

# TAX BRIEFING

Office of the Chief Inspector of Taxes

**ISSUE 21 - March 1996**

## Internal Review Procedure for Revenue Audits

### Background

The right to have an internal review of any decision made by a Revenue official is provided under the "Charter of Rights". The existing review procedure is initiated by a taxpayer or his/her adviser requesting that a review be undertaken by a superior officer. In relation to decisions taken in Tax Districts, this review is normally undertaken by a Regional Director.

Some practitioner and business representative groups have suggested that there is a reluctance, particularly in relation to Revenue Audit, to ask for a review by a Regional Director because:

- ❖ this officer may be perceived as being too closely involved with the Tax District and the official who carried out the audit,
- or
- ❖ it might be thought that the review would give offence to the official involved and have an adverse affect on their future relations with Revenue.

There is no need for such reluctance. Revenue officials fully accept that their decisions, including decisions relating to audits, can be reviewed either by a colleague or by an appeal tribunal.

### Alternative Review Process

Nevertheless, it is recognised that perceptions are important. To meet the

situation and to make taxpayers and practitioners more comfortable with looking for a second opinion, the Revenue Commissioners have nominated the Director of Customer Services as the person who will take responsibility for the arbitration role in relation to decisions taken in Tax Districts. The Director of Customer Services has no connection with the Audit Programme and has no responsibility for its management. He has a direct role in promoting and implementing the Charter of Rights and in ensuring taxpayer confidence in tax administration.

The aim of this review process is to provide an objective second opinion within Revenue when taxpayers or tax advisers feel:

- ❖ their viewpoint on a particular issue has not been given due consideration at District level,
- or
- ❖ that their rights under the Charter of Rights have not been fully respected,
- or
- ❖ that the District has adopted an unreasonable approach, or an approach that is technically/legally incorrect.

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## Guidelines

The following points may be helpful to practitioners in considering whether an internal review of an audit is appropriate:

- ❖ In reviewing audit cases, the Director of Customer Services will look at all relevant aspects of the case. He will be concerned with ensuring that the Charter of Rights is implemented and that Revenue's objectives, as set out in the Charter, are furthered.
- ❖ Obviously, the adequacy of records, explanations and co-operation given are matters to be taken into account in the review process.  
A review should not be requested until the District Inspector's attention has been drawn to all evidence on which the taxpayer and practitioner are relying in support of their contention. In other words, any information in

support of the case for a review should previously have been presented to the District.

- ❖ From audit cases reviewed to date, it is evident that some practitioners may be looking for a review simply because they do not like the findings arising from the audit and, perhaps, feel that they may get a better deal elsewhere. The review process is not, of course, to be used for such a purpose. Where a review is requested, practitioners should be able to rely on evidence, already put forward during the audit, to support an alternative result or to cast substantial doubt on the District findings.
- ❖ Where the item requiring review is a legal/technical issue, agents should give their view of what they consider the position to be. It should be supported, as appropriate, by reference to the law, case law, etc.

Requests for reviews should outline the specific reason why the request is being made and should be addressed to:

**Mr. Joe Lynch,**  
Director of Customer Services,  
Office of the Chief Inspector of Taxes,  
Setanta Centre,  
Nassau Street,  
Dublin 2.

### Existing Rights and Practice

Where they prefer, practitioners and taxpayers can, of course, continue to contact the District's Regional Director, if dissatisfied with the local handling of a client's tax affairs.

**The review procedure outlined does not affect a person's right of appeal to the Appeal Commissioners under tax legislation.**

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## INTERNATIONAL ISSUES

### **Current Position on Ireland's Double Taxation Agreements**

Ireland currently has Double Taxation Agreements, in force, with twenty seven countries. Three of these agreements, with Russia, Israel and Poland, were ratified, by both parties, during 1995 and therefore take effect in 1996. It is expected that two further agreements, with Hungary and the Czech Republic, which were ratified by Ireland in 1995 will be ratified by our partners in 1996 thus enabling the treaties to take effect in 1997.

Additionally, a Protocol to the Ireland/UK Double Taxation Agreement dealing with foreign pension schemes was ratified on 21 September 1995. This applies with retroactive effect from 1994. Broadly it provides that an employee transferred by his employer, from one State to the other for a temporary period, may remain a member of an approved pension scheme in the former State while getting tax relief in the latter State.

It is hoped that two new Double Taxation Treaties, Ireland/Greece and Ireland/Mexico, will be finalised during 1996.

Ireland is currently in the process of renegotiating a number of its older Double Taxation Agreements. These include our treaties with: the United States, Belgium, Italy, France, Canada, Austria and Norway.

Copies of Double Taxation Agreements may be purchased from the

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

Telephone (01) 661 3111  
Fax (01) 475 2760

International matters are dealt with in the following areas:

#### **International Section,**

Revenue Commissioners,  
Dublin Castle,  
Dublin 2  
Telephone (01) 679 2777  
Fax (01) 679 3314

#### **International Claims, Residence and Charities Unit,**

Revenue Commissioners,  
Government Offices,  
Nenagh,  
Co. Tipperary.

*Callers in (01) area*  
Telephone: 677 4211

*Callers outside the (01) area:*  
Telephone (067) 335 33  
Fax (067) 323 73

### **Double Taxation Treaties entered into by Ireland.** **(For Tabulation see Page 16)**

## SERVICE CHARGES

### Relief for Service Charges

#### Introduction

Section 7 Finance Act 1995 introduced income tax relief for service charges paid by individuals. The relief will be available for 1996/97 and subsequent years for service charges paid in full and on time in the preceding calendar year. The maximum relief in any tax year is £150 at the standard rate (27% for 1996/97).

#### Service Charges Qualifying for Relief

All service charges paid to:-

- ❖ local authorities for the provision of **domestic** water supply, **domestic** refuse collection and **domestic** sewage disposal,
- ❖ independent contractors for **domestic** refuse collection,
- ❖ group water schemes for **domestic** water supply.

#### Qualifying Individuals

An individual (or his/her spouse) who is liable for and pays the service charge will qualify for the relief.

Alternatively, an individual who pays the service charge (although not liable for it) and lives, on a full-time basis, in the house which is the subject of the charge can also qualify for the relief.

This latter category is intended to cover situations such as a son or daughter paying a service charge on behalf of an elderly parent. Any claim to relief by the son/daughter must be accompanied by a disclaimer (Form SC1) completed by the liable individual.

#### Local Authority Service Charges Arrears

An individual with arrears can only qualify for relief for service charges in 1996/97 if at least 20% of the arrears are paid **in addition to** the 1995 service charges. **The arrears do not qualify for relief.**

#### Amount of Relief

The amount which qualifies for relief under **all** headings is the lower of £150 or the amount paid (**net** of any discount and arrears).

The relief is calculated by reference to the following:

#### Actual amount paid to:-

- ❖ local authorities for the domestic services described above
- ❖ group schemes for domestic water supply.

#### Flat rate of £50 for:-

- ❖ payment of a specified annual charge to independent contractors for **domestic** refuse collection **and**
- ❖ purchase of "tags" for **domestic** refuse collection by local authorities or independent contractors.

#### How tax relief is granted Local Authority Service Charges

The legislation requires each local authority to submit computerised returns for each calendar year to the Revenue Commissioners detailing all cases who have met the necessary conditions (set out below). Returns must be submitted by 31 January (i.e. within one month of the year end). Where the first return is incomplete a supplementary return must be made within a further month.

To be included in the computerised return an individual must have fulfilled **all** of the following conditions:

- ❖ all service charges must be paid in full and on time (i.e. the 1995 services charges must be paid in full and on time to qualify for relief in 1996/97)
- ❖ arrears from earlier years must be cleared over 5 years. Accordingly, at least 20% of any arrears, in addition to the 1995 service charge, must be paid before an individual can qualify for relief in 1996/97
- ❖ the local authority must be advised of the RSI number of the individual liable for the service charge.

**Where a PAYE taxpayer has supplied his or her RSI number in sufficient time to be included in the local authority return the relief, where due, has been automatically incorporated into his or her 1996/97 TFA certificate.**

#### Claims for Relief directly to Tax Offices

Taxpayers who have **not** advised the local authority of their RSI number (or who have not done so in sufficient time to be included in a local authority return) will not be granted relief automatically.

In such cases relief will be granted on due claim from the taxpayer.

#### Independent Contractors and Group Water Schemes

Independent contractors and Group Water Schemes are not obliged to submit computerised returns. Relief will be granted on due claim by the taxpayer. It will not normally be necessary to provide a receipt.

#### "Tag" system

A variety of domestic refuse collection "tag" systems are operated throughout the country by both local authorities and independent contractors. The "tags" can be purchased from normal retail outlets as well as directly from the service provider. Claims for relief for the cost of "tags" can be made directly to the Tax Office. Receipts will not normally be required.

#### Non PAYE Taxpayers

Non PAYE taxpayers must claim the relief at year end in their tax return.

#### Holiday Homes

Relief is **not** limited to a principal private residence. Accordingly, it may be claimed in respect of more than one **domestic** residence subject to the overall limit of £150.

#### Business expense

Relief is **not** available on any amount claimed as a business expense. For example, where one supply is used for both domestic and business purposes, relief is not available on the portion claimed as a business expense.

#### General

A percentage of all claims will be checked with the Local Authority to confirm their validity.

# CORPORATION TAX

## Completion of Form CT1

### Introduction

The standard of completion of forms CT1 has generally been high. However, as part of our ongoing review of the completion of forms we wish to draw practitioners' attention to the following matters.

### Manufacturing Relief

Where manufacturing relief is being claimed, the amount claimed should be entered at Panel 12, Code R3.

It is not sufficient to charge the profits to corporation tax at the reduced rate in Panel 11 while omitting to input an entry in respect of the manufacturing relief being claimed at Panel 12, Code R3.

### Losses

#### Section 16(1) C.T.A. 1976

Where relief is being claimed in respect of a trading loss incurred in a preceding accounting period under Section 16(1) C.T.A. 1976

- ❖ The amount of the loss being claimed should be entered at Panel 4 Code S6.

#### Section 16(2) C.T.A. 1976

Where a trading loss has been incurred in an accounting period

- ❖ Nil should be entered at Panel 1 Code D1.
- ❖ Capital allowances should be entered at Panel 2 under Codes S1, S2 or S3 as appropriate.
- ❖ The aggregate of the trading loss, plus the capital allowances

should be entered at Panel 11 Code H1.

### Income Tax

#### Section 151 C.T.A. 1976

- ❖ Payments in respect of which the company is liable to account for income tax sho

### Surcharges

#### Section 101 and 162 C.T.A. 1976.

Surcharges under Sections 101 and 162 in respect of accounting periods ended in the 12 months preceding the accounting period (for which the CT1 is being completed) should be entered at Panel 13 Code V1 or V2 respectively.

## CAPITAL TAXES

## RESIDENTIAL PROPERTY TAX - Valuation Dates & Certificates of Clearance

### Valuation Date 5 April 1996

The **market value** exemption limit for 1996 (valuation date 5 April) is **£101,000**. The **Income exemption** limit for 1996 is **£30,100**.

*Residential Property Tax in respect of the valuation date 5 April 1996, is payable on or before 1 October 1996.*

### Certificate of Clearance

Practitioners are reminded that any person who purchases a residential property for an amount in excess of the market value exemption limit **must** deduct the specified amount from the sale consideration unless the vendor produces a Residential Property Tax clearance certificate **before the sale is closed**.

A guarantee given by the vendor (or his/her agent) that the clearance certificate will be furnished on a date subsequent to the date of the closing of the sale does not obviate the purchaser's obligation to deduct the specified amount.

### Further Information

A leaflet (RP5) outlining the main features of the Residential Property Tax clearance

certificate procedure was enclosed with Issue 20 of

### Tax Briefing.

Further information may be obtained from the Capital Taxes Branch, Dublin Castle, Dublin 2.

Telephone No. (01) 679 2777  
Extns: 4164, 4173, 4174.

New houses with a floor area of less than 125 square metres are exempt from stamp duty. However, the deed of transfer/conveyance must be submitted for adjudication to the Revenue Commissioners together with a floor area certificate issued by the Department of the Environment. The Finance Bill, 1996, will provide that such deeds need no longer be presented for adjudication if the deed itself contains a statement to the effect that a valid Department of the Environment certificate was in force for the new house at the date of transfer/conveyance. This measure will reduce the formalities and simplify the

## STAMP DUTY

### Abolition of need for Adjudication in the case of new houses

procedures for obtaining this stamp duty exemption.

The requirement to present the deed for impression of the PD (Particulars Delivered) stamp will not be affected by the above provisions.

## CAPITAL TAXES

# Capital Acquisitions Tax

## New Forms and Guide

As part of the ongoing review of the main forms in use for Capital Acquisitions Tax purposes, a number of new forms and a new guide will be available from mid-April.

These are

- ❖ the standard Gift/Inheritance Tax Self-Assessment Return (IT38)
  - ❖ the Guide to completing the Self-Assessment Return (IT39),
- and
- ❖ supplementary claim forms for the two main CAT reliefs; Agricultural Relief (IT41) and Business Relief (IT5)

## Seminars

A series of seminars will be held shortly at the following venues to acquaint practitioners with the new forms. The seminars will also examine the more difficult aspects of CAT such as

A new Statement of Practice (SP-CAT1/96) detailing the index factors to be used in calculating CAT and Probate Tax liabilities up to and including 1996 is now available.

For CAT purposes, in respect of taxable gifts/inheritances taken in the following years, the index factors to be used are:

1990	1.04	}	
1991	1.076	}	To be
1992	1.109	}	applied to
1993	1.145	}	the
1994		}	threshold
(prior to 11 April)	1.160	}	amount

1994		}	To be
(on or after 11 April)	1.160	}	applied to
1995	1.188	}	the class
1996	1.217	}	threshold

## Indexation Factors

aggregation and go over the operation of the main CAT reliefs relating to agricultural and business property.

### Dublin:

#### Jurys Hotel, Ballsbridge

Tuesday 7 May 2.30 p.m.

### Limerick:

#### Castletroy Park Hotel

Wednesday 24 April 2.30 p.m.

### Cork:

#### Silver Springs Hotel

Thursday 25 April 2.30 p.m.

### Galway:

#### Corrib Great Southern Hotel

Tuesday 30 April 2.30 p.m.

Practitioners are invited to attend at the most convenient location.

In the meantime, if practitioners have any queries on the new forms they should contact Capital Taxes Division's Taxpayer Advisory Service at the numbers below.

The new forms and guide can be ordered (preferably by fax) from

### Taxpayer Advisory Service

Capital Taxes Division,  
Dublin Castle,  
Dublin 2.

Telephone: (01) 679 2777  
Extns. 4591/4593/4597

Fax: (01) 679 3261

or from

Revenue Forms Leaflets Service

Telephone (01) 8780100

(This service is available 24 hours a day)

## The indexed class thresholds since 1994 are:

Class	Relationship	Indexed Class Threshold		
		1994	1995	1996
A	e.g. son/daughter/parent*	£174,000	£178,200	£182,550
B	e.g. niece/nephew/brother/sister/ grandchildren	£23,200	£23,760	£24,340
C	e.g. strangers/cousins	£11,600	£11,880	£12,170

\* In the case of a gift a parent falls into Class B

## In relation to Probate Tax, the index factors and the exemption thresholds are as follows:

Year	Index Factor	Exemption Threshold(£)
1993	—	10,000
1994	1.015	10,150
1995	1.039	10,390
1996	1.065	10,650

A copy of the new Statement of Practice is available from the Capital Taxes Division's Taxpayer Advisory Service (address and phone numbers given above).



# Payment by Direct Debit

## Preliminary Tax

### Legislation

Section 31 Finance Act 1995 makes provision for the payment of Income Tax Preliminary Tax by direct debit.

### Minimum amount payable

The minimum amount of preliminary tax which must be paid is the lower of:

- ❖ 90% of the tax liability for the actual year of assessment
- or
- ❖ 100% of the tax liability for the previous year of assessment
- or
- ❖ **in the case of direct debit participants only**, 105% of the tax liability for the **pre-preceding** year of assessment.\*

\* The 105% rule does not apply where the income tax payable for the pre-preceding year is Nil.

### Direct Debit Scheme

The direct debit scheme for Preliminary Tax is designed to spread the burden of payment of preliminary tax evenly throughout the calendar year. Payments made in the calendar year will be credited against the Preliminary Tax which falls due in that calendar year. For example, direct debit deductions made during 1996 will be credited against the Preliminary Tax payment due in 1996 for the 1996/97 year of assessment.

At the end of the calendar year, each customer participating in the direct debit scheme will be issued with a statement of all preliminary tax payments made during the calendar year.

### Participation in the Direct Debit Scheme

Completion and return of a direct debit mandate form is required from any customer wishing to participate in the scheme.

Completed mandate forms should be returned to the Collector-General by the 1st of the month preceding the month in which deductions are to commence e.g. if deductions are to commence in February, the mandate form should be returned by 1 January. Payments will be deducted on the 9th of each month up to and including December.

### Cut-off Date for 1996/97 Preliminary Tax

As a special transitional measure for 1996 (in respect of Preliminary Tax for the 1996/97 year of assessment), authorisations for the payment of Preliminary Tax by direct debit will be accepted by the Collector-General up to **1 June 1996**.

For 1997 and subsequent years, authorisations for the payment of Preliminary Tax by direct debit must reach the Collector-General by 1 March in the calendar year in which deductions are to be made.

### Revision of monthly payment amount

The amount of Preliminary Tax to be debited on a monthly basis may be revised downwards at any time.

For 1996, the first year of operation of the scheme, upward revisions of the monthly payment amount can be made up to 1 August 1996.

For 1997 and subsequent years, upward revisions of the monthly payment amount can be made up to 1 May.

To revise the amount of the direct debit, a new completed mandate form, indicating the new monthly deduction amount, should be returned to the Collector-General by the appropriate date.

Where special circumstances arise (e.g. cessation or change in the accounting date for the business) the Collector-General will consider, on an individual basis, applications to increase the amount of direct debit after the dates set out above. Such applications should be

made to the Central Services Area of the Collector-General's Office (address below) and should include an explanation of the reason for the change of the mandated amount.

### Subsequent Years

Once a customer has joined the direct debit scheme, deductions will continue to be made in accordance with the most up to date instructions provided by the customer for subsequent years, unless the customer notifies the Collector-General that participation in the direct debit scheme is being ceased.

### Enquiries

Further information on the scheme and mandate forms may be obtained by calling (061) 310310 and asking for the Direct Debit Helpline or by writing to

**Office of the Collector-General,  
Sarsfield House,  
Francis Street,  
Limerick.**

A Statement of Practice on the operation of the direct debit scheme is enclosed with this issue.

# Issue of Third Party Returns to be reduced

Forms 46G and 46G(Company) are currently issued to all cases on Revenue records considered likely to be required to make returns of payments for services.

Since the introduction of automatic filing of Third Party returns we have received a significant amount of information which has been valuable in Revenue programmes. We have started the process of carrying out computer analysis to identify taxpayers not on record and sources not returned. Having analysed returns received, we are getting a clearer picture of areas where we are getting relevant returns.

*This will be reflected in the issue of Forms 46G in April 1996 for the year 1995/96, where the numbers to be issued will be reduced. They will issue to the bigger cases only. Taxpayers who have made returns for prior years and do not get one for 1995/96 are not expected to file a return for 1995/96. Where, exceptionally, we require a return from such a taxpayer we will ask for it.*

Taxpayers who have never been issued with the form or who have not made returns for prior years should review their records to establish whether or not they are obliged to file a return, as the self assessment basis applies.

Returns are required in respect of persons who are ordinarily resident in the State. Payments for services rendered by a foreign supplier who has no presence in the country need not be returned e.g. a foreign transport company delivering a machine.

VAT exclusive figures should be given except where a person is not registered for VAT. Where there are difficulties in isolating the VAT exclusive figure, the VAT inclusive figure will be accepted once it is made clear that it is VAT inclusive. The same limit of £3,000 applies whether the payments are returned on a VAT inclusive or exclusive basis.

## Overseas duties and Car Benefit-in-Kind

A car provided to a director or an employee will not be regarded as available for private use for that part of the year in which the director or employee is outside the State for the purpose of performing the duties of the office or employment.

**This treatment will apply for 1994/95** and following years provided the following conditions are satisfied

- ❖ the director or employee does not claim the 'foreign earnings deduction' (if any) under Section 154 Finance Act 1994 (as amended) in respect of the car benefit-in-kind

excluded) - a day for this purpose must include an overnight stay

- ❖ the director/employee travels abroad without the car
- ❖ the car is not available for use by the director's/ employee's family or household during the director's/employee's period of absence outside the State.

(PAYE) Allowance was extended to foreign social security pensions received by Irish residents from EU Member States **notwithstanding** that they have not been subject to a PAYE type system of tax deduction.

## PAYE Allowance extended

- ❖ the aggregate number of days spent outside the State for the purpose of performing the duties of the office or employment is at least 30 complete days in the tax year (any holiday leave period abroad should be

**Employee (PAYE) Allowance**  
Section 138B, Income Tax Act 1967

With effect from 1994/95 (i.e. with effect from the 6 April 1994), the Employee



# Urban Renewal Relief - Multi-storey Car Parks

## Introduction

Section 41B, Finance Act 1994 (introduced by Section 35, Finance Act 1995), extends the 1994 Urban Renewal provisions to certain multi-storey car parks. This article gives details of the incentives available for expenditure on the construction or refurbishment of a multi-storey car park.

## Definition of a Qualifying Multi-storey Car Park.

In order to qualify for the incentives a multi-storey car park must:

- ❖ be certified by the local authority in whose functional area the car park is located
- ❖ consist of two or more stories, and those two or more stories must be used exclusively for the provision of car parking space to members of the public generally.

A car park located over a commercial premises, such as ground floor retail units or offices, will qualify once it meets the conditions outlined above. In such circumstances, only the expenditure on the car park will qualify for the incentives. The expenditure on which relief is being claimed must be apportioned so as to exclude the expenditure on the commercial premises.

## The Certification Process

In order to qualify for the incentives, the developer of a multi-storey car park **must** obtain a certificate from the local authority in whose functional area the car park is located, certifying that it has been developed in accordance with criteria laid down by the Minister for the Environment.

These criteria relate to:

- ❖ planning and design,
- ❖ traffic and parking management policies, and
- ❖ pricing structures and hours of operation.

## It is not necessary that the multi-storey car park be located in an area designated for Urban Renewal.

The question of whether to issue a certificate is one for the appropriate local authority to which any queries on the certification process should be directed.

The certificate will take the form of a letter from the local authority to the developer. It will confirm that the car park has been developed in accordance with the criteria laid down by the Minister. (Guidelines on these criteria are available from the Department of the Environment.)

## The Incentives

### Capital Allowances

50% of expenditure incurred in the qualifying period on construction or refurbishment of a qualifying multi-storey car park qualifies for industrial buildings allowances. The rates are:

*Owner-occupier:*  
50% free depreciation, **or**  
25% initial allowance and 2% annual allowance on the remaining 25%,

*Lessor:*  
25% initial allowance and 2% annual allowance on the remaining 25%.

Expenditure on the refurbishment of an existing multi-storey car park will qualify for capital allowances only if it amounts to 20% or more of the market value of the car park prior to refurbishment.

### Balancing Charge

Where an event which would otherwise give rise to a balancing charge occurs, in the case of a qualifying building, no balancing charge can be imposed where the event occurs more than 13 years after:

- ❖ the building is first used in the case of construction expenditure
- or
- ❖ the incurring of the expenditure in the case of refurbishment.

Notwithstanding this restriction on the imposition of a balancing charge the building still has a 25 year "life" for the

purposes of industrial buildings allowances. There is no prohibition on the granting of a balancing allowance after the expiry of the 13 year period.

## Double Rent Deduction

A double rent deduction, for which Section 42, Finance Act 1994 makes provision, is available to the lessee of a multi-storey car park, subject to the usual conditions, i.e.

- ❖ construction or refurbishment expenditure, which is capital in nature, must be incurred on a qualifying building in the three year qualifying period
- ❖ the lease under which the rent is paid must be entered into during the three year qualifying period
- ❖ the lease under which the rent is paid must be on bona fide commercial terms.
- ❖ the lessor and lessee must not, directly or indirectly, be connected with each other.

## Qualifying Period

The legislation runs for the three year period from 1 July 1995 to 30 June 1998.

## DIRT

### Credit Unions

### Deposit Accounts and DIRT

We have been asked to comment on the treatment of credit unions under the DIRT provisions. The position is as follows:

Under section 43 Finance Act 1972, credit unions are exempt from income tax with effect from the date of their registration under the Industrial and Provident Societies Acts 1893 to 1978. Section 11(6) Corporation Tax Act 1976 extends this exemption to corporation tax (registered

industrial and provident societies being bodies corporate would, but for section 43 be within the charge to **corporation tax**).

Relevant interest within the meaning of Chapter IV of Part 1 Finance Act 1986 received by credit unions is subject to DIRT.

Since credit unions are **not** companies **which are within the charge to corporation tax in respect of relevant interest**, they cannot

- ❖ operate DIRT free deposit accounts under section 37B Finance Act 1986, or
- ❖ have DIRT refunded to them (section 35(1)(b) Finance Act 1986).

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## FARMING

### Conacre Letting

#### Income from Conacre Letting

A number of enquiries have been received from practitioners on the tax treatment of income from conacre letting, and whether it is chargeable under the rules of Case I or Case V of Schedule D.

#### The Revenue Approach

Income arising from conacre letting is "a payment in the nature of rent", and comes within the definition of rent in Section 80(I), Income Tax Act, 1967, it is therefore chargeable under the rules of Case V of Schedule D.

This approach is supported by the case of *Maurice E. Taylor (Merchants) Ltd. v. Commissioner of Valuation* [1981] N.I. 236. The modern conacre agreement is analogous to a lease and consequently any payment made on foot of that agreement is analogous to rent, i.e. a payment in the nature of rent.

Such income should not be included in arriving at the Case I profit (or loss) from farming, and cannot be taken into account for the purposes of stock relief or income averaging. A separate Case V computation is required.

### Stock Valuations on Farm Retirement Scheme

#### Farm Retirement Scheme Valuation of Stock

A number of enquiries have been received from practitioners regarding the valuation of stock of a farming trade

- ❖ in the hands of the farmer who is retiring
- ❖ in the hands of the successor/transferee

#### Treatment

Where stock

- ❖ is sold for valuable consideration to a trader

and

- ❖ the trader is entitled to deduct that cost in computing his/her profits

the stock should be valued at the sale price or the value of the consideration given. (Section 62(1)(a) Income Tax Act, 1967 applies)

Sales or transfers at gross under-value or over-value do **not** come within this provision and in such circumstances stock should be valued at market value in the hands of both the transferor and transferee.

Where stock is transferred for no consideration i.e. from a parent to a child who is farming or commencing to farm:

- ❖ the stock should be valued at market value in the parent's accounts Section 62(1)(b) Income Tax Act, 1967 applies)
- ❖ the child, who in effect has received a gift and has appropriated it to trading stock, is entitled to claim a deduction

equivalent to the market value of the stock in computing the trading profits.

#### Note

This article clarifies the operation of Section 62 as it stands and is without prejudice to any changes which may arise in this years Finance Act.

## FARMING

# Stock Relief for Young Farmers in Partnerships

### Background

Section 21, Finance Act 1995, introduced a scheme of 100% stock relief for farmers who are eligible for a grant under the EU Scheme of Installation Aid for Young Farmers or who are under a certain age and have completed a recognised agricultural course. A farmer who qualifies for this enhanced relief can avail of it for a maximum period of 4 years.

A number of enquiries have been received on how the relief should be ascertained in the case of a partnership. In particular, where one or more of the partners is a “qualifying farmer” (as defined), and one or more is not.

### General

Stock relief is a deduction in arriving at the Case I profit. In the case of a partnership the practice has been to deduct the stock relief due in arriving at the partnership profit. This practice will continue where all the partners come within the same stock relief regime.

Where some partners in a partnership are entitled to 100% stock relief while others are entitled to the usual 25% relief, the partnership profit to be allocated in accordance with the profit sharing ratios is the profit before stock relief but after making all other adjustments. To arrive at the assessable profit of each partner, the stock increase will be allocated in accordance with the profit sharing ratios and stock relief will be allowed accordingly.

### Example

A and B farm in partnership, sharing profits and losses equally. B, who is 30 years of age, completed a recognised agricultural course in 1994, and is entitled to 100% stock relief by virtue of Section 21. A, his father, is entitled to the usual 25% stock relief. Results for the year ended 31 March 1996 (basis period for 1995/96) show:

Profit per accounts	15,000
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Adjustments for light, heat, depreciation, motor, etc.	<u>5,000</u>
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Adjusted profit before stock relief:	20,000
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Closing stock :	75,000
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Opening stock:	<u>51,000</u>
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Stock increase:	24,000
-----------------	--------

Allocated to A:	12,000
-----------------	--------

Allocated to B:	12,000
-----------------	--------

<b>Partner A's share</b>	10,000
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*less stock relief:*

Stock increase of £12,000 @ 25%	<u>3,000</u>
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<b>Case I profit - A</b>	<u>7,000</u>
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<b>Partner B's share</b>	10,000
--------------------------	--------

*less stock relief:*

Stock increase of £12,000 @ 100%	<u>12,000</u>
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<b>Case I profit - B</b>	<u>Nil</u>
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(stock relief cannot create a loss)

### Conclusion

Practitioners should note that the questions of whether a partnership exists in any particular case, or what the profit sharing ratios of any partnership are, are questions of fact. “Partnership” cases where the enhanced relief is claimed and it appears that:

- ❖ a partnership does not exist,
- or
- ❖ the profit sharing ratios are not factual and appear to have been altered so as to maximise the enhanced relief for the period that it is available

may be subject to audit for any year that the enhanced relief is claimed.

## Losses arising on disposal of BES shares

A number of enquiries have been received from practitioners as to how losses arising on the disposal of BES shares are to be calculated.

**Section 25 Finance Act 1984** provides that for the purposes of calculating capital gains tax, the full acquisition cost, indexed for inflation, may be deducted from the sale proceeds.

However, if a loss arises on a disposal of shares in respect of which BES relief was allowed, and not withdrawn i.e. where the amounts normally allowable as deductions exceed the consideration, then the following provisions will apply :

The amount of the deductions will be reduced by the lower of

- ❖ the amount of the income tax relief obtained (i.e. the amount of relief allowed, not the tax saved)

or

- ❖ the amount by which the deductions exceed the consideration.

The effect of this restriction is that the result for Capital Gains Tax will normally be no gain/no loss.

### Example:

An amount of £10,000 was invested in a BES Scheme and income tax relief was granted as follows:  
£10,000 @ 48% = £4,800.  
Seven years later the shares were sold for £6,000.

The loss is calculated as follows:

Sale proceeds	£6,000
---------------	--------

Allowable deduction	£10,000
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### Reduce Allowable deduction by the lower of :-

the amount by which the deductions exceed the consideration	£4,000
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the amount of the income tax relief allowed	£10,000
---	---------

(Reduction is	£4,000)
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<b>Allowable deduction is now</b>	<b>£6,000</b>
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Therefore the Chargeable Gain/Allowable Loss is	<b>Nil</b>
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### NO ALLOWABLE LOSS ARISES

## Disposal of Certain Assets in excess of £100,000

The purpose of this article is to alert practitioners to the significant changes introduced by **Section 76 Finance Act 1995**, regarding the disposal of certain assets for consideration in excess of **£100,000**. These changes are effective from 2 June 1995.

**Paragraph 11 Schedule 4 Capital Gains Tax Act 1975** provides that on the payment of consideration for acquiring certain assets a deduction of 15% is to be made by the purchaser, unless the Inspector of Taxes has issued a certificate relieving the purchaser of his/her obligation to make this deduction.

### Assets

Section 76 extends the scope of the assets to which Paragraph 11 now applies to include :

- ❖ shares received in exchange for shares which were of a type specified in the original enactment.
- ❖ situations which rank as disposals for C.G.T. purposes

where consideration passes without an asset being acquired i.e. liquidations and loan redemptions.

### C.G.50 Certificate

One of the grounds on which a vendor can claim entitlement to a C.G.50 has been altered. Whereas previously a vendor who satisfied the Inspector that he/she is 'ordinarily resident' was entitled to a certificate, a vendor must now satisfy the Inspector that he/she is 'resident' within the meaning of Section 150 F.A.1994.

The other grounds for obtaining a certificate remain unaltered so that the vendor is still entitled to a certificate if he/she can show that either no amount of C.G.T. is payable or that the C.G.T. has been paid.

### Non Monetary Consideration

The provisions relating to non-monetary consideration disposals have been altered substantially. Since 2 June 1995 a purchaser involved in such a transaction and to whom the vendor has not given a certificate is now

obliged within seven days of the time of the acquisition to notify the Revenue Commissioners in writing, providing particulars of

(Continued on page 13)

## **CAPITAL GAINS TAX**

- ❖ the asset acquired
- ❖ the consideration for acquiring the asset
- ❖ the market value of the consideration and
- ❖ the name and address of the person making the disposal .

The purchaser must also pay to the Collector General 15% of the market value of the consideration.

### **Administration of Capital Gains Tax**

There appears to be confusion among some practitioners, especially solicitors, regarding the administration of Capital Gains Tax. This has led to many queries being misdirected with consequent inefficiencies for both Revenue and practitioners and their clients.

Capital Gains Tax is not administered centrally in Dublin Castle like other capital taxes such as Capital Acquisitions Tax.

It is administered by the Office of the Chief Inspector of Taxes in the Tax Districts spread around the country.

Accordingly, practitioner queries (both oral and written) on behalf of clients in relation to Capital Gains should be addressed to the Tax District where the clients' Income Tax/Corporation Tax affairs are dealt with.

## **EMPLOYERS' P35**

# **New Look to Form P35**

## **Tips for Completion**

By now each registered employer should have received their 1995/96 P35 stationery. Practitioners are reminded that the deadline for submission of fully completed returns is **30 April 1996**. Returns should be sent to the Employers (P35) Unit, Government Offices, Nenagh, Co. Tipperary.

In an effort to improve customer service to both taxpayers and practitioners the P35 Declaration Form has been redesigned and simplified thus making it easier to complete. The most up to date technology is being used to capture and process the data on the new form and practitioners can greatly assist Revenue in achieving accurate and timely processing by following some simple ground rules when completing the forms:-

- ❖ make sure that the Declaration Form is used only for the employer to whom it is issued. This is necessary because each form is pre-coded with details unique to a specific employer.

- ❖ return the original form (not a photocopy). In the interests of accuracy the computer technology used by Revenue to process returns is designed to operate with original forms.
- ❖ use the return envelope provided as this also speeds up processing.
- ❖ ensure that all entries on the form are complete and legible.
- ❖ make sure that all computations are accurate and carried forward correctly.
- ❖ complete the pence boxes in the P35 Declaration Form and ensure that the totals field (part B on the Declaration Form) is completed.

- ❖ ensure that the Declaration Form is signed.
- ❖ record the correct RSI number for each employee on the P35L.
- ❖ make a nil return for employers who have no employees during the tax year.

The above sets out the general position. If you require further advice or assistance please ring the P35 Helpline at 6774211 (01 area) or (067) 33533 (all other areas).

**Finally remember that employee details can be submitted on Computer Tape or Diskette.**

## ***Tax Briefing - Issue 20***

### **Correction**

Article 1.3 of **Tax Briefing** Issue 20, No.4, 1995 on Off-Shore Funds contains an error.

In paragraph (iv) of the Article the sentence 'Broadly, gains arising on the disposal of material interests in off-shore funds after 5 April 1995-----'

### **should read**

'Broadly, gains arising on the disposal of material interests in **certain** off-shore funds after **5 April 1990**-----'

## ***Collector General's Decentralisation***

As part of the Government's decentralisation programme, the Big Cases Section of the Collector-General's Office, formerly located in St. Martin's House, Waterloo Road, Dublin 2, has with effect from 1 March 1996 commenced relocating to:

**Office of the Collector-General,  
Customer Services - Big Cases Section,  
Sarsfield House,  
Francis Street,  
Limerick.**

Telephone No. (061) 310310  
(Dublin callers may contact this Office at (01) 6774211)

Fax No. (061) 401009

Please note that **all returns and payments should continue to be submitted to the address printed on the return form.**

## ***Change of addresses for Tax Districts***

**Dublin PAYE No.4 District** has moved from Hawkins House, Hawkins Street, Dublin 2 to :

**14/15 Upr. O'Connell Street,  
Dublin 1.**

with effect from Monday 12 February 1996.

Telephone number (01) 874 6821

Fax number (01) 878 6389

This District deals with employees of: Airlines, Banks, Bookmakers, Brewers, Dept. of Defence, Distillers, Farmers, Hairdressers, Hotels, Motor Trade, National Teachers, Newspapers, Printing.

**Dublin Audit No.3 District** has moved from Clanwilliam Court, Mount Street Lower, to:

**Hawkins House,  
Hawkins Street,  
Dublin 2.**

with effect from Monday 12 February 1996.

Telephone number (01) 677 5004

Fax number (01) 677 5003

This District deals with Audit and Vat queries of Professionals & Related Companies.

### **Castlebar District**

To avoid the possibility of correspondence going, in error, to other offices in the building, all correspondence for Castlebar District should be addressed to :-

**Inspector of Taxes,  
Michael Davitt House,  
Castlebar,  
Co. Mayo.**

## ***Tax Briefing available on diskette***

Practitioners should note that **Tax Briefing** can now be supplied on 3½ "diskettes, to practitioners using Microsoft Word, Version 6.0. Requests should be made to :

**Tax Briefing Mailing List,  
Office of the Chief Inspector of Taxes,  
Customer Services Unit,**

4th Floor,  
Setanta Centre,  
Nassau Street,  
Dublin 2.

## ***Revenue Forms & Leaflets - Centralised form ordering service***

Practitioners should note that all Revenue forms and leaflets can now be ordered by telephone from

**Revenue Forms & Leaflets Service**  
at (01) 878 0100  
(This service is available 24 hours a day)

### **Capital Taxes**

Practitioners should also note that Capital Tax forms relating to Capital Acquisitions Tax, Stamp Duty and Residential Property Tax can also be ordered directly (preferably by Fax) from :

**Taxpayer Advisory Service,  
Capital Taxes Division,  
Dublin Castle,  
Dublin 2.**

Telephone No. (01) 679 2777  
Extns. 4591/4593/4597  
Fax No. (01) 679 3261



## ***New Procedures in the Stamp Duty Public Office, Dublin Castle***

Following a review of cash handling arrangements in the Stamp Duty Public Office, Dublin Castle, new procedures have been introduced with effect from 5 February 1996. From that date, all cash payments for Stamp Duty or Companies Capital Duty must be made directly to :

**Cash Office,  
Capital Taxes Division,  
Stamping Building,  
Dublin Castle,  
Dublin 2.**

An explanatory leaflet is available from :

**Stamp Duty Office,  
Dublin Castle,  
Dublin 2.**

For further information contact Brendan Costigan at (01) 679 2777 Ext: 4574 or Donal Savage at Ext: 4567.

## ***Agents' File Change of name or address***

Name and address information relating to practitioners has now been extracted from our computer records and used to compile a comprehensive Agents' File. As a result, any changes of agent's name or address will need only be notified once to a central area and individual notifications for each client to various districts and offices will no longer be necessary. Changes of agents name/address should be notified to:

**Taxes Central Registration Office,  
Arus Brugha,  
9/10 Upper O'Connell St,  
Dublin 1.**

Telephone No. (01) 874 6821  
Fax No. (01) 874 6078

## ***VAT - Electronic transmission of VAT repayments***

The Revenue Commissioners will shortly introduce a scheme whereby repayments of VAT will be made by **electronic**

**transmission** to bank or building society accounts nominated by traders. An advice slip giving brief details of the repayment will be issued to traders at the same time as the electronic payment is being made.

All traders registered for VAT have recently received an information leaflet outlining the scheme and requesting details of the nominated account to which their repayments will be sent.

Electronic transmission is the quickest and safest way to receive your VAT refund and practitioners are asked to ensure that their clients have notified the Collector General's Office of the relevant details.

Any further information in relation to the scheme can be obtained from:

**VAT Repayments Section,  
Office of the Collector General,  
Sarsfield House,  
Francis Street,  
Limerick.**

Tel. No. (061) 310310  
Fax No. (061) 401013.

## ***Revenue - on the Web***

People at home and abroad now have an opportunity to obtain relevant and timely tax and customs information at the click of a mouse.

Information on business incentive schemes - the 10% Corporation Tax rate, the International Financial Services Centre and Section 35 Film Relief is now available on the Revenue Commissioners Web site on the Internet. This site can be found at **<http://www.revenue.ie/>**

For those interested in getting more information on these incentive schemes the E-mail address is **[incentive@revenue.iol.ie](mailto:incentive@revenue.iol.ie)**.

Other information available includes the Taxpayers Charter of Rights, Personal Tax information, information on Double Taxation agreements, and recent changes announced in the Budget.

## ***Tax Calendar 1996/97***

A tax calendar, covering the period 1 April 1996 to 30 April 1997, is enclosed with this issue. This is a quick reference guide to remind you of key tax dates in the coming tax year.

## ***New Business Profile Form (Form BP1)***

A new simplified tax return form is being introduced on a trial basis for the 1995/96 tax year to cater for small unincorporated businesses which do not engage agents to prepare their tax returns. The form, **Business Profile (Form BP1)**, is similar to the **Farm Profile (Form AG12)** currently used by certain farmers.

It incorporates a simplified form of accounts.

## Double Taxation Treaties entered into by Ireland

COUNTRY	DATE OF SIGNING	DATE OF RATIFICATION	DATE OF ENTRY INTO EFFECT			
			Income Tax	Corporation Tax	Capital Gains Tax	S.I. No.
AUSTRALIA	31 May 1983	21 December 1983	6 April 1984	1 January 1984	6 April 1984	406 of 1983
AUSTRIA	24 May 1966	5 January 1968	" " 1964			250 of 1967
AUSTRIAN PROTOCOL	19 June 1987	9 December 1988	" " 1976	1 January 1974	6 April 1974	29 of 1988
BELGIUM	24 June 1970	31 December 1973	" " 1973			66 of 1973
CANADA	23 November 1966	6 December 1967	" " 1958			212 of 1967
CYPRUS	24 September 1968	4 December 1970	" " 1952			79 of 1970
CZECH REPUBLIC	14 November 1995	IR - December 1995				321 of 1995
DENMARK	26 March 1993	8 October 1993	" " 1994	1 January 1994	6 April 1994	286 of 1993
FINLAND	27 March 1992	26 November 1993	" " 1990	1 January 1990	6 April 1990	289 of 1993
FRANCE	21 March 1968	15 June 1971	" " 1966			162 of 1970
GERMANY	17 October 1962	2 April 1964	" " 1959			212 of 1962
HUNGARY	25 April 1995	IR - December 1995				301 of 1995
ITALY	11 June 1971	14 February 1975	" " 1967			64 of 1973
ISRAEL	20 November 1995	December 1995	" " 1996	1 January 1996	6 April 1996	323 of 1995
JAPAN	18 January 1974	4 November 1974	" " 1974			259 of 1974
KOREA (REP. OF)	18 July 1990	27 November 1991	" " 1992	1 January 1992	6 April 1992	290 of 1991
LUXEMBOURG	14 January 1972	25 February 1975	" " 1968			65 of 1973
NETHERLANDS	11 February 1969	12 May 1970	" " 1965			22 of 1970
NEW ZEALAND	19 September 1986	26 September 1988	" " 1989	1 January 1989	6 April 1989	30 of 1988
NORWAY	21 October 1969	21 August 1970	" " 1967			80 of 1970
PAKISTAN	13 April 1973	20 December 1974	" " 1968			260 of 1974
POLAND	13 November 1995	December 1995	" " 1996	1 January 1996	6 April 1996	322 of 1995
PORTUGAL	1 June 1993	11 July 1994	" " 1995	1 January 1995	6 April 1995	102 of 1994
RUSSIA	29 April 1994	7 July 1995	" " 1996	1 January 1996	6 April 1996	428 of 1994
SPAIN	10 February 1994	21 November 1994	" " 1995	1 January 1995	6 April 1995	308 of 1994
SWEDEN	8 October 1986	5 April 1988	" " 1988	1 January 1989	6 April 1988	348 of 1987
SWEDISH PROTOCOL	1 July 1993	21 December 1993	20 January 1994	20 January 1994	20 January 1994	398 of 1993
SWITZERLAND	8 November 1966	16 February 1968	6 April 1965			240 of 1967
SWISS PROTOCOL	24 October 1980	25 April 1984	" " 1976	1 January 1974	6 April 1974	76 of 1984
UNITED KINGDOM	2 June 1976	23 December 1976	" " 1976	1 January 1974	6 April 1976	319 of 1976
UK PROTOCOL	7 November 1994	21 September 1995	6 April 1994	1 April 1994		209 of 1995
UNITED STATES	13 September 1949	20 December 1951	" " 1951			Sch. B, ITA '67
ZAMBIA	29 March 1971	31 July 1973	" " 1967			130 of 1973
SOUTH AFRICA	1 May 1958	26 August 1960				210 of 1959
SPAIN	25 February 1975	25 March 1977		Sea or Air Transport Agreements		26 of 1977
U.S.S.R.	17 December 1986	23 December 1987		Air Transport Agreement		349 of 1987