

TAX BRIEFING

Office of the Chief Inspector of Taxes

Issue 25 - February 1997



Finance Leasing update

Introduction

Issue 24 of *Tax Briefing* clarified the tax treatment applicable to finance leases of assets used for the purposes of a trade or profession. A less detailed article on the subject was carried in Issue 20, dated December 1995.

We have received representations regarded some aspects of the article in Issue 24 and now provide further clarification. When considering the correct tax treatment applicable to finance leases the following article should be read in conjunction with the article in Issue 24.

Lease Termination - Income Tax/Corporation Tax returns already submitted

In Issue 24 we stated:

"Where lease terminations have been dealt with incorrectly in a return of income for the years 1994/95 and subsequent years, the taxpayer will be treated as having corrected the error without unreasonable delay provided the error is corrected before the end of February 1997. (Section 48(1)(b)(ii) Finance Act 1986 refers.)"

In general, Revenue will not reopen 1993/94 and prior years because of an alteration arising from this statement unless the amounts involved are material."

Trade-ins / Acquisitions before 6 April 1996

It has been represented to us that many traders entered into transactions involving the trade-in of an asset against a replacement leased asset on the understanding that a deduction could be taken immediately for the trade-in value of the asset. Where the old asset had been leased, this deduction would have been netted off against the rebate of rentals. Where capital allowances had been granted in respect of the old asset, the deduction would have been used to cover any balancing charge arising. In such circumstances, the trader did not receive the rebate of rentals/proceeds of sale into his/her hands and to apply the correct treatment at this stage could have a serious effect on the trader's cash flow position. Some traders made up-front cash payments, which may have derived from the private sale of an asset on which a balancing charge arose and which were dealt with similarly.

The correct tax treatment of trade-ins/up-front payments was set out in the article on leased assets in Issue 20 of *Tax Briefing*, December 1995. Accordingly, advisors were on express notice from the date of the correct tax treatment applicable to trade-ins.

(continued on page 2)

In this Issue

Finance Leasing

Further clarification

Compliance

Revenue Compliance activities explained

Rental Income

Allowability of Accountancy Fees & Property Rental Companies

VAT

Reliefs for Diplomats

Capital Gains

Company buy-back of Shares

TALC

Recent Developments

Corporation Tax

Surcharges

Stamp Duty

Budget '97 changes

and more - see inside

However, to avoid hardship to taxpayers who entered into leases on the basis that a deduction for the up-front payment could be taken immediately, **Revenue will not seek to make an adjustment in relation to trade-ins/any up-front payments dealt with in the manner outlined above and made prior to 6 April 1996.** All transactions after that date must be dealt with in accordance with the articles in *Tax Briefing*.

Similar considerations apply in relation to assets on lease which were acquired by lessees prior to 6 April 1996. The rebate of rentals may have been netted off against the cost of acquiring the asset and not taxed in the period in which it arose. Revenue will not seek to make an adjustment where the taxpayer has not claimed capital allowances for an asset. Revenue

will allow taxpayers to defer paying tax on the rebate of rentals in such cases and will confine the charge to the amount on eventual sale/trade-in of the asset. The charge to tax on the rebate in these circumstances will be made for the period in which the asset is eventually sold/traded-in.

Where practitioners corrected returns as a result of the article in *Tax Briefing*, Issue 24 (including returns for 1995/96 not submitted at December 1996), they will be allowed to revised the return again in line with this article.

Review of Returns

To avoid an unproductive review by practitioners of returns as a result of the article in Issue 24, the following approach may be adopted:

❖ Where the alterations arising from the article on leasing are effectively taken into account in returns already submitted for subsequent years or accounting periods, Revenue will not seek to make adjustments to the tax treatment of finance leases.

❖ Where the alterations arising from the article on leasing are not effectively taken into account in returns already submitted for subsequent years or accounting periods, adjustments may be confined to material amounts which have not been taken into account in returns already submitted.

Audits

Where an audit for any year/ accounting period was ongoing at

(continued on page 3)

TAX BRIEFING

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Contents

	Page 1,2 & 3
Finance Leasing	
Compliance	4
Capital Acquisitions Tax	6
Stamp Duty	
<i>Residential Property - Consideration exceeding £150,000</i>	6
<i>Young Trained Farmers</i>	7
VAT - Reliefs for Diplomats	7
International Issues	8
Capital Gains Tax	
<i>Company Buy-Back of Shares - Trade Benefit Test</i>	9
<i>Valuation of Unquoted Shares</i>	10
Residence of Individuals	10
Rental Income	11
Corporation Tax	
<i>Surcharges</i>	12&13
<i>Road Marking Companies</i>	12
Collector-General	14
Employer Information	15
Surcharges	16
Urban Renewal Relief	16
General Notes	17
TALC	18
Revenue News	20

December 1996, the taxpayer should draw the Revenue Auditor's attention to any incorrect treatment of finance leases. Adjustments will be made in accordance with the treatment outlined in the above paragraphs.

Subject to adjustments which may be necessary in accordance with the treatment outlined above, audits for any year/accounting period which were settled at December 1996 will not be re-opened as a result of the article on leasing or this article.

General

The date specified for correction of returns (i.e. 28 February 1997) has been extended further to 30 April 1997. References in this article and the article in Issue 24 of *Tax Briefing* to:

- ❖ **1993/94 and prior years,**
include CT accounting periods ending prior to 6 April 1994 and
- ❖ **1994/95 and subsequent years,**
include CT accounting periods ending on or after 6 April 1994.

Timing of allowance

Under this heading Issue 24 stated, *inter alia*,

*"Ordinary recurring payments under a finance lease should be written off on a straight line basis over the period during which it is expected that the asset will be leased.
Initial lease rentals under the lease or up-front payments made by the lessee represent a payment in advance of lease rentals and are allowed over the period during which it is expected that the asset will be leased."*

All leasing charges, including up-front payments should be written off on a straight line basis over the period during which it is expected the asset will be leased.

A judgment will have to be made as to the expected period over which the asset will be leased. Where it is reasonably certain at the inception of the lease that the lessee will exercise the option to lease the asset beyond the primary period, the payments should be written off over the period during which it is expected that the asset will be leased. Otherwise, the payments may be written off over the primary period of the lease. In general, the taxpayer's judgment in this regard will not be questioned. However, where payments are written off over a primary lease period which is shorter than the usual primary lease period for assets of the type in question, taxpayers may be required to satisfy Revenue Auditors that the treatment adopted is reasonable in the circumstances.

Treatment of trade-ins/ up-front payments

The sentence in Issue 24 "*The lessee is allowed to write off the (Up-front) payment over the period of expected use of the asset by the lessee*" should read "The lessee is allowed to write off the payment over the period during which it is expected that the asset will be leased".

This is as stated in the paragraph entitled "Timing of allowance" quoted earlier.

Motor Vehicles

Section 27 Finance Act 1973

This section provides for a restriction on leasing charges allowable in respect of private motor vehicles, the retail price of which (at the time of manufacture) exceed the relevant capital limit (currently £15,000). A rebate of rentals represents a return of leasing charges already allowed for tax purposes to the lessee.

Where a rebate of rentals arises in respect of leasing charges which have been restricted under Section 27 Finance Act 1973, Revenue will seek to assess only the proportion of the rebate which has been allowed for tax purposes to the lessee.

Section 29 Finance Act 1973

Under this section, where a person who has leased a motor vehicle to which Section 27 Finance Act 1973 applies subsequently becomes the owner of the vehicle, the tax treatment as a leased asset is to be revised. Revision takes place at the time the asset is acquired with retrospective effect to the date the leasing began. The transaction is effectively treated as a hire purchase transaction. Leasing charges paid plus the amount paid to acquire the asset are aggregated. The person is treated as having acquired the vehicle at the retail price of the vehicle when it was manufactured and the balance of expenditure is treated as hiring charges which are spread over the period of hiring.

Where this treatment under Section 29 Finance Act 1973 applies, the treatment of lease termination as set out in the article in Issue 24 will not apply. However, in the case of finance leases, taxpayers may opt to treat the lease termination in accordance with the article in *Tax Briefing*, in which case the Section 29 adjustment need not be made.

Revenue Compliance Activities

Introduction

The success of a self assessment system depends on a high level of voluntary compliance by Revenue customers, as regards the timely payment of tax, the making of returns on time, and the accuracy of those returns. Our compliance programme targets those who fail to meet their payment or return filing obligations. This article provides an overview of Revenue's compliance activities with particular reference to taxpayers with tax arrears.

General

Revenue's compliance activities have evolved over the years. Collection compliance has traditionally been dependant on Sheriff and Solicitor enforcement of estimates and assessments, augmented more recently by legislative initiatives such as attachment and tax clearance. Since self assessment, returns compliance has been based on periodic campaigns for Income Tax and Corporation Tax. Now however, new Revenue management initiatives, aided by significant investment in technology, are coming to fruition. Compliance programmes for the future will involve more Revenue staff than ever before, will address customers rather than taxheads, and will be more effectively focused than heretofore.

The Compliance Issue

The compliance programmes will address late payment of tax, non-payment of tax, and non-filing of returns for all taxes. It will also address cases with historic arrears including cases which are currently compliant, or who are no longer in business.

Our Team

The staff for our compliance programmes will consist of several teams in the Collector-General's office, the local Inspector's offices and Local Collection (Local Collection is a field force drawn mostly from Customs and Excise offices, with some Collector-General staff in Dublin.) The allocation of cases to different teams will be determined by the

size of the case, the most effective approach to working the case, and the availability of resources.

All compliance teams will be fully trained for the task in hand, and will be empowered to make all relevant decisions in the case, including the agreement of payment terms, and selection, where necessary, of the most suitable enforcement option for the case.

The Technology

Revenue's **CONTAX** computer development is providing the main tool being deployed in support of the compliance initiatives.

CRS is our new Common Registration System. This system, which was introduced early in 1996, facilitates the working of the cases for all taxes simultaneously by providing cross references to all of a customer's registrations for the different taxes for which he/she is liable. The work of inputting and verifying cross references is being completed.

AIM (Active Intervention Management)

AIM is a flexible case-management system which assists in the identification of non-compliant cases, assigns them in priority order to the relevant case-workers, and automatically returns the case to the caseworker for every critical event in the case, e.g. failure to keep a promise to pay, the breakdown of an instalment arrangement, or renewed non-compliance in the case. AIM records a complete history of all compliance activity for the customer. Accordingly, from now on, whenever a case is being caseworked the caseworker will have immediately available a

full history of previous contacts and activities in the case, even where such contact was with another compliance team or Revenue agency. This detailed case history profile will greatly assist in detecting patterns of non-compliance and in preventing delinquent customers from employing delaying tactics to escape their obligations.

The Approach

Broadly speaking, what is coming into being is a regime whereby the ultimate non-compliance of not paying tax on time is being confronted at the earliest possible time. Whether the programme is driven by targeting non-filers or non payers the impact on the customer is the collection of both the tax return and the underlying tax.

Most programmes will address all non-compliance in the case for all taxheads for which the customer is liable. While the approach will vary from time to time, and will to some extent depend on the nature of the non-compliance, generally the customer can expect to be contacted directly by the Revenue official, either by telephone, or by personal visit. The objective of the contact will be to get the payment position up to date by establishing the liability through the furnishing of outstanding returns, and the collection of all outstanding tax.

Where the customer is unable to pay all monies owed, the caseworker has authority to conclude an instalment arrangement. Generally, when an instalment arrangement is allowed

COMPLIANCE

- ❖ A substantial downpayment will be expected
- ❖ The amount of the arrangement will take account of the customers personal circumstances
- ❖ The question of accrued and future interest must be addressed, and
- ❖ The customer must agree to pay current VAT and PAYE/PRSI by Direct Debit.

The objective will be to conclude an instalment arrangement covering the shortest possible timescale taking account of the circumstances of the case and in particular the customers ability to meet the terms of any arrangement. Caseworkers will have particular regard to the failure of instalment arrangements (including the failure to pay current taxes during the lifetime of an arrangement) when addressing further non-compliance, and in deciding if the compliance pattern is such that enforcement proceedings are more appropriate in the case.

Caseworkers will have full authority to recommend and instigate appropriate enforcement where necessary, e.g. referral to sheriff or solicitor, issue of attachment orders, etc. In addition Revenue will not hesitate to petition for bankruptcy or the winding up of a company where the circumstances of a case warrant it.

While the general approach to non-compliance caseworking will be cross-taxhead, we will continue to have specifically targeted campaigns as well. For example, the main P35 compliance campaign will be handled in Nenagh while the Inspectors' Offices will in certain circumstances continue to carry out the Form 11 and CT1 programmes as single taxhead programmes although they will have the added dimension of getting payment of the underlying tax, or the more accurate quantification of preliminary tax.

Other points to note

The issue of estimates for PAYE/PRSI and VAT will continue, but the estimates will be

more soundly based on our knowledge of the case. Moreover, where the repeated issue of estimates is clearly ineffective, the estimation process in the case will be suspended and the case will be visited by an Inspector for quantification of the liability and collection of the outstanding liabilities.

We will not be able to casework every case initially. Those which are not caseworked will continue to be processed through to enforcement. Our intention is to extend our caseworking approach as rapidly as possible to cover the entire range of Revenue customers.

Role of the Tax Practitioner

The role of the Tax Practitioner is important to the success of our Compliance Programmes.

As a Tax Practitioner you should:

- ❖ Advise a client to address compliance problems as soon as they arise, they will not go away
- ❖ Advise Revenue immediately when a client commences or ceases trading. This avoids unnecessary estimation, demands etc. In particular when a client dies we should be notified promptly.
- ❖ Advise us if you are no longer acting in a case. On the other hand please advise us when you are appointed in a case so that we can communicate directly with you.
- ❖ Advise your clients about the new Compliance Programme. Compliance caseworkers will be contacting them by telephone or visiting them to discuss their compliance difficulties. When we decide to visit a customer in connection with non-compliance some advance notice of an intention to visit may be given, but generally, due to the nature of compliance visits, most will be made without fixed appointment.
- ❖ Make your clients fully aware of the sanctions pertaining to late/non compliance or to put it another way - the advantage of complying should be stressed
- ❖ Remember that every effort will be made by the caseworker to

arrive at a satisfactory method of payment of the arrears. Your assistance/guidance to your client on instalments, direct debit etc. is vital

- ❖ Ensure that if any of your clients are experiencing difficulty in meeting the terms of an instalment arrangement that we are contacted at once. We recognise that some customers who enter instalment arrangements may subsequently experience difficulties in meeting their obligations. However, we are also determined that unexplained breaches of agreements will be taken into account in making future decisions on enforcement and insolvency.
- ❖ Remember that when cases are referred to an enforcement agency they will increasingly have been case managed beforehand. Enforcement will be pursued.
- ❖ Once the sheriff/solicitor becomes involved in a case, your client must pay costs regardless of the outcome.

The Benefits of Compliance Management

There are benefits for both practitioner and client in this new approach.

- ❖ Each case will be consolidated across taxheads which will minimise contacts with the tax office and reduce compliance costs for your client
- ❖ Each case will be managed to finality by the case worker dealing with you
- ❖ There will be uniformity in the approach taken by all the Revenue areas dealing with compliance, particularly in areas such as interest, instalment arrangements etc.

Customers are being given an opportunity to bring the tax affairs up to date and if they make a reasonable effort they will find that the new collection regime will be as accommodating as possible to meet their particular circumstances.

Capital Acquisitions Tax

Indexation Factors

A new Statement of Practice (SP-CAT1/97) dealing the index factors to be used in calculating CAT and Probate Tax liabilities up to and including 1997 is now available.

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

1990	1.04	}To be
1991	1.076	}applied to
1992	1.109	}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	}applied to
1996	1.217	}the class
1997	1.237	}threshold

The indexed class thresholds since 1995 are:

Class	Relationship	Indexed Class Threshold		
		1995	1996	1997
A	for example son/daughter/	£178,200	£182,550	£185,550
B	for example parent/niece/newpew/ brother/sister/ grandchild	£23,760	£24,340	£24,740
C	for example strangers/cousins	£11,880	£12,170	£12,370

Exception:

A parent qualifies for the Class A threshold where he/she takes an immediate absolute inheritance on the death of a child.

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
1997	1.082	10,820

A copy of the new Statement of Practice is available from the *Capital Taxes Division's Taxpayer Advisory Service*, Fax No. (01) 679 0049 or from the *Revenue Forms & Leaflets Service* at (01) 8780100.

Business / Agricultural Property Relief

In his Budget speech of 22 January 1997, the Minister for Finance announced increases in the reliefs as follows:

Business Property Relief

- ❖ Increased from a flat rate of 75% to a flat rate of 90% in the case of gifts and inheritances (to which the relief applies) of business property taken on or after 23 January 1997.

Agricultural Property Relief

- ❖ Increased to a flat rate of 90% in respect of gifts and inheritances (to which the relief applies) of agricultural property taken on or after 23 January 1997.

Stamp Duty - Conveyances and Leases of Residential Property where the Consideration exceeds £150,000

On 22 January 1997, (Budget Day) Dail Eireann passed a Financial Resolution increasing the stamp duty payable on certain conveyances and leases of residential property executed after that date where the consideration exceeds £150,000. [There are no changes to the rates of stamp duty applicable to non-residential property or to residential property where the consideration does not exceed £150,000]. The new rates of stamp duty are as follows:

Aggregate Consideration	Rate of Duty
£150,001 to £160,000	7%
£160,001 to £170,000	8%
Greater than £170,000	9%

Where the property is mixed (e.g. living quarters over a shop, a farm sold together with a farmhouse) the higher rates will only apply to the residential portion and then only if the aggregate consideration attributable to the residential portion

New houses/apartments with a Department of Environment floor area certificate (e.g. a floor area less than 125 square metres) continue to be exempt from duty. The higher rates will only apply to larger new houses (which qualify for partial relief from duty) where the site value or 25% of the total consideration from the site and building exceeds £150,000.

Guidance notes on the provisions contained in the Financial Resolution are available on request from the Revenue Commissioners:

Stamp Office Dublin

Tel.: (01) 679 2777 Ext. 3551, or
Fax: (01) 679 4115.

Stamp Office Cork

Tel.: (021) 968783
Exts. 3105 / 3109 / 3141, or
Fax: (021) 318088.

Revenue Forms & Leaflets Service

Tel.: (01) 878 0100.

Young Trained Farmer Relief

In his Budget speech on 22 January 1997, the Minister for Finance announced that the Young Trained Farmer Relief is being extended for a further 3 years. It will apply to instruments executed on or after 1 January 1997, and on or before 31 December 1999. There is no change in the basis on which the relief will be granted.

Instruments will be stamped and the relief granted on the basis that the relevant legislation will be included in the Finance Act 1997. In the event that the relevant legislation is not enacted or there is any change in the conditions governing the relief it may be necessary to return instruments to the Capital Taxes Office for review.

VAT

VAT Reliefs for Diplomats

Introduction

The Minister for Finance has signed "The Value Added Tax (Refund of Tax) (No. 29) Order, 1996". The Order was signed into law on 12 November 1996 and has effect from 1 December 1996. The order deals with relief from VAT for certain goods and services purchased by accredited diplomatic personnel serving in Ireland.

The order provides a statutory basis for repayment of VAT by Revenue to diplomats on the goods listed below where the amount of VAT involved is £100 or more. Claims should be submitted to the Office of the Accountant General on form "Dip 1.", as before. The new order also provides for remission of VAT by traders where a single item costs at least £250 (including VAT).

New Procedures

Remission of VAT as provided for in the new order will be dealt with by way of prior authorisation.

A form "Dip 1A" must first be approved by the Head of the Diplomatic Mission and submitted to the Department of Foreign Affairs. The Department will then authorise the form and forward it to be stamped by the Accountant General and returned to the Diplomatic Mission.

The diplomatic will then produce the authorisation on form "Dip 1A" to the trader who will then be able to "Zero-rate" the supply. The trader will retain the original in his VAT records to vouch the validity of the "zero-rated" supply. The authorisation will be valid for a period of **three months** from the date of issue by the Accountant General. A separate authorisation and form "Dip 1A" is required for each purchase.

Qualifying Goods and Services

Another new feature introduced by the order is that supplies of gas, electricity and telecommunications services to the Ambassador's/Head of Mission's residence and the official embassy premises can also be effectively "zero-rated" on the basis of a single once-off authorisation for each premises.

Other goods and services which qualify for remission or repayment are:

- ❖ Purchase or lease of the official premises of the embassy or diplomatic mission and the principal residence of each member of the diplomatic staff
- ❖ Household goods for use in the above premises

- ❖ Business goods necessary for the performance of duties
- ❖ VRT-free motor vehicles
- ❖ Bicycles
- ❖ Excisable products
- ❖ Certain hire, maintenance, transport and storage services.

Copies of the Order (S.I. No. 334/96) are available from:

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

Tel.: (01) 661 3111
Fax: (01) 475 2760

Price per copy £2.00

Further Information

Any queries regarding the new scheme should be addressed to your local tax office or to:

*Office of the Accountant General,
Government Offices,
Kilrush Road,
Ennis,
Co. Clare.*

Tel.: (065) 41200
Dublin Callers: (01) 677 4211
Fax: (065) 40394

Current position on Ireland's Double Taxation Agreements

Introduction

Ireland has comprehensive Double Taxation Agreements with twenty nine countries. As a result of a considerable number of queries from practitioners we are publishing below summary details of the Withholding Tax Rates that apply with each country.

Negotiations

The Irish treaty network continues to be expanded and updated. Negotiations for a treaty with South Africa have been concluded and it is expected to be signed, ratified and in force next year. Negotiations for the conclusion of new treaties are also taking place with Mexico, Greece, India, Malaysia and the Baltic States. Treaties currently in the process of renegotiation include: the United States, Belgium and Italy.

Agreements

Copies of existing Double Taxation Agreements may be purchased from:

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

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

Ireland: Double Taxation Agreements - Withholding Tax Rates

COUNTRY	YEAR	WITHHOLDING TAX RATES		
		Dividends	Interest	Royalties
Australia	1984	15	10	10
Austria	1964	0(a) / 10	0	0 / 10(p)
Belgium	1973	0(a) / 15	15	0
Canada	1958	0(b) / 15	15	0(q)
Cyprus	1952	0	0	0 / 5(r)
Czech Rep.	1997	5(c) / 15	0	10
Denmark	1994	0(a)(c) / 15	0	0
Finland	1990	0(d) / 15(e)	0	0
France	1966	0(a), 10(f) / 15	0	0(s)
Germany	1959	0(a) / 15(g)	0	0
Hungary	1997	5(h) / 15	0	0
Italy	1967	0(a) / 15	10	0
Israel	1996	10	10	10
Japan	1974	10(c) / 15	10	10
Korea (Rep.)	1992	10(d) / 15	0	0
Luxembourg	1968	0(a) / 5(c) / 15	0	0
Netherlands	1965	0(a)(c) / 15	0	0
New Zealand	1989	15	10	10
Norway	1967	0(c) / 10	0	0
Pakistan	1968	0(i) / 0-52(j)	no limit	0
Poland	1996	0(c) / 15	0(m) / 10	10
Portugal	1995	10(a) / 15	0(n) / 15	10
Russia	1996	10	0	0
Spain	1995	0(a)(c) / 15	0	5(t) / 8(u) / 10
Sweden	1988	0(a) / 5(d) / 15	0	0
Switzerland	1965	10(c)(k) / 15	0	0
United Kingdom	1976	0(a)(d) / 15(c)	0	0
United States	1951	5(1) / 15	0(o)	0
Zambia	1967	0	0	0

Notes

- (a) Per EC Parents/Subsidiaries Directive.
- (b) Inter-corp. rate - 100% holding (see also other conditions in treaty).
- (c) Inter-corp. rate - 25% holding.
- (d) Inter-corp. rate - 10% holding.
- (e) Of the aggregate of the dividend and the repayable credit.
- (f) Inter-corp. rate - 50% holding.
- (g) Subject to variation - see treaty.
- (h) 10% holding.
- (i) Inter-corp. rate.
- (j) For an Irish individual recipient (not engaged in trade or business in Pakistan) - the withholding tax rate is up to 52%, calculated at the highest tax rate which would apply to him if he were a Pakistani resident liable to tax on world income.
- (k) This rate will fall to 5% if Ireland concedes payment of a tax credit to Swiss direct investors.

- (l) Inter-corp. rate - 95% holding - provided not more than 25% of the gross income of the payer company is derived from interest and dividends (other than from its own subsidiaries).
- (m) Certain credit sales and bank interest.
- (n) Certain Government loans.
- (o) Not if the recipient is a company that owns more than 50% of the voting power in the payer company - domestic rate (30%) applies.
- (p) If the recipient holds more than 50% of the payer company.
- (q) Literary, dramatic, musical or artistic copyrights (other than for films or tv) - otherwise domestic rate applies.
- (r) For films (not tv).
- (s) Excluding films - domestic rate applies.
- (t) Literary, dramatic, musical or artistic copyrights.
- (u) Films, tapes and lease payments.

Company Buy-Back of Shares - "Trade Benefit Test"

Introduction

Where a company acquires its own shares any amount paid in excess of the original issue price is treated as a distribution by virtue of Section 84 Corporation Tax Act 1976.

However, Sections 59 to 72 Finance Act 1991, permit capital gains tax treatment where a company buys its own or its holding company's shares providing certain conditions are met. One of these conditions is that the purchase is made "*wholly or mainly for the purpose of benefiting a trade carried on by the company or by any of its 51 per cent subsidiaries*" - Section 61(1)(a)(i)(I) Finance Act 1991 refers. This article sets out how this **trade benefit** test is applied by Revenue and also how an advance opinion may be obtained in a particular case is required.

References in this article to purchase/buy-back of shares includes redemption, repayment or purchase of its own shares by a company, as appropriate.

The legislation deals with the buy-back of shares by unquoted companies or unquoted holding companies of trading groups.

Trade Benefit Test

This test requires that it be shown that the sole or main purpose of the buy-back is to benefit a trade carried on by the company or of one of its 51% subsidiaries. The test would not be met where, for example, the sole or main purpose of the buy-back is to benefit the shareholder or to benefit a business purpose of the company other than a trade e.g. an investment activity.

Revenue will normally regard a buy-back as benefiting the trade where the example:

- ❖ There is a disagreement between the shareholders over the management of the company and that disagreement is having or is expected to have an adverse effect on the company's

trade and where the effect of the transaction is to remove the dissenting shareholder

- ❖ The purpose is to ensure that an unwilling shareholder who wishes to end his/her association with the company does not sell the shares to someone who might not be acceptable to the other shareholders.

Examples of this would include:

- An outside shareholder who has provided equity finance and wishes to withdraw that finance
- A controlling shareholder who is retiring as a director and wishes to make way for new management
- Personal representatives of a deceased shareholder where they wish to realise the value of the shares
- A legatee of a deceased shareholder, where she/he does not wish to hold shares in the company.

The above examples envisage the shareholder selling his/her entire shareholding in the company and making a complete break from the company. If the company is not buying **all** the shares owned by the vendor or if the vendor is selling all the shares but retaining some connection with the company (e.g. directorship) it would seem unlikely that the transaction would benefit the company's trade.

However, there may be situations where:

- ❖ For sentimental reasons a retiring director of a company wishes to retain a small shareholding in the company

- ❖ A controlling shareholder in a family company is selling his/her shares to allow control to pass to his/her children but remains on as a director for a specified period purely because his/her immediate departure from the company at that time would otherwise have a negative impact on the company's business.

In such circumstances it may still be possible for the company to show that the main purpose is to benefit its trade.

Advance Opinion

Where a company is unsure whether a proposed buy-back is for the benefit of the trade and where all the other legislative requirements have been met Revenue will, if requested, give an advance opinion on the question of whether the proposed buy-back satisfies the "trade benefit test". Requests should be sent to:

*Office of the Revenue Commissioners,
Direct Taxes International & Interpretation
Division,
Capital Gains Tax Section,
Stamping Building,
Dublin Castle, Dublin 2.*

Applications for an advance opinion should:

- ❖ Confirm that all the other requirements of the legislation have been met
- ❖ List the current shareholders in the purchasing company together with particulars of their shareholdings and their relationship with each other, if applicable. If it is a group situation a statement or diagram of the group structure would be helpful.
- ❖ State the reason for the share buy-back and the trading benefit expected to accrue to the company (or its 51% subsidiary)

(continued overleaf)

- ❖ State the name(s) of the person(s) disposing of the shares, the number and type of shares involved in the buy-back and the date(s) the shares were acquired
- ❖ State the amount to be paid for the shares, how this is to be financed and how the latter will impact on the financial position of the company
- ❖ Forward a copy of the most recent accounts of the company.

Capital Gains Tax

Valuation of Unquoted Shares

In all cases involving a disposal of unquoted shares, where the disposal or acquisition was other than by way of a bargain at arms length, a valuation of the shares is required. In future these valuations must be accompanied by a newly introduced **Form SVCGT**. The form SVCGT must be completed by the taxpayer or his/her agent. Practitioners should note that:

- ❖ A separate SVCGT must be completed in respect of each valuation relating to a particular disposal.
- ❖ A copy of the accounts for the 12 month period ending prior to the valuation date must be submitted with each valuation.

Supplies of these forms can be obtained from local tax offices or from the *Revenue Forms & Leaflets Service* at (01) 878 0100.

Residence of Individuals

Section 152 Finance Act 1994 [as amended by Section 169 FA 1995]

Background

Under the provisions of Section 152 Finance Act 1994 [as amended by Section 169 Finance Act 1995], individuals who are no longer resident but who remain ordinarily resident are taxable as if they were resident in the State. However, the provisions of Section 152 Finance Act 1994 do not apply to:

- ❖ Income from a trade or profession, no part of which is carried on in the State
- ❖ Income from an office or employment, all the duties of which are performed outside the State
- ❖ Other income of an individual which in any year does not exceed £3,000.

Queries have arisen as to whether the £3,000 referred to above means "other income" or "other **foreign** income".

Revenue View

The Revenue view on the matter is that the other income not exceeding £3,000 referred to in Section 152 Finance Act 1994 [as amended by Section 169 Finance Act 1995] means other **foreign** income not exceeding £3,000.

Example

Mr. Murphy is not resident but is ordinarily resident in the State for 1995/96. His income for that year is as follows:

Employment income

£25,000 [all the duties of the employment were performed outside the State]

Deposit interest

£2,000 [arising to a foreign bank account]

Rent from Irish property

£5,000 [profit rent]

Mr. Murphy is chargeable to tax in the State only on the Irish source [rental] income of £5,000.

If however, the foreign deposit interest was £4,000, Mr. Murphy would be chargeable to Irish tax on the rental income of £5,000 plus the foreign deposit interest of £4,000.

Note 1

Section 52 Income Tax Act 1967 is not affected by Section 152 Finance Act 1994 and the charge to tax of the Irish source of income remains unchanged.

Note 2

Paragraph 4.A.(ii)(a) of leaflet RES 1 [Sept. 1995] should be noted accordingly.

RENTAL INCOME

Introduction

As announced by the Minister for Finance, Ruairi Quinn T.D. in the Principal Features of the 1997 Budget the following article clarifies the allowability of accountancy and other administrative costs against rental income.

Accountancy Fees

Allowable deductions under Case V are listed in Section 81(5) Income Tax Act 1967. Section 81(5)(d) authorises a deduction in respect of *"the cost of..... management of the premises borne by the person chargeable and relating to and constituting an expense of the transaction or transactions under which the rents or receipts were received"*.

Accountancy fees are arguably not part of the costs of management of the premises but relate more to management of the landlord's financial affairs than to the management of the premises. Such expenses could also be argued not to constitute an expense of the transaction under which the rents were received. However, it is recognised that the efficient running of a business of letting premises requires that a financial account be prepared.

Accordingly, Revenue is prepared to treat accountancy fees incurred for the purposes of preparing a rent account as an allowable deduction in computing Case V income for Income Tax or Corporation Tax purposes.

This treatment will apply to returns submitted after the publication of this issue of **Tax Briefing**. Returns already submitted will not be re-opened.

Property Rental Companies - Expenses of Management

Following a review of Revenue practice relating to expenses of management of property rental companies, this note sets out our views on the matter and refers specifically to the treatment of directors remuneration.

Investment Company

It is accepted that property rental companies may come within the definition of 'investment company' in Section 15(6) Corporation Tax Act

1976. While it is not possible to be definitive in relation to the characteristics a property rental company would need to be classed as an investment company, the following may be of some assistance:

- ❖ Generally speaking, a rental company which holds more than one property will be regarded as an investment company
- ❖ A rental company which holds only one property but also holds any other classes of investments in more than nominal amounts (e.g. government bonds, quoted shares) will also be regarded as an investment company
- ❖ Revenue will not seek to distinguish between the making of and the holding of investments in the case of such companies. However, it will be necessary, in relation to any property rental company, to show clearly that the nature of the operations of the company are such that it can be accepted that its main business is the making of investments and the principal part of its income is derived from those investments.

Expenses of Management

Where a property rental company is considered to be an investment company, it will be entitled to claim deductions in respect of any expenses of management which are additional to expenses deductible as costs of management (of premises) under Section 81(5)(d) Income Tax Act 1967 in computing rental income. However, in the case of companies which derive all their income from rents, no additional deductions for the costs of management of premises should be due. For example, as outlined above, accountancy fees will be allowed as a deduction under Section 81 in computing rental income.

Directors Remuneration

In relation to directors remuneration in property rental companies, Revenue take the view that the remuneration is admissible to the extent that it is reasonable having regard to the services rendered or the duties performed. In practice no objection will be raised to payments which do not exceed 10% of the gross rents. Where the directors devote a substantial part of their time to the management of a company's properties and there is not a separate

management charge, payments which do not exceed 15% of gross rents will not be questioned.

In relation to investment companies generally, there has been a long standing Revenue practice to accept as admissible an amount of directors remuneration which does not exceed 10% of the company's gross income (including franked investment income). It is not intended to disturb this approach in relation to non-rental income. Therefore, where the income of an investment company includes rental income to which the 15% limit would be applicable, this percentage limit will be applied to the rental income only and the 10% limit will be applicable to the other income of the company.

Note

It is important to note that the directors remuneration within limits mentioned will not be aggregated with other admissible expenses of management, irrespective of whether the rental company comes within the definition of 'investment company' in Section 15(6) Corporation Tax Act 1976. In other words, the percentage limits of 10% or 15%, as appropriate, are to be applied only in determining the level of directors remuneration which would be regarded as admissible. Those limits are not to be regarded as inclusive of other expenses of management and neither are they to be applied to other expenses of management.

Example

The following example illustrates the proposed treatment of directors remuneration in respect of an investment company, where the company's income includes rental income and where it is established that the directors devote a substantial part of their time to the management of the company's properties:

Gross rents	£200,000
Other income (gross)	<u>£40,000</u>
Total	£240,000

Admissible directors remuneration is calculated as follows:

Gross rents £200,000 x 15%	£ 30,000
Other income £40,000 x 10%	<u>£4,000</u>
Total	£ 34,000

A deduction of £34,000 will be regarded as admissible

**Interaction of Sections 23 FA 1981/43 FA 1994 and
Surcharges under Section 101 Corporation Tax Act 1976**

Introduction

There has been a degree of difficulty in relation to the question of the interaction of both Section 23 Finance Act 1981 and Section 43 Finance Act 1994 with the close company surcharge provisions of Section 101 Corporation Tax Act 1976. We have been asked to consider the matter again and to outline our views.

Revenue view

Revenue are now prepared to accept that in computing income of an accounting period for the purpose of Section 100(4) CTA 1976 any allowable expenditure under Section 23(2) FA 1981 and Section 43(2) FA 1994 which is carried forward from an earlier accounting period may be deducted. In other words, it is accepted that any relief under Section 23 FA

1981 or Section 43 FA 1994 which has not already been used to reduce a charge to tax on the company in question may be used to calculate the estate income and the distributable income of the company for the accounting period.

This treatment will apply to returns submitted after the publication of this issue of *Tax Briefing* and to cases under enquiry. Liabilities which have been determined on a different basis will not be disturbed.

Manufacturing Relief - “Road Marking” Companies

Introduction

It is the Revenue view that the processes involved in the operation of “road marking” companies include processes which are “construction operations” as defined in Section 17(1) Finance Act 1970. Accordingly, such operations are precluded from manufacturing relief by virtue of the provisions of Section 50(1)(b) Finance Act 1980.

Guidelines

Arising from a recent review of the method of operation involved in road marking, Revenue accepts that a substantial part of the overall processes would qualify for manufacturing relief. Arising from the review, it is accepted that 55% of overall turnover arises from “manufacturing” and the remaining 45% arises from “construction operations”.

These percentages are guidelines based on the review mentioned above. Any company claiming alternative percentages as between “manufacturing” and “construction operations” will be required to give details in support of these alternatives.

Practitioners should note that Revenue intends to adopt the above proportionate approach in relation to all companies engaged in road marking. In accordance with Self Assessment principles, it is expected that “road marking” companies will submit their corporation tax returns on this basis.

Cases under Enquiry

Where the question of manufacturing relief is currently under enquiry with companies engaged in road marking, Revenue intends to adopt the above approach in resolving the issue. Companies not under enquiry, and who have filed returns on a different basis to that outlined above, will not be re-opened.

Completion of Form CT1 - Group Companies

Where associated companies wish to elect to have the £50,000 (specified amount) apportioned between them, they should complete Panel 27 of the Form CT1.

The requirement to submit a separate election as outlined in the article in *Tax Briefing* - Issue 24 is not necessary.

Surcharge on Undistributed Income of Service Companies

Section 52 Finance Act 1996, amends Section 162 Corporation Tax Act 1976, which deals with the surcharge on undistributed income of certain close companies, including service companies and companies carrying on a profession. The amendment provides that the surcharge on the income of those companies which arises from trading or professional activities is reduced from 20% to 15%. The change took effect as and from 1 April 1996. The surcharge on any undistributed investment and rental income of such companies remains at 20%.

The examples below show how to calculate the Section 162 surcharge following the 1996 amendment:

Example 1

Company A:

Accounting period (a.p.) ending on 31 May 1998:

	£
Professional services income	120,000
Deposit interest:	20,000
Property rental income:	10,000
Distributions made within 18 months of a.p.	3,000

Step 1: Calculate the distributable income:

Professional services income	120,000
Deposit interest:	20,000
Property rental income:	<u>10,000</u>
Total Income:	150,000
less Corporation Tax: 50,000 @ 30%	15,000
100,000 @ 38%	<u>38,800</u>
	53,800

Distributable Income: 96,200

Step 2: Calculate ½ of the distributable income:

Distributable income 96,200 x ½ **48,100**

Step 3: Calculate ½ of the distributable investment income:

Deposit interest:	20,000
less Corporation Tax: 20,000 @ 38%	<u>7,600</u>
	12,400
less 5%	<u>620</u>
	11,780
x ½	5,890

Step 4: Calculate ½ of the distributable estate income:

Property rental income:	10,000
less Corporation Tax: 10,000 x 38%	<u>3,800</u>
	6,200
Less 7½ %	465
	5,735
x ½	2,867

Step 5: Add together:

The distributable income (Step 2)	48,100
The net distributable investment income (Step 3), and	5,890
The net distributable estate income (Step 4),	<u>2,867</u>
Total:	56,857

Step 6: From the Step 5 result, deduct the distributions, to arrive at the amount liable to surcharge:

Total at Step 5:	56,857
Less distributions:	<u>3,000</u>
Liable to Surcharge	53,857

Step 7: Deduct the distributions made from the net distributable investment income and the net distributable estate income to arrive at the amount liable to surcharge @ 20%:

Net distributable investment income	5,890
Net distributable estate income	<u>2,867</u>
	8,757
Less distributions made	<u>3,000</u>
Liable to surcharge @ 20%	5,757

Step 8: Calculate the surcharge:

Liable at 20% (Step 7): 5,757 @ 20%	1,151.40
Liable @ 15%:	
(53,857 - 5,757) = 48,100 @ 15%	<u>7,215.00</u>
Total Surcharge:	8,366.40

Example 2

Company B:

Accounting period (a.p.) ending on 31 May 1998:

	£
Professional services income	120,000
Distributions made within 18 months of a.p.	30,000

Step 1: Calculate the distributable income:

Income:	120,000
less	
Corporation Tax: 50,000 @ 30%	15,000
70,000 @ 38%	<u>26,600</u>
	41,600

Distributable Income: 78,400

Step 2: Calculate ½ of the distributable income:

Distributable income 78,400 x ½ **39,200**

Step 3: Deduct the distributions from the Step 2 result:

½ Distributable income:	39,200
less	
Distributions made:	<u>30,000</u>
	9,200

Step 4: Apply the surcharge to the Step 3 result:

Surcharge: 9,200 @ 15%: 1,380

Direct Repayment of VAT to Traders' Bank Account

As part of their commitment to the on-going development of customer services the Revenue Commissioners have introduced a system whereby VAT repayments due to registered traders are now being paid electronically to the Bank or Building Society Account as nominated by the customer. A confirmation slip is issued to the customer to confirm the transaction. The benefits to the customer, include

- ❖ More secure method of receiving repayment
- ❖ Customer is unaffected by any vagaries in the postal system

The new system results in greater efficiency in the processing of VAT repayment claims.

Details required from Trader

To enable claims to be repaid in this way, a trader is required to provide details (account number and sort code) of the Bank or Building Society Account to which the repayment can be credited. Because of the restrictions which

currently apply in the bank clearing system, the account in question has to be operated in the Republic of Ireland with any one of the following institutions:

- ◆ A.I.B. p.l.c.
- ◆ Bank of Ireland p.l.c.
- ◆ Ulster Bank
- ◆ T.S.B.
- ◆ National Irish Bank
- ◆ Irish Permanent p.l.c.
- ◆ First National Building Society or,
- ◆ Irish Nationwide Building Society.

A special account may be opened for the specific purpose of having the VAT repayment claim credited to a unique account if the customer so desires. Details provided now may of course be altered at any later stage. Revised details should be notified to the Collector-General's Office.

The existing method of cheque repayment will continue for a further limited period. With effect from **1 September 1997** the traditional method of payment by cheque will cease and all repayments from that date will be made electronically to the account nominated by the customer.

VAT registered traders are urged, therefore, to provide the necessary details to the Collector-General's Office as soon as possible to avoid any unnecessary delays in the issue of repayments.

Further information/ assistance

For further information or assistance on this scheme

Tel: (061) 310310 or

Fax: (061) 401013

Dublin callers: (01) 677 4211

and ask for the

Direct VAT Repayment Helpdesk.

Preliminary Tax - Direct Debit

General

Practitioners are requested to remind their clients of the main attractions of opting to pay their Preliminary Tax by direct debit.

These are:

- ❖ It spreads the burden of payment over a longer period thus facilitating those for whom a single annual payment may cause problems
- ❖ Customers who pay by direct debit can avail of more flexible rules as regards the amount of preliminary tax to be paid.

Payment date

For Preliminary Tax due in respect of the 1997/98 year of assessment (due on 1 November 1997), authorisation for the payment of Preliminary Tax by direct debit must reach the Collector-General's Office by **1 March 1997**. Upward revision of the monthly payment amount may be made up to 1 May 1997.

Further information

Further information and mandate forms in relation to this scheme, can be obtained from:

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

Tel: (061) 310310

Dublin callers: (01) 677 4211

and ask for the

Direct Debit helpline.

P35 End-Of-Year Return

Introduction

P35 stationery for 1996/97 is now issuing to all registered employers. Practitioners are reminded that the deadline for submission of fully completed returns is 30 April 1997. Returns should be sent to:

*Employers (P35) Unit,
Government Offices,
Nenagh,
Co. Tipperary.*

New stationery

In a further effort to improve the quality of service to employers and tax practitioners P35 stationery has been redesigned and simplified again this year. The major change this year has been to the P35 Listing used by employers with manual systems. This has been redesigned and simplified thus making it easier to complete. As the most up to date technology is now being used to capture and process the data on the new stationery, practitioners can greatly assist Revenue in achieving accurate and timely processing by following some simple ground rules when completing the forms:-

- ❖ The Declaration Form must only be used for the employer to whom it is issued. This is necessary because each form is pre-coded with details unique to a specific employer.
- ❖ The original forms must be returned (not photocopies). In the interests of accuracy the computer technology used by Revenue to process returns is designed to operate with original.
- ❖ Use the return envelope provided as this also speeds up processing
- ❖ Ensure that all entries on the form are complete and legible

- ❖ Check that all computations are accurate and carried forward correctly
- ❖ Complete the pence boxes where necessary and ensure that all total fields are completed
- ❖ Ensure that the Declaration Form is signed
- ❖ Record the correct RSI number for each employee on the P35 Listing
- ❖ A nil return must be made for employers who have no employees during tax year.

Further Information

If you require further advice or assistance please ring the P35 Helpline at
677 4211 (01 area) *or*
(067) 33533 (all other areas).

Computer Disks

Finally, remember that all computer payroll employee details can be submitted on computer diskette. **If the return can be made on diskette please do so.** The employer can then avail of the facility to receive employees' tax-free allowance details on diskette thus minimising costs for both themselves and Revenue.

For further details on the diskette scheme please contact John Grace at (067) 33533.

Tax Calculation Tables

It has been decided to dispense with the bulk issue of Tax Calculation Tables to employers. This follows on surveys which established that the tables were not widely used. They will now be available on request from local tax offices and the *Revenue Forms & Leaflets Service* at (01) 878 0100.

In a further effort to reduce employers compliance costs and the number of impacts Government Departments have with employers, the Department of Social Welfare and Revenue will jointly issue notices to employers setting out the various tax and PRSI rates which will apply to wages and salaries for 1997/98. These joint notices will issue in early March.

Practitioners should advise their clients of this new approach.

Tax Deduction Cards (TDCs)

It would seem from a recent telephone survey of employers that some employers are receiving Tax Deduction Cards (TDCs) from us even though they are using computerised or other own systems. Over 90% of large employers contacted did not need or use the TDCs that were being sent to them.

This is obviously a very unsatisfactory situation and is adding to the administrative costs of both employers and Revenue.

Practitioners should notify the employer's tax office or the P35 Unit in Nenagh where a client switches from TDCs to a computerised or alternative manual system. This will ensure that TDCs are not issued unnecessarily.

In an effort to tackle the problem all employers who are designated as TDC users on Revenue computer records will be issued with a leaflet with this years bulk issue of TDCs. This leaflet will encourage employers to let Revenue know if the TDCs are no longer required.

It is hoped that this exercise will bear results by reducing employers' compliance costs of handling bulky TDC material and will also reduce Revenue's own postage and handling costs.

Surcharge for late submission of Returns

Practitioners are reminded that the deadline for submission of the 1995/96 Returns was 31 January 1997. If a tax return was not submitted by the return filing date liability to tax will be increased by:

- ❖ 5% of the tax subject to a maximum of £10,000 if the return is made within two months of the filing date or

- ❖ 10% of the tax subject to a maximum of £50,000 if the return is made more than two months after the return filing date.

Where a business set up and commenced during the 1995/96 year of assessment, the surcharge will not be imposed if the return for that year is made by the return filing date for the following tax year i.e. 31 January 1998. This will apply only to those cases who were not involved in a business in a previous tax year.

PAYE tax paid and Surcharge on late Returns by Directors

Practitioners will be aware that the 1992 Finance Act brought company directors and, where joint assessment applies, spouses of company directors within the Self Assessment provisions.

The obligation to make a Return of Income under the Self Assessment system was enacted for directors to complement the return filing requirements for companies and to ensure the effectiveness of company audits.

Revenue accept that the returns of certain non-proprietary directors are not critical to the audit process. A "proprietary director" is a director of a company who is the beneficial owner of, or is able either directly or indirectly to control, more than 15% of the ordinary share capital of the company. A non-proprietary director is a director other than a proprietary director. In Statement of Practice SP - IT/1/93 the Revenue Commissioners accepted that in the case of directors -

- ❖ Who are non-proprietary directors
- and
- ❖ Who would not be "chargeable persons" for Self Assessment purposes apart from being directors
- and
- ❖ All of whose income including fees, benefits, distributions, etc.

is subject to tax directly or indirectly under PAYE,

a Return of Income need not be filed automatically each year.

While the return filing requirement for directors is in place for some time, the provisions of Section 245 Finance Act 1992 are still not fully recognised by some practitioners. Practitioners are reminded that, to render the surcharge an effective deterrent to late filing by directors, the surcharge is based on the income tax liability of a director before any credit for PAYE tax paid by the director.

If your client is a director who is obliged to automatically submit a return by reference to the Self Assessment legislation contained in Finance Act 1988, as amended, and the practice set out in SP-IT/1/93, significant PAYE tax payments will not obviate the surcharge. Timely filing of directors' returns is essential if a surcharge based on income tax liability before credit for PAYE tax paid is to be avoided.

Copies of Statement of Practice SP-IT/1/93 are available from local tax offices and the *Revenue Forms & Leaflets Service* at (01) 878 0100.

Urban Renewal Relief

Double Rent Allowance - Off Site Document Storage

A number of queries have been received from companies which provide services involving document storage, management and retrieval of documents and other archive services as to whether payments made by their clients will qualify for double rent allowance.

Section 42 Finance Act 1994

For a double deduction to be due under Section 42 Finance Act 1994 a person must pay rent under a qualifying lease in respect of a qualifying premises and must be, apart from Section 42, entitled to a deduction for the rent paid in respect of the qualifying premises which is occupied by such person for the purposes of his/her trade or profession. The lease must also be granted on bona fide commercial terms by a lessor to a lessee who is not connected with the lessor. The terms lease, lessee, lessor and rent have the meanings assigned to them in Chapter VI, Part IV, Income Tax Act 1967 (Case V).

Payments made for off site storage

Whether or not the interest which the user of the storage, management, retrieval or archive service acquires is a leasehold interest in a premises will depend on the facts of the case and the agreement between the parties. If such a leasehold interest exists payments of rent made by the user, in respect of a qualifying premises which is occupied by that person for the purposes of his/her trade, will qualify for the double rent deduction provided they are on bona fide commercial terms between unconnected persons. It is the Revenue view that other payments in respect of ancillary services involved do not constitute rent for the purposes of Section 42 Finance Act 1994.

Claims for the Double Rent Deduction

Practitioners and their clients should satisfy themselves that they comply with the provisions of the legislation before a claim is made. Additionally the expression of doubt provision contained in Section 14(4) Finance Act 1988 should be used in a case where a doubt arises. Any incorrect claims which have been made should be brought to the attention of the Inspector involved.

GENERAL

Book value of Brood Mares

General

For accounting purposes, the base value at which a brood mare should be carried in the books of a bloodstock breeder is the lower of cost or net realisable value, as with any other stocks. The *cost* of a mare is largely a matter of record, and can be determined with reasonable accuracy.

There are a number of factors which need to be taken into account when estimating the *net realisable value* of a mare, including the mare's own physical appearance, bloodlines and racing history, age, fertility, history in the sales ring or on the racing track of any progeny, etc. While the above criteria must be taken into account in estimating the net realisable value of the mare, the valuation is nonetheless largely a matter of judgement on the part of the person who values the mare.

If a taxpayer makes a decision to revalue an expensive brood mare, by reducing the value of the mare in the accounts to net realisable value, Revenue has no objection in principle to this treatment. Such a decision must be justified by the facts of a case. **There is no entitlement to write off or depreciate a brood mare over a period.**

The taxpayer may be asked to support the valuation adopted, in the course of a Revenue audit.

Procedure for Resolving Disputes

It is accepted that estimating the valuation of a thoroughbred brood mare can be a difficult matter. Accordingly, it has been agreed with representatives of the

bloodstock industry, where it becomes an issue between a taxpayer and an Inspector of Taxes in the course of a Revenue audit, that **the taxpayer can request** the Inspector to refer the matter to the Technical Services Unit of the Office of the Chief Inspector of Taxes for consideration.

This will not affect the taxpayer's right to an independent review as laid down in the Charter of Rights, or any statutory right of appeal to the Appeal Commissioners.

Note

The procedure mentioned above applies only to **thoroughbred brood mares**, and not to half breed mares, showjumpers, etc. In the case of a non-thoroughbred mare, the right to an independent review as laid down in the Charter of Rights remains.

Medical Insurance Relief - Introduction	BUPA
<p>BUPA Ireland commenced trading on the Irish market on 1 January 1997.</p> <p>It is an authorised insurer within the meaning of Section 145 Income Tax Act 1967. Qualification for relief in respect of premiums paid is set out in that section.</p> <p>Tax treatment</p> <p><i>Briefly, the position is:</i> Where a taxpayer makes payments to an authorised insurer under a contract of insurance which provides specifically for the reimbursement or discharge, in whole or in part, of actual medical, surgical or nursing expenses the taxpayer is entitled to income tax relief at the standard rate on the amount of premiums paid.</p>	<p>Where the premiums paid to the authorised insurer entitle the taxpayer to benefits other than such reimbursement, the amount of relief to be given is to be restricted to that portion of the premiums which provides cover for the reimbursement or discharge, of actual medical, surgical or nursing expenses.</p> <p>Payment of benefits other than such reimbursement is generally made under what are commonly known as "cash plans". Premiums or the part of the premium, paid in respect of such cash plans do not qualify for relief.</p> <p>Relief due for qualifying premiums paid between 1 January 1997 and 5 April 1997 will be allowed in the 1997/98 tax year.</p>

Interest Cap Fees/Payments

Enquiries have been received regarding the taxation of interest cap fees.

Interest caps set an upper limit to the interest payable on variable rate loans. Caps may be effected as part of a loan agreement or by a separate agreement with either the lending bank or another bank. The bank with which the interest cap agreement is made agrees, in return for a fee (i.e. the interest cap fee/payment) which may be paid up front, to compensate the borrower if interest rates rise above a certain level.

Revenue is prepared to treat a payment for an interest cap as part of the interest expense relating to a loan. Where the interest on the loan to which the cap applies is allowable either in computing the profits or a trade or profession or in calculating profit rent under Case V, the payment for the interest cap will also be allowed.

Tax Administration Liaison Committee (TALC)

Introduction

The Tax Administration Liaison Committee (TALC) continued its liaison role between Revenue and tax practitioners in 1996. TALC was chaired in 1996 by Ms. Pam Kearney of the CCAB-I - the committee will be chaired by Liam Hennessy, Revenue, in 1997.

In order to achieve more efficient delivery of its work-programme, TALC re-organised its operating procedures in 1996. The pre-existing TALC Sub-Committees continued their ongoing role of reviewing broad areas of the tax system such as indirect taxation and audit. They were joined by a new form of TALC committee, the Ad-Hoc Group - this has a narrower remit to examine specific issues in tax administration within a limited timeframe. Like the Sub-Committee, the Ad-Hocs have both Revenue and practitioner representation. It is considered that the experiment of using satellite bodies to achieve TALC's agenda worked well in 1996 and it has accordingly been decided to continue the experiment in 1997. Following are brief notes setting out developments in the TALC Sub-Committees and Ad-Hoc Groups in 1996.

Developments in 1996 Talc Sub-Committees and Ad-Hoc Groups

Indirect Taxes Sub-Committee

Action taken:

- ❖ The Sub-Committee is being used as a forum for dissemination of information on EU VAT developments. The Sub-Committee is briefed by the Revenue delegate to the EU VAT committee and details of guidelines agreed by that committee are given at each meeting.

- ❖ The Sub-Committee is also being used to disseminate information on the twice yearly OECD meetings. The OECD is currently examining present practice in the member countries as regards financial services.

- ❖ Two working groups have been established to examine VAT on property and on the purchase/sale of shares. Each group is chaired by a member of the Sub-Committee but technical expertise from outside the Sub-Committee is brought in when necessary. The property working group is close to overall agreement on a solution to the specific problem of "technical self-supplies". The group intends to examine a number of other technical issues in the property area - the meaning of development, pre-development expenditure, development undertaken by a tenant and transfer of a business.

- ❖ A paper was discussed in relation to the consolidation of VAT law. The Sub-Committee agreed that such a project would be worthwhile and plans will now be drawn up to progress the issue.

- ❖ The EU proposals for a common VAT system were discussed at the most recent meeting of the Sub-Committee and, in view of the importance of these proposals, it is likely that their technical/administrative aspects will become a subject of regular discussion in future.

- ❖ The Sub-Committee also discussed numerous specific technical issues which required clarification during the year, e.g. cross-border groupings, leasing services provided to local authorities in other member states and telecommunications.

Audit Sub-Committee

Action Taken:

- ❖ The practitioners were consulted on issues covered in the Code of Practice for Revenue Auditors before its issue in 1996.
- ❖ Revenue agreed that the Business Profiles will be revised in a standard format more suitable for possible publication. The question of publication will be considered in 1997.
- ❖ Discussions are continuing between Revenue and the Department of Social Welfare regarding matters of mutual interest
- ❖ Responsibility for new Internal Review Procedure for Revenue Audits has been allocated to the Director of Customer Services. The Sub-Committee agreed to monitor the use of the review procedure on an ongoing basis.
- ❖ After consultation with practitioners, the *Taxpayers Guide to Revenue Audits* was welcomed by practitioners and the business community generally.
- ❖ The practitioners were kept advised regarding topics covered in ongoing Revenue discussions with business groups.
- ❖ Revenue agreed to issue a discussion document in early 1997 in relation to all issues associated with voluntary disclosure
- ❖ A new audit unit dealing with the audit of company directors and wealth-controlling individuals was established.
- ❖ The question of a standardised car allowance for partners was discussed and remains on the agenda for future meetings. Revenue have agreed to examine the UK practice in this area.

This content is for 5 years old.
Where still relevant, it has been incorporated into the Tax Authority Manual.
Where not relevant, it is marked as website text.

GENERAL

- ❖ An article setting out Revenue's approach to the auditing of computer systems will be published in a future issue of *Tax Briefing* in 1997.
- ❖ The practitioners were briefed on procedures in the large case audit programme
- ❖ Difficulties giving rise to the use of pro-forma invoices were discussed. This will be discussed with the TALC VAT Sub-Committee.

Technical Sub-Committee

Action Taken:

- ❖ A number of working groups were established to discuss termination payments, company buy back of shares and signature of returns
- ❖ A paper has been prepared on termination payments which outlines the issues requiring more detailed consideration. This paper was presented for consideration to plenary TALC which agreed that the working group could examine the issues raised in greater detail.
- ❖ A document dealing with the trade benefit test in relation to companies buying back their own shares has been prepared. (*Editors note - see page 9*)
- ❖ Discussions on the examination of the law relating to the signing of returns are continuing. Revenue are to present a paper on this issue shortly.

Dissemination of Revenue Information

Action Taken:

- ❖ The *Notes for Guidance* on the Finance Act 1996 were published in October and were well received
- ❖ There is a commitment to publish Consolidated Notes on the Consolidated Tax Bill before the end of 1997

- ❖ The Internet technologies both for internal Revenue use and external customer service are identified as issues to be explored in the *Revenue Corporate Plan: Statement of Strategy 1997-1999*. Possible usages could extend to an interactive and up-to-date Revenue Web-site containing e.g. all Revenue public information. Interactivity could ultimately involve, *inter alia*, electronic filing of returns and declarations.

- ❖ The publication of an up-to-date manual of tax memos is being explored in the context of Freedom of Information legislation and the proposed publication of the Consolidated Tax Bill.

- ❖ It is hoped to issue five *Tax Briefings*, in 1997 and this will be supported by Revenue Fax dealing with topical items which occur between issues. Revenue Fax is sent to all practitioner bodies for onward transmission to practitioners as appropriate.

- ❖ The possibility of publishing Appeal Commissioners' decisions in appropriate circumstances and with suitable arrangements for confidentiality is to be examined with the Appeal Commissioners.

- ❖ The *Revenue Strategy Statement* promises the production of a discussion document on the appropriateness and structure of a pre-transaction ruling system within the lifetime of the corporate plan.

Administrative Compliance for Small and Medium Size Enterprises (SMEs)

Action Taken:

- ❖ VAT registered persons may now reclaim VAT on an "invoice paid" basis. The December 1996 issue of *Tax Briefing* contained a note to this effect.

- ❖ Under Relevant Contacts Tax Regulations, building companies are obliged to submit various end of year details in manual form. This involves significant resources for companies where the information is held on computer. Revenue have now agreed that such information may be submitted on computer disk. The commencement date and format for the receipt of the information will be published in due course.

- ❖ The Collector General is currently reviewing the possibility of automatically issuing Tax Clearance Certificates to certain taxpayers

Capital Taxes (including CGT)

Action Taken:

- ❖ Revised forms and proposed new administrative arrangements for handling stamp duty cases were circulated by Revenue to the practitioner members for comment. The new streamlined procedures are designed to give certainty to practitioners regarding the supporting documentation required in share transfer cases and regarding the treatment which individual cases can expect when submitted to Capital Taxes Division.
- ❖ Following discussion with the Department of Social Welfare, a much improved response time for the supply of RSI numbers has been provided since September 1996 which has been reflected in significantly better turnaround times for the certification of Inland Revenue Affidavits

- ❖ The possibility of a joint CG50/RPT clearance certificate application form is not being pursued following the Government announcement on abolition on RPT

The membership of the various Committees and Groups was published in Issue 22 of *Tax Briefing*.

Correction

The article on Phoenix Cases in *Tax Briefing* - Issue 24 referred to the publication of restricted directors in the annual report of the Companies Office. This should have read the *1995 Companies Report*.

Issue of Form 12 1996/97 and Med 1

To assist taxpayers in making claims for health expenses incurred, a Form 12 for 1996/97 and Form Med 1 will issue to taxpayers who have made a recent health expenses claim.

Third Party Returns - Form 46G

Form 46G has, in recent years, issued directly to taxpayers. We have received representations from tax practitioners that the forms should be issued directly to them.

The development of and use of an *Agents' File* for the 1996/97 bulk issue of Returns will allow the Form 46G for 1996/97 (where it is relevant) to be issued with the 1996/97 Form 11. This will allow practitioners to identify those clients who have been issued with Form 46G and to retain copies of the information submitted for future reference.

International Financial Services Centre Queries to Revenue Offices

With immediate effect, all correspondence and telephone queries relating to the above should be referred to:

*Inspector of Taxes,
Dublin Audit District No. 5,
1st Floor,
Lansdowne House,
Dublin 4.
Tel.:*

(01) 668 9400

This change is being introduced to streamline procedures and give a better service to practitioners and taxpayers. Direct Taxes Administration Division, Incentives Branch, Dublin Castle will be consulted where the issue raised requires a response which goes beyond a purely technical one. Any clarifications required in relation to the operation of this notice can be obtained by telephoning: (01) 679 2777 Ext. 4016, 4017 & 4018 (Direct Taxes: Incentives Branch).

Revenue Key Points Card for 1997/98

A Key Points Card outlining the main allowances, reliefs etc. for 1997/98 is enclosed with this issue.

Balance of Tax due for 1995/96

Where Preliminary Tax requirements have been met the due date for the payment of any balance of tax due for 1995/96 is **30 April 1997**. Practitioners are requested to remind their clients of this date and that the remittance slip is attached to the notice of assessment.

Preliminary Tax for 1997/98

Practitioners are reminded that authorisations for the payment of Preliminary Tax by direct debit must reach the Collector-General's Office by 1 March 1997. Upward revision of the monthly payment amount may be made up to 1 May 1997.

Tax Briefing - Issue 24 Crossword Solutions

ACROSS:

1 Personal, **4** Returns, **6** Excise, **7** Capital, **9** Urban Renewal, **11** Roll Over, **14** Stamp Duty, **15** PAYE, **16** Interest, **18** Gilts, **20** Evades, **22** Waive, **23** Flat Rate, **24** IFSC, **26** Accounts, **27** Medical, **30** Remit, **31** Allowance, **32** Golden Handshake, **33** Avoid.

DOWN:

1 Penalty, **2** Surcharge, **3** Expenses, **4** Relief, **5** Self Assessment, **8** Building Society, **10** DIRT, **12** Appeal, **13** VAT, **17** Central Bank, **19** Zero Rating, **21** Tax, **23** Farmer, **24** Initial, **25** Doctor, **28** CAT, **29** Seed