which this restriction applies, the figure to which tax relief applies cannot exceed a maximum of 5% of that covenantor's total income, and where a covenantor has more than one such covenant, the figure to which tax relief applied cannot exceed an aggregate amount of 5% of that covenantor's total income.

Total Income

means a covenantor's gross income less certain deductions from income such as mortgage interest (to the extent that it is relieved from tax @ 48%), Schedule E expenses, capital allowances etc.

Overview of Budget Changes

The Budget changes apply to the following:

- all new covenants
- all existing covenants from 6 April 1995.

The changes are summarised as follows:-

- As a general rule, tax relief has been abolished on the covenants to minors.
 - Unrestricted tax relief still applies for 1994/1995 and 1995/1996 on new/existing covenants to all individuals, including minors who are permanently incapacitated (except where a covenant is from a parent to his/her own permanently incapacitated minor child).
 - Tax relief, subject to the 5% income restriction, applied for :
 - 1995/96 in the case of existing covenants and
 - 1994/95 and 1995/96 in the case of new covenants:
- to all individuals (other than minors and incapacitated individuals referred above)
 - for research, teaching of natural sciences and to certain bodies for the promotion of Human Rights.
- Tax relief will continue for 1996/97 and later years on covenants:
 - to permanently incapacitated individuals,
 - to elderly (i.e. aged 65 or over) individuals,
 - for research, teaching of natural sciences and to certain bodies for the promotion of Human Rights.

Except for covenants to the permanently incapacitated, these covenants will be subject to the 5% income restriction.

EXAMPLE

A covenantor has a total income of £20,000 and has made a covenant for £2,000, which is 10% of total income.

The 5% income restriction applies to the covenant and the covenantor is therefore limited to tax relief on 5% of total income.

The tax relief is calculated as follows:-

Covenantor's total income	£20,000
Payment due under covenant	£ 2,000
(10% total income)	

Restrict payment for tax purposes to 5% of total income

i.e. £20,000 x 5%	£1,000
Deduct tax @ 27% =	£270

Net payment to covenantee £2,000 - £270 = £1,730

It is important to remember that, when a payment is being made to a covenantee, the amount on which tax is deducted must be restricted to 5% of the total income as in this example.

If a covenantor has a number of covenants to which the 5% income restriction applies, the aggregate amount to which tax relief is applied cannot exceed 5% of total income.

Details of Relief available on covenant payments between particular individuals for 1994/95 and later years

Parents to Children

Minor Child

As a general rule a parent cannot get tax relief on a covenant to a minor child.

Adult Child

Tax relief applied for 1994/95 and 1995/96 only, subject to the 5% income restriction.

Permanently Incapacitated Adult Child

Unrestricted tax relief will continue for all years for covenant payments to permanently incapacitated adult children.

Grandparents to Grandchildren

Minor Grandchildren

Tax relief, subject to the 5% income restriction, applied for 1994/95 on an existing covenant. There is no relief available for 1995/96 or later years, unless the grandchild is incapacitated (see below).

No relief is due on new covenants.

Adult Grandchild

Tax relief applied for 1994/95 and 1995/96 only, subject to the 5% income restriction.

Permanently Incapacitated Grandchild

Unrestricted tax relief will continue for 1994/95 and later years for covenant payments to permanently incapacitated grandchildren, irrespective of age.

Covenant from other individuals to minors

Nieces/Nephews and other Minors

Unrestricted tax relief applied for 1994/95 only on an existing covenant. No relief is available for 1995/96 or later years on an existing covenant. No relief is due for any year on new covenants.

Permanently Incapacitated Nieces/Nephews/other Minors

Unrestricted tax relief will continue for 1994/95 and later years for covenant payments for permanently incapacitated minors.

Covenants from individuals to other adult individuals

All adult individuals who are not permanently incapacitated

Tax relief applies for 1994/95 and 1995/96 only, subject to the 5% income restriction as follows:-

- if the covenant is new, the restriction will apply for both 1994/95 and 1995/96
- if the covenant is an existing covenant, the restriction will apply for 1995/96 only.

Elderly Individuals who are not incapacitated

Tax relief will continue for 1994/95 and later years, subject to a 5% income restriction as follows:-

- if the covenant is new, the restriction will apply for 1994/95 and later years,
- if the covenant is an existing covenant, the restriction will apply for 1995/96 and later years.

All adult individuals who are permanently incapacitated

Unrestricted tax relief will continue for 1994/95 and later years for covenant payments to permanently incapacitated individuals.

Covenants for research and teaching of natural sciences and to certain bodies for the promotion of Human Rights

Tax relief applies for 1994/95 and later years, subject to the 5% income restriction as follows:

- if the covenant is new, the restriction will apply for all years
- if the covenant is an existing covenant, the restriction will apply only from 1995/96.

Covenants between Separated Spouses

Covenants, which are part of maintenance agreement, as defined in Section 3 Finance Act 1983, between separated spouses are not effected by the Budget changes.

1.2 Health Expenses - Dependant Relative

Introduction

This article outlines Revenue's approach to determining the amount of "health expenses defrayed" by a claimant where such expenses have been incurred on behalf of a dependant relative who has income in his/her right.

Legislation

Subject to specified restriction, Section 12 Finance Act 1967 provides for relief where an individual defrays expenses on the provision of health care for a dependant relative (as defined for tax purposes).

For the purposes of the section, expenses are not regarded as having been defrayed by a claimant in so far as they can be recouped in any way either by:

- the claimant or,
- by an dependant of the claimant from a public or local authority or,
- Under a contract of insurance or by way of compensation or otherwise.

The section therefore limits the expenses which can qualify for relief (before restrictions) to the net expenses actually defrayed by the claimant.

Accordingly, the amount of health expenses defrayed by a claimant is determined by reference to the facts and circumstances of each case including whether the dependant

has income in his/her own right and how such income is utilised.

Revenue Approach

In general, Revenue take the view that in so far as health expenses are directly or indirectly defrayed out of the dependant's own disposable income, they cannot be regarded as having been defrayed by the claimant.

The following working rules apply:

1. Where the dependant relative is maintained full time in a nursing home/hospital.

In calculating the amount of health expenses defrayed in such cases, a deduction should be made of 60% of the dependant relative's old age pension or other similar income. (The remaining 40% of the dependant relative's pension may be regarded as meeting personal, non-medicated expenses).

The following example illustrates the position.

1994/95

Health Expenses of dependant relative	£7,000
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Deduct:	
60% of Pension:	
(Say £4,149 x 60% = £2,490)	£2,490

Health Expenses defrayed	£4,510
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Where the maintenance is a nursing home/hospital commences during the tax year, the restriction will be applied on a pro-rata basis.

2. Where the dependant relative undergoes one-off treatment (e.g. a serious operation)

In such cases, in calculating the amount of expenses defrayed, the restriction applied as 1

above in respect of the dependant's pension need not be applied.

1.3 Residence of Individuals

Introduction

This Article does not repeat the material on residence of individuals under the 1994 Finance Act as already contained in RES 1 or, in Issue 15 of Tax Briefing. It is concerned mainly with split year treatment under section 153, foreign earnings deduction under section 154, electing to be resident under section 150, transitional relief under section 157 and ordinary resident under section 152. These sections are relevant in more complex cases. A knowledge of the material contained in earlier publications should enable practitioners to deal with the less complicated cases.

Split Year treatment (SYT) (Section 153)

Year of Arrival/Departure - General

Paragraph 6 of RES 1 outlines the tax treatment of certain individuals in the year of arrival in the State and in the year of departure from the State.

SYT applies only to income from an employment. It does not apply to income from an office e.g. a directorship. Unless SYT applies, an individual who is resident in the State in the year of arrival/departure is taxable on all income for that year. Where SYT is due, the individual is taxable on all income other than pre-arrival/post-departure employment income for the year of arrival/departure.

Where an individual qualifies for SYT, she/he is treated (for the purposes of charging to tax income from any employment) as being resident in the State for the part of the tax year after arrival/before departure and, non-resident for the remainder of that tax year. In effect, the year is split, to ensure that foreign employment earnings prior to arrival or after departure are not subject to Irish tax.

Procedure in Year of Departure

If the authorised officer (as defined in Section 149 Finance Act 1994) is satisfied that an individual resident in the State, departs to live abroad other than for a temporary purpose and in circumstances where it is clear that he/she does not intend to be resident in the State in the following tax year. SYT may be allowed immediately. The individual is therefore regarded as non-resident from the date of departure so far as the taxation of employment income is concerned.

Procedure in Year of Arrival

Similarly, if the authorised officer is satisfied that a non-resident individual arrives into the State with the intention and in such circumstances that he/she will be resident in the State for the following tax year, SYT may be allowed immediately. In this way, the individual is regarded as resident from the date of arrival in so far as the taxation of employment is concerned.

Position if Intention not Fulfilled

If due to unforeseen circumstances (e.g. for domestic or, health reasons or cancellation of an employment contract) the genuine intention with regard to residence/non-residence is not subsequently fulfilled, the decision taken by the authorised officer in regard to entitlement to SYT will not be reversed.

How the Intention as to non-residence is satisfied

Intended absence from the State for a continuous period of 15 months will generally ensure that this test is satisfied. However, each case will be examined individually, by reference to the number of days intended to be spent in the State in each tax year.

Residence Tests

The examples in Chart 1 illustrates how the residence tests for SYT operate. For convenience, the number of months is converted to days by multiplying by 365/12.

The examples show that that an absence of 15 months will not always satisfy these tests. In very limited circumstances, an absence of less than 15 months may satisfy the resident tests.

Personal Allowances

An individual entitled to SYT is resident in the State for the full tax year in question. Accordingly, the individual is entitled to full personal allowances for the year and is chargeable to tax on the full amount of any income, other than pre arrival/post departure employment income, for the year.

PAYE Exclusion Orders

Position prior to 1994 legislation

In the past, exclusion orders were issued to cover full tax years only. This arose from the fact that an individual was regarded as resident or non-resident for the entire tax year in question.

In practice, an individual who went abroad for employment was exempt from income tax on employment income from the date of departure. This applied where the individual was paid abroad and remained outside the country for the full tax year following the year of departure. If, however, the individual was paid from Ireland, the employment income continued to be taxable in Ireland and was subject to PAYE for the years of departure and return.

New Legislation

Under the new legislation, where an individual qualifies for SYT for 1994/95 or later years, he/she is treated for the purposes of charging to tax any income from an employment, as resident in the State for part of the tax year of arrival/departure and non resident for the remainder of that tax year. An individual who is non-resident is chargeable to tax on employment income only if the employment is exercised in the State. Accordingly, where an individual is entitled to SYT and that individual's employment is exercised abroad, the income from that employment is not taxable.

Present position on exclusion orders

Where an individual qualifies for SYT, an exclusion order will be granted for the part of the year for which the individual is regarded as non-resident. In practice, this will involve granting an exclusion order with effect from the date of departure from the State. The exclusion order will indicate the date from which it is effective and should include the following statement:

"This exclusion order is effective only for the period in which the employee resides abroad to perform the duties of the employment".

In a case where an exclusion order is being cancelled, a notice showing the date of cancellation will issue to the relevant authority.

Exclusion Orders - Effect on PRSI

Where an exclusion order is issued, PRSI automatically ceases to be deductible through the PAYE system. Employees may nevertheless continue to be insurable in the State under Social Welfare legislation. In such cases it will be necessary for employers to remit PRSI directly to the Department of Social Welfare (DSW). For convenience, a copy of the exclusion order will be sent directly to the:

Department of Social Welfare, PRSI Special Collection Section, Floor 1, O'Connell Bridge House, D'Olier St., Dublin 2.

This will enable DSW to take the matter directly with the employer/employee.

Foreign Earnings Deduction FED) (Section 154)

The position of FED is outlined in paragraph 7 of RES 1 and an example of how to calculate the deduction is given in Appendix 1 of RES 1. This paragraph deals with categories of employees an income which qualify for FED and also outlines the approach being adopted in calculating

qualifying days for the purpose of the Section.

FED- To whom it Applies

FED is available to all employees other than,

(I) employees paid out of the public revenue of the State,

and

(II) employees of any board, authority or other similar body established by or under statute (public body).

Examples of employees within (I) are civil servants and teachers. Examples of employees within (ii) are local authority employee, employees of bodies such as ESB, Bord Na Mona Etc.

FED is also available to directors of trading companies, whether or not the company is resident in the State.

FED The Income to which it applies

FED is not available (A) where the income from the office/employment is chargeable on a remittance basis (where office/employment is a foreign, non UK, possession and the office holder/employee is non-domiciled or, a citizen of Ireland who is not ordinarily resident), or,

(B) where the income is from an employment exercised in the UK or where income arises from a UK possession, or,

(C) where the employment income is not chargeable to tax because of split year treatment

Where Employees Qualify for FED

As already indicated, employees of a company set up under the Companies Acts and owned by the public body are not excluded from FED. Where employees of a

public body are seconded to such a company, these employees will qualify for FED in respect of the employment with the company. Earnings from the public body prior to the secondment should be included with employment earnings in calculating FED.

Days spent abroad while working for the public body should not be included in qualifying days.

Example:

X is a resident employee of a public body who is seconded to a company owned by that body and spends 120 days working for that company in Saudi Arabia. X had previously spent a continuous period of 60 days working abroad for the public body. X's income for 1994/95 is as follows:

Earnings from Semi-state company	£20,000
Earning from Secondment	£15,000
FED is $\frac{(120-15) \times £35,000}{35}$	£10,068

In the example it should be noted that income from the public body is included in the calculation but days spent abroad while working for the public body are not included.

Seconded Employees/Payroll Systems

It has been agreed that where employees of a public body are seconded to a company owned by the body, it will not be necessary to remove the employees from the payroll of the public body in order to qualify for Fed. Where documentation is provided to support the secondment (e.g. a contract with the company), the fact that the employee continues to be paid by the public body and to be included in the pension scheme of the public body may be ignored. In these circumstances, the public body is acting as the agent of its subsidiary company in paying the employee. The public body will, of course, have to recharge the earnings of the

employees in question to its subsidiary company.

Qualifying Days

A qualifying day is one of at least 14 consecutive days spent abroad for the purpose of performing the duties of an office or employment. The period taken as a whole must be substantially devoted to the performance of those duties. Accordingly, the entire period need not be devoted to the duties of the office or employment.

Week-ends and public holidays are obvious examples of periods which might not be devoted to the duties.

Deduction for FED at End of Year

Since the amount of any FED will depend on the number of qualifying days absent from the State either in a tax year or, in a period of 12 months straddling two years (see RES 1, Appendix 1B), the FED deduction will be made at the end of the relevant period.

Claim for FED

A claim for FED by an employee should be supported by a statement from the employer indicating the date of departure from and return to the State and the location at which the duties of the office or employment were performed while abroad.

Electing to be resident (Section 150 Finance Act 1994)

The election should be in writing. Once made, there is no provision for withdrawal of an election. An individual who elects to be treated as resident for a tax year (page 1 of RES 1) is entitled to claim SYT and FED in certain circumstances.

Inter Relationship of SYT and FED

An individual is entitled to SYT and FED for the same year in respect of different employment's.

For instance, an individual entitled to SYT in respect of earnings prior to taking up residence here would be entitled to FED in respect of an employment which was taken up after that date, provided the individual has sufficient qualifying days abroad (see paragraph 7, RES 1). The income from the earlier employment would not fall to be included in "Employment Earnings" for the purpose of calculating the FED (see Appendix 1 of RES 1). Equally the days spent abroad prior to taking up residence in the State would not be regarded as qualifying days.

SYT/FED - the Strict Position/Practice

Strictly, an individual is not entitled to FED in respect of an employment where any income from the employment for the year is exempt from tax because of SYT. In practice, however an individual may be allowed SYT and FED in respect of the same employment. The amount of the FED in such a case should be calculated as if the employment prior to the change in residence was a different employment to the employment following the change in residence.

Example

Y was transferred to Ireland by his existing employer in May 1994. Y qualifies for SYT in respect of employment income from 6 April 1994 to the date of arrival. Y's employment income from arrival to 5 April 1995 was £30,000.

From arrival to 5 April 1995 Y worked abroad, other than in the UK, for 90 qualifying days.

FED is $(90 - 15) \times £30,000$ £6,164

365

Double Taxation Relief

Where an individual has income which qualifies for SYT, double taxation relief is not available for the tax year of

arrival/departure in respect of foreign tax paid. This arises from the fact that Double Taxation Relief is available only for tax years for which an individual is resident in the State (Par. 3, Sch. 10 Income Tax Act 1967). The income which is not chargeable to tax because of SYT is treated as arising in a year of assessment in which the individual is non-resident (Section 153(3) Finance Act 1994).

Where a deduction in respect of FED is due in respect of income from an office or employment exercised in a Treaty Partner State, the foreign earnings will normally have been taxed in that State. Double Taxation Relief will be due in respect of tax paid on that income in the treaty partner state.

The calculation of Double Taxation Relief is such a case is illustrated in Chart 2.

Transitional Relief (Section 157)

Paragraph 10 of RES 1 outlines the circumstances in which the transitional relief will be allowed. Tax Briefing, Issue 15 - July 1994, elaborates further on the circumstances in which the relief will be allowed and on the amount of that relief. While Section 76(4) Income Tax Act 1967 would have applied only where income from an employment is paid abroad, the fact that payment is made in Ireland for 1994/95 should not preclude transitional relief. If the authorised officer is satisfied that section 76(4) would have applied to income from an employment, and that arrangements had been entered into on this basis, transitional relief may be allowed.

Many established employers have a history of foreign service contacts to which section 76(4) applied. In such cases, it may be accepted, unless there is some indication to the contrary, that section 76(4) would have applied for 1994/95 and transitional relief may be allowed.

Amount of Transitional Relief

The following example illustrates the amount

of transitional relief which will generally be allowed.

Example

Z, a resident individual spends 80 days working in Nigeria in 1994/95. It is accepted that Section 76(4) would have applied to the income from the employment but for the repeal of that provision. The emoluments are paid from Ireland.

Z's employment income for 1994/95 is £30,000 - excluding allowable expenses but including BIK's etc.

$$\text{Qualifying days } 15 \times \frac{80}{90} = 13 \text{ days}$$

Transitional relief is

$$\frac{(80 - 13) \times £30,000}{365} = £5,506$$

This is the amount of FED which would arise if the 90 qualifying days' requirement were not applicable and if the disallowance of the first 15 qualifying days were applied on a pro rata basis.

Where claims are received for transitional relief in excess of the amount calculated as above, the claimant will be asked to provide full details of how the amount claimed has been calculated and to provide documentary evidence in support of the claim. Once this has been received, the claim will be referred to Residence Section.

Ordinary Residence (section 152)

The meaning of ordinary residence under the new provisions is explained in paragraph 2 of RES 1.

Issue 15 - July 1994 of Tax Briefing deals with the ordinary residence of individuals who departed from Ireland in any of the three years prior to 1994/95.

The new treatment under section 152 of individuals who are not resident but who are ordinary residents is set out in paragraph 4(ii)(a) of RES 1.

In effect, an individual who is non-resident but who is ordinarily resident continues to be liable to tax on any passive income (e.g. investment income).

Such an individual also continues to be liable to tax on the income from any trade, profession, office or employment unless that trade profession, office or employment is wholly exercised abroad. The performance of duties in the State which are merely incidental to the exercise of an office or employment abroad will not bring the income within the charge to tax.

(Note: this does not apply to the exercise of a trade or profession)

It is important to note however that if the performance of duties in the State is not incidental to the exercise of the office or employment abroad, then the entire income from the office or employment comes with the charge to tax and not just that part of that income which is derived from exercise of the employment in the State.

The question of whether the performance of duties in the State is merely incidental to the exercise of the exercise of the office of employment abroad is one of fact. In general, performance of the duties in the State for less than 30 days in any tax year may be regarded as incidental to the performance of the duties abroad.

Position of employees to whom section 76(4) Income Tax Act 1967 applied for 1993/94 and prior years and who return to the state.

Employees in this category were taxed on remittances of employment income in the tax year. For the year of return to the State, they were taxed on remittances in the period from

6 April in the tax year to the date of return plus the actual remuneration arising from the date of return to the following 5 April.

For 1994/95 for later years, where such individuals return to the State and are resident for the year of return, they are taxable on actual employment income arising in that year, subject to split year treatment, foreign earnings deduction or transitional relief. The remittance to the State of employment income which was accumulated abroad in earlier years will not affect the liability for 1994/95 or later years in such cases. This is without prejudice as to the treatment of cases in which claims to transitional relief are referred to Residence Section.

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.

Chart 1

Residence Tests for split year treatment where individual departs in Year 1

Days in IRL Year 1	Resident Year 1 (Yes/No)	Days in IRL Year 2	Resident Year 2 (Yes/No)	Resident tests Satisfied (Yes/No)
Abroad for 14 months (426 days)				
28	No (30 day rule)	276	Yes (183 day rule)	No
60	Yes (look back rule)	244	Yes (183 Day Rule)	No
120	Yes (Look Back Rule)	184	Yes (183 Day Rule)	No
180	Yes (Look Back Rule)	124	Yes (Look Back Rule)	No
240	Yes (183 day Rule)	64	Yes (look back rule)	No
300	Yes (183 day rule)	4	No (30 day rule)	Yes
Abroad for 15 months (456 days)				
28	No (30 day rule)	246	Yes (183 day rule)	No
60	Yes (look back rule)	214	Yes (183 day rule)	No
120	Yes (look back rule)	154	No	Yes
180	Yes (look back rule)	94	No	Yes
240	Yes (183 day rule)	34	No	Yes
300	Yes (183 day rule)	0	No	Yes

Abroad for 16 months (487 days)

28	No (30 day rule)	215	Yes (183 day rule)	No
60	Yes (look back rule)	183	Yes	No
120	Yes (look back rule)	123	No	Yes
180	Yes (look back rule)	63	No	Yes
240	Yes (183 day rule)	3	No	Yes

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Chart 2

Example of calculation of FED/Effective Rate and Double Taxation Relief

Mr. A's only income for 1994/95 is:

Salary IR£30,000 (including all BIK's etc. and after deducting all allowable expenses).

He has 143 qualifying days working abroad, in a treaty country other than the UK during which he earns IR£16,000.

He paid the equivalent of IR£3,000 foreign tax on his salary.

1. Foreign Earnings deduction:

$$\frac{(143 - 15) \times £30,000}{365} \quad 10,520$$

	Foreign	Irish
Employment income	16,000	14,000
Foreign Earnings Deduction	<u>5,611</u>	<u>4,909</u>
Employment income (net of FED)	10,389	9,091

(FED is apportioned on a pro rata basis between the foreign earnings and the Irish earnings for the purposes of calculating the double taxation relief).

2. Appropriate Rate Calculation: £

Irish effective rate:

Gross Income	30,000
Less: foreign earnings deduction	<u>10,520</u>
Total income	19,480
Allowances	<u>5,786</u>
Taxable income	13,694

Taxable (13,694 @ 27%)

Tax 3,697.38

$$\text{Irish effective rate : } \frac{3,697.38 \times 100}{19,480} = 18.98\%$$

$$\text{Foreign effective rate: } \frac{3,000 \times 100}{10,389} = 28.88\% \quad (\text{Note 1})$$

Since the Irish effective rate is lower, regross doubly taxed income net of FED @ this rate.

3. Double Taxation relief	£
Foreign Income net of FED:	10,389
Less: foreign tax	<u>3,000</u>
Net Income	7,389
Net foreign income regressed @ Irish effective rate:	
$\frac{7,389 \times 100}{81.02}$	= 9,119
Irish earnings	<u>9,091</u>
Allowances	18,210
Taxable:	<u>5,786</u>
	12,424
Taxable (12,424 @ 27%)	
Tax	3,354.48
Double taxation relief	9,119 x 18.98%
Net Irish tax payable	<u>1,730.78</u>
	<u>1,623.70</u>

Note 1: The foreign effective rate is calculated by reference to the foreign income as computed for Irish tax purposes i.e. net of the part of the foreign earnings deduction attributable that income.

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1.4 1986 Urban Renewal Relief Scheme

Introduction

Practitioners have sought clarification on the interaction between Section 42(7) Finance Act 1986 and Section 19 Finance Act 1970 in so far as these sections apply to commercial buildings in designated areas. Their main concern is whether a purchaser is entitled to capital allowances on a commercial building developed during the qualifying period but purchases after the period has ended, whether on 31 July 1994, or the period as extended under Section 41(8) Finance Act 1986.

Legislation

Section 42(7) Finance Act 1986

This subsection is concerned with the quantum of expenditure that may qualify for capital allowances. In effect it limits such expenditure to that actually incurred on the construction of a qualifying premises during the qualifying period as defined within the section.

Section 19 Finance Act 1970

This section extends the period of claim for capital allowances to the date the purchase price becomes payable in circumstances where a building or structure is brought unused or within twelve months of being first used.

Revenue Approach

For the purposes of claiming capital allowances under Section 19 Finance Act 1970, expenditure is deemed to have been incurred on the date the purchase price becomes payable. Accordingly, where a claim for capital allowances relates to expenditure which has been incurred in accordance with the provisions of Section 47(2) Finance Act 1986, the date for the claim can be set by reference to the provisions of Section 19 Finance Act 1970 where the provisions of the latter section are satisfied.

1.5 1994 Urban Renewal Scheme - Office Accommodation

Introduction

A number of enquiries have been received from practitioners as to what constitutes office development for the purposes of the 1994 Urban Renewal Scheme.

Legislation

The Scheme was introduced by Part 1 Chapter IV of the 1994 Finance Act. The Act provides, inter alia, for capital allowances on commercial premises in use for the purpose of a trade or profession, or which are let on bona fide commercial terms. Expenditure on office development is excluded, except where it is ancillary.

Office development is ancillary where expenditure in the qualifying period on the offices is not more than 10% of the total capital expenditure in the qualifying period on the construction/refurbishment of the building.

Revenue Approach

Where office development accounts for more than 10% of the total expenditure on a qualifying premises in a designated area the capital allowances will be reduced on a pro-rata basis.

It is a question of fact in each particular case as to whether more than 10% of the development work of a building relates to office accommodation. In most cases the office accommodation in a premises will be clearly identifiable as such.

It is however recognised that in cases where premises are in use for business such as banks, building societies, insurance brokers or estate agents particular areas may be in use for a number of purposes including office accommodation. A similar situation may arise where premises are in use as doctors or dentists surgeries. It is accepted in such cases

that most if nor all of the premises would be in use other than as office accommodation.

1.6 Return by employers of Benefits Etc. - Section 178 Income Tax Act 1967

A selective issue of Forms P11D will take place in respect of the year ended 5 April 1995. The form P11D requires the employers concerned to return details of benefits, non-cash emoluments and benefits not subjected to PAYE provided to employees with emoluments of £1,500 or more for the year and to all directors. Only those employers to whom the forms issue will be required to make a return.

2. Corporation Tax

2.1 Manufacturing Relief - Quarry Industry

Introduction

The purpose of this item is to identify for practitioners activities in the quarry industry which qualify for manufacturing relief.

Legislation

The legislation relevant to this issue is contained in section 39 Finance Act 1980 as amended by section 41 Finance Act 1990.

Revenue Approach

Where a company is engaged solely in the crushing of stone, that activity is within the scope of section 39 Finance Act 1980 and will qualify for manufacturing relief.

By contrast, where a company is engaged in the washing and grading of sand and gravel, or aggregates, Revenue take the view that these activities are excluded from manufacturing relief by the provisions of Section 39(5) Finance Act 1980 as inserted by Section 41(1)(c) Finance Act 1990.

2.2 Incomplete Company Tax Returns

We have been asked by Districts to refer to the item published in Issue 13 - January 1994 about incomplete tax returns. There has been a welcome improvement overall but a few practitioners might usefully read the item again! Here it is

From : Tax Briefing, Issue 13 - January 1994:

Incomplete Company Tax Returns

Districts report a significant increase in the number of cases where the following matters are not completed on company tax returns (forms CT1):

- surcharge on close company's undistributed investment & estate income
- (Section 101/162, CTA 1976) - PANEL 17 on Form CT1
- Income tax due on loans to participators/annual payments

(Sections 98/151, CTA 1976 - PANEL 18 on Form CT1.

- It should be noted that returns submitted without such matters being dealt with, where there is a liability under these headings, are not full and true returns. Some practitioners may, depending on the circumstances, have clients with incomplete returns of this kind being subjected to an interest charge and a surcharge for failure to submit a correct return (as well as the additional tax due).
- Practitioners are requested to ensure that returns submitted by their staff are fully complete in these and to all other respects.

3. Income Tax/Corporation Tax

3.1 Relief for Expenditure on Approved Buildings and Gardens in the State

Introduction

Section 19 Finance Act 1982 provides relief from Income Tax or Corporation Tax to the owner/occupier of an approved building in respect of certain expenditure incurred in

respect of repair, maintenance or restoration. Such expenditure may be treated for tax purposes as if it were a loss in a separate trade carried on by that owner/occupier and the normal rules for giving tax relief for such a loss will apply.

Section 19 relief was extended to gardens of significant horticultural, scientific, architectural, historical or aesthetic interest existing independently of approved buildings by the provisions of Section 29, Finance Act 1993.

Both Section 19 and Section 29 were amended by Section 18 Finance Act 1994 to alter the conditions under which the tax relief is given in respect of approved buildings/gardens.

Approved building/Garden

An approved building for the purposes of Section 19 is one in respect of which determinations have been made -

(A) by the Commissioners of Public Works in Ireland - that it is a building which is intrinsically of significant, historical, architectural or aesthetic interest, and

(B) by the Revenue Commissioners - that reasonable access to the building is afforded to the public.

An approved garden existing independently of an approved building must also have received the above two determinations. However, the determination made by the Commissioners of Public Works in Ireland in respect of an approved garden is to the effect that the garden is intrinsically of significant horticultural, scientific, historical, architectural or aesthetic interest.

Reasonable access in the case of an approved building/garden

Whether reasonable access is afforded to the public will be examined by the Revenue

Commissioners by reference to the facts of each individual case. Section 19, however, requires that the following minimum obligations must be satisfied:-

(A) Access to the whole or substantial part of the building/garden must be available at the same time,

(B) Access is afforded for a period of at least 60 days in any one year (including not less than 40 days during the period 1 May - 30 September include.) at reasonable times and in a reasonable manner, subject to any temporary closures necessary for repair, maintenance and restoration work,

(C) The daily viewing times must be at least four hours, and

(D) The admission price (if any) must be reasonable so as not to preclude the public from seeking access to the building/garden.

Advising Bord Failte regarding reasonable access in the case of an approved building/garden

In addition to meeting the requirements regarding reasonable access set out above, claimants for tax relief under Section 19/Section 29 must also advise Bord Failte regarding access to the approved building/garden in the manner set out below.

As respects qualifying expenditure incurred in a chargeable period beginning on or after the date of passing of the 1994 Finance Act (23 May 1994), claimants for Section 19 relief must, by 1 January in the specified periods set out below, advise Bord Failte regarding:-

- The name, if any, and address of the approved building/garden, and
- The days and times during the year when access is afforded to the public.

This information is given to Bord Failte on the understanding that it may be published by

Bord Failte or by another tourism promoting body.

The information must be given to Bord Failte at the following times:

- By 1 January in the accounting period in respect of which the claim for relief is being made, and
- By 1 January in each of the accounting periods beginning on or after 23 May 1994 up to a maximum of five such periods.

An accounting period in any 12 month period in which a taxpayer makes up his/her accounts.

Claiming tax relief in respect of an approved building/garden

In order to qualify for relief under Section 19, the expenditure must be incurred on the repair, maintenance or restoration of an approved building or on the maintenance or restoration of any garden or grounds or an ornamental nature occupied or enjoyed with that building.

In order to qualify for relief under Section 29, the expenditure must be incurred on the maintenance or restoration of an approved garden.

Tax relief is not available, however, where any such expenditure is otherwise allowable for tax purposes or in respect of sums recoverable by a claimant by way of a grant or reimbursement for any source.

A claimant is obliged to afford facilities at any reasonable time to authorised officers of the Commissioners of Public Works in Ireland and of the Revenue Commissioners to inspect the building/gardens or to examine the work in respect of which the expenditure to which the claim relates was incurred.

Clawback of relief

There is provision for the revocation of a

determination made by either the Revenue Commissioners or the Commissioner of Public Works in Ireland where the conditions for granting such determinations cease to exist. Any relief granted to a claimant in the five year period immediately before the effective date of a relevant written notice of revocation by the Revenue commissioners will be clawed back.

Information

Application forms for a determination by the Commissioners of Public Works in Ireland may be obtained from

The Secretary,
Office of Public Works,
51 St. Stephen's Green,
Dublin 2.

Tel (01) 661 3111
Extns. 2361 or 2263

Fax (01) 661 0747.

If the Commissioners of Public Works make a determination that the building/garden is an approved building/garden under the legislation, application can be made to the Secretary, Revenue Commissioners, Dublin Castle, Dublin 2, regarding the determination to be made by them. The Secretary, Revenue Commissioners, may be contacted by post or by

Tel. (01) 679 2777, Extn 4011
Fax (01) 679 9287.

Where both of the above determinations have been made, a claim for relief in respect of the relevant expenditure may be made to the claimant's own Inspector of Taxes.

Residential Property Tax

It should also be noted that Section 95, Finance Act 1983, provides that approved buildings under Section 19, Finance Act 1982 are not residential property for the purposes of Residential Property Tax. Accordingly, approved status under Section 19 also

removed such buildings from the charge to Residential Property Tax. For further information in this regard, please contact

Residential Property Tax unit,
Revenue Commissioners,
Dublin Castle, Dublin 2

Tel: (01) 679 2777 Extns. 4627, 4629 or 4630

3.2 Signature on Returns

Introduction

Inspectors in Income Tax processing districts have advised that a number of tax returns involving over three hundred tax practitioners have been delivered bearing a practitioner's rubber stamp imprint but are otherwise without a signature. This is a repeat of a practice discovered in 1992 in regard to Corporation Tax Returns. We addressed the problem then in Tax Briefing Issue 8 Paragraph 2.2. We are now concerned, not only that the problem has recurred, but also by the scale of the problem.

Legislation

Under the self assessment system, a tax return required to be made by a chargeable person may be prepared and delivered by another person acting on the authority of the chargeable person. The return in all instances must be in the prescribed form. The prescribed form is defined in Section 9 Finance Act 1988 as a form prescribed by the Revenue Commissioners.

Prescribed Form

The prescribed form for the purpose of making a tax return includes, inter alia, the statutory form 11 and the approved facsimile forms 11. Each of these forms requires a signature. Where the returns I made on the authority of the chargeable person, the signature of the authorised person is required on the form to validate the return and to signal the delegated authority.

Returns which are rubber stamped and which are otherwise unsigned do not meet these requirements.

3.3 Tax Treatment of Stock Lending/Repurchase (repo) Transactions

Introduction

Stock lending and Repo transactions are a common feature of well developed financial centres and are most notably seen in connection with market making in stocks and securities.

The transactions involve the temporary transfer of stock or securities from one party to another with a simultaneous commitment to reverse the transaction some point in the future (usually within days or weeks).

Reality of transactions

A key feature of these transactions is that a transfer of legal title occurs which is subsequently reversed on completion. If the taxation of these transactions were to reflect the form for what has occurred, a charge to Capital Gains Tax or Income/Corporation Tax might arise. Notwithstanding this legal form the substance is essentially one of lending. In stock lending transactions the profit earned by the lender will either be reflected in a small margin between the "selling" and "repurchase" price or in the form of a side fee paid by the borrower. In the Repo context, this fee will be received by either the lender or borrower depending on the particular circumstances.

Revenue Approach

Arrangements have been agreed by the Revenue Commissioners to recognise the substances of these transactions and to tax only the accounting profit earned.

The arrangements will apply as follows:

1. to lending/borrowing institutions whether trading or non-trading which are:

- Irish resident companies, or
- Branches of non-resident companies.

They will not apply to individuals.

2. subject to all restrictions specified below, to

- all interest bearing, discounted and premium bearing securities, or
- equities quoted on recognised stock exchanges

Restrictions

The restrictions will apply to all equities and to other securities, on which interest payments would be subject to withholding tax. This might arise where no Double Taxation Treaty exists or where an existing treaty does not provide for full exemption from withholding tax.

In such cases the arrangements will not apply if the stock is “on loan” at a time when an interest or dividend payment is made. The reason for this is that any tax credit which might arise would be for the benefit of the “payee” of the interest/dividend. That payee may not be the person who is beneficially entitled to credit.

There is no legislation in place at present to facilitate the orderly transfer of this tax credit to the person beneficially entitled to it, and as there is no process of administrative enforcement the only practical solution is to prevent the situation arising in the first place. Since dividend dates are well known in advance, there will be little reason for this situation to arise. If, for whatever reason, a problem were to occur, the Revenue Commissioners will apply the relevant legislation strictly and take no account whatever of these proposed arrangements.

Quoted equities may be “lent” at any other time. Interest bearing securities may be “lent” at all times save for circumstances where tax credits might arise. In those circumstances the same restrictions will apply as for equities.

These arrangements will also apply to discounted and premium bearing securities. Difficulties are not expected in these cases, as the returns would typically be received on redemption.

Any unusual situations not dealt with here will be examined on a case by case basis by the Revenue Commissioners.

3. Stock/Securities may be denominated in an currency.

4. Statutory audited accounts of the relevant companies, insofar as these transactions are concerned, must recognise the substance rather than the form of the activities. In this regard accounts must be unqualified. The Revenue Commissioners will apply the tax treatment in line with the accounting treatment. Deviations from this will not be considered.

5. Any “manufactured” dividends paid in respect of these securities will be taxed in full.

6. It has been decided to limit these arrangements to transactions extending for period of 3 months or less.

7. These arrangements will be kept under review. The Revenue Commissioners reserve the right to withdraw any or all of these arrangements in the event of their being used for tax avoidance purposes.

4. Capital Gains Tax

4.1 ICI/Zeneca Demerger

Introduction

In response to a number of enquiries from practitioners we outline below the Revenue approach to the tax consequences for shareholders of the ICI/Zeneca demerger which took place on 1 June 1993

Background information

In this demerger ICI declared a dividend which was satisfied by the distribution of shares in a subsidiary company Zeneca Plc.

ICI did not make a distribution in specie to its shareholders.

The question has arisen as to the tax treatment to be applied to the dividends received by Irish shareholders.

Revenue Approach

The receipt of the dividends by way of Zeneca shares is to be treated as capital subject to Capital Gains Tax.

Each shareholder will be deemed to have made a disposal of part of his/her ICI holding as at 1 June 1993.

The consideration for the disposal will be equal to the Market Value of the Zeneca Shares received at the time.

Also, as this is a part disposal, the shareholders will be entitled to part of the original cost of the ICI shares as a deduction from the Market Value of the Zeneca Shares in accordance with paragraph 6 of Schedule 1 of the Capital Gains Tax Act 1975.

Example

A person holds ICI shares at the date of the demerger - Original cost £500.

The market value of the shares in Zeneca is IR£636 and the value of the ICI shares after the demerger is IR£642.

The consideration for the disposal is £636.

The base cost is $\text{£}500 \times \frac{636}{636+642} = \text{£}248.80$ (Plus indexation as appropriate)

[Note : The valuations of ICI and Zeneca Shares as at 1 June 1993 were
631.75p Stg. (=642.93 p IRL) and
625.75p Stg. (=636.38p IRL) respectively.]

It is understood that the Irish shareholders had been advised individually by the company of the Revenue Approach in this matter.

5. Collector-General

5.1 Automated Remittance Processing (ARP)

In Tax Briefing Issue 15 (July 1994) reference was made to the introduction of Automated Remittance Processing (ARP) technology for the processing of tax payments received by the Office of the Collector-General in the cash offices in Dublin and Limerick.

We outline here in some detail how the ARP system operates and how Revenue's service to both taxpayers and practitioners is improved if some simple rules are followed.

ARP

The ARP system is based on the use of customised dedicated tax payslips which are processed through a computerised document scanning and transport system supplied by UNISYS. This system has changed completely the manner in which payments are processed in the office. Payslips and cheques pass along a track which reads the coded information from the payslips (tax reference number tax type and taxable period) and from the cheques (bank sort code).

The captured information is sorted and passed to workstations where the amounts are entered separately from the payslips and cheques. Each remittance is balanced at this point. Any errors detected in the reading of the coded information are also corrected.

The payslips and cheques are passed along the document track a second time where both are cross referenced. Cheques are encoded with the payment amount, sorted and totalled for the bank. Both front and back of all documents are microfilmed in this pass. The cheques are sent to the bank. Payment details are transmitted to the Revenue mainframe computer, for updating of taxpayers' records, by direct link from the ARP system. Reports are also produced containing balancing, lodgement and management information.

The main benefits to taxpayer and agent from the introduction of ARP technology are that taxpayer records are updated with payment information on the evening of process and receipts are issued automatically to the taxpayer from the mainframe computer for all payments processed through the ARP system. These receipts are issued within days of the payment being processed. With the co-operation of taxpayers, as set out hereunder, it will be possible to achieve the goal of payment records being updated within 24 hours of receipt and the receipt being issued immediately thereafter.

Tax Payslips

The tax payslip is the lynch pin to the success of ARP payment processing. As mentioned above, payslips are now customised and dedicated to each taxpayer during the production process. The key part of the payslips is the OCR encoding which can be seen on the bottom left side of the slip.

This takes the form of a unique 16/18 numeric character string which incorporated the following information:

- Taxpayer's registration number
- Tax type code
- Tax period code
- Numeric "check character" to ensure that the string has been correctly captured.

Arising from this, photocopying or altering other returns/payslips, to replace lost or mislaid documents is not compatible with ARP technology and could actually lead to increased delays in the processing of payments/returns or the crediting of a payment to the wrong case.

This problem is not unique to the Collector-General's Office, but arises in all modern payment processing installations.

How Can Practitioners Help?

Practitioners can greatly assist Revenue in rapid and efficient payment processing in several ways.

Examples include:

- Emphasise to both clients and practice staff that the tax payslip is an integral part of every return and should therefore never be detached from the return.
- Clients in particular should be advised that great care should be taken of Revenue forms which incorporate payslips. If such forms are damaged or mislaid it is not possible to print actual encoded replacements for clients.

Because the payslip also enables taxpayers to pay tax through the Bank GIRO system, some taxpayers are of the opinion that the payslip need not be included with payments sent direct to Revenue.

This is not the case and failure to include the payslip with the payment can lead to delays in updating the taxpayer's records and issuing receipts.

Practitioners should never alter one client's payslip to pay another client's tax. Equally, they should never copy or alter a payslip even for the same client.

As mentioned above, each payslip is now unique to a specified taxpayer/tax type/tax period. To alter a payslip for another purpose can cause serious difficulties for the taxpayer and agent.

Practitioners should check a client's tax receipts on receipt of same from Revenue, to ensure that the correct tax amounts, periods etc. are shown thereon.

Any discrepancies should be notified to the Collector-General immediately.

When completing the tax payslip, practitioners should ensure that the OCR scan line section at the foot of the slip is not written on, bent or folded. Special care should be taken to avoid infringing the scan line when signing declarations on either part of the payslip. Similar precautions should be taken with any accompanying cheques to avoid infringing the MICR data shown thereon.

Where "Nil" returns are being submitted for any tax, please also ensure that the payslips accompanying the returns. ARP technology is also used for the rapid processing of "Nil" returns. Where the payslips are missing delays can ensue in the updating of records with the return information.

Payslips not enclosed with payment

Where accounting information is not available or is inadequate, the remittance is processed but the taxpayer's record cannot be full updated. It is of vital importance to a taxpayer that his/her payment record is updated immediately a payment is made. The key to this is the correct use of a correct payslip.

6. Capital Taxes

6.1 Stamp Duty

Shares in Private Companies

Transfers of shares in private companies between related or associated parties require adjudication by the Stamps Office. The following documentation must be submitted when adjudication of such transfers is being sought:

- Original and one copy of each stock transfer form.
- A completed Adjudication Warrant
- A completed Form SD 4. This form requests details of how the value being submitted for the shares was arrived at.
- A copy of the company's latest, audited, annual accounts.

- A copy of any written agreement relating to the transfer of the shares.

Queries relating to the above matter should be addressed to

**Capital Taxes Division,
Customer Services - Stamp Duty,
Stamping Building,
Dublin Castle,
Dublin 2.**

Telephone (01) 679 2777, Exts. 4558/4559
Fax (01) 679 0636

**Stamp Duty Office,
Government Buildings,
Sullivan's Quay,
Cork.**

Telephone (021) 968 783
Fax (021) 318088

7. Capital Acquisitions Tax

7.1 Indexation Factors

The Finance Act, 1994, changes the basis of indexation of the capital acquisitions tax thresholds.

Since 11 April 1994, the class threshold applicable to each taxable gift or taxable inheritance in any aggregate of taxable values should be indexed by the indexation factor relevant to the current benefit.

Prior to 11 April 1994, the threshold amounts were indexed. The indexation factor for capital acquisitions tax in respect of benefits taken in 1995 is 1.188.

The indexation factor for probate tax for persons dying in 1995 is 1.039.

A Statement of Practice on this matter will be issued shortly.

8. Value Added Tax

8.1 VAT Treatment of Secondhand Goods: The Margin Scheme

The European Union adopted a Council Directive (94/5/EC) (the Seventh Directive) on 14 February 1994, amending the Sixth VAT Directive with effect from 1 January 1995. The amending Directive introduces new common VAT Rules in relation to the VAT treatment within the EU of second-hand moveable goods, works of art, collectors items and antiques.

The principle feature of the Seventh Directive is a new system known as the "margin" scheme which is intended to reduce the likelihood of double taxation in the context of the sale of these goods.

The Seventh Directive will be reflected into Irish VAT law early in 1995. Dealers who would benefit from the implementation of the margin scheme were allowed to do so, with effect from 1 January 1995.

An information leaflet setting out the areas which are of interest to those dealers and how the scheme should be operated by them is available from local tax offices.

8.2 Value-Added Tax (Threshold for Advance Payment) (Amendment) Order, 1994 S.I. No. 342 of 1994

The Minister for Finance has made an Order entitled as above.

Section 19(6) of the Vat Act, together with S.I. No. 345 of 1993, requires that an advance payment of VAT be made in December 1993. And subsequent years, by any taxable person whose total net annual VAT liability exceeds a threshold.

The Order amends S.I. No. 303 of 1993, to further increase this threshold from £300,000 to £1,000,000 in respect of the advance payment to be made in December 1994, and in subsequent years.

8.3 European Communities (Value-Added Tax) Regulations, 1994 - S.I. No. 448 of 1994

The Minister for Finance has made a Regulation entitled as above.

The Regulation inserts a new section 15B into the VAT Act. The new section deals with the transitional arrangements applicable for the taxation of trade between Austria, Finland, Sweden and Ireland, in the context of the accession by these countries to the European Union on 1 January 1995.

Copies of the Order and Regulation may be purchased from the

Government Distribution Sales Office,
Sun Alliance House,
Molesworth Street,
Dublin 2.

Or through any bookseller, price £1 and 40p respectively (postage 48p and 36p extra respectively).

International

Double Taxation Treaties

Portugal and Spain

The new double taxation treaties with Portugal and Spain are now in force.

United Kingdom

A protocol amending the 1976 treaty with the United Kingdom was signed in November 1994. This protocol provides for the insertion into the existing treaty of a new Article 17A dealing with contributions to occupational pension schemes.

Russia

The treaty with Russia is awaiting the approval of the Russian parliament before the instruments of ratification may be exchanged.