

Tax Briefing

Office of the Chief Inspector of Taxes



Issue 26 - April 1997

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VAT Repayments

A More Efficient Service

Introduction

In keeping with the commitment of the Revenue Commissioners to improve and expand customer service initiatives, we have recently introduced a system whereby all VAT repayments due to registered customers can be paid electronically to a nominated Bank or Building Society Account. We are confident that the new electronic system has significant benefits for customers including:

- More secure method of receiving repayment
- System unaffected by any vagaries in the postal system
- Greater efficiency in the processing of repayment claims
- Confirmation to customer that the account has been credited with the repayment.

The overall result is a faster, more efficient and secure method of receiving VAT repayments.

Encouraged by the success of the scheme to date, we now intend to extend the use of the scheme significantly in the coming months and eventually to replace the existing cheque based VAT repayments system entirely. Pending this change, all future repayments by cheque will be accompanied by a form requesting bank account details.

Customers are urged to complete the details as requested and return the form to the *Office of the Collector-General, Sarsfield House, Francis St., Limerick.*

Alternatively, customers can provide the relevant bank account details on the VAT3 return form when making their next claim to a VAT repayment.

It is important that customers provide the information as soon as possible as failure to do so may result in delays being experienced in receiving VAT repayments when the existing cheque issue system is eventually discontinued.

Account Details

It is important when completing the form that the account number and sort code are written clearly and accurately. The sort code is a code which identifies the branch at which the customer's account is held within the financial institution. This code can be obtained from the customer's branch. The account number must not exceed eight digits in total.

Location of Bank or Building Society Account

The account must be in a bank or building society within the Republic of Ireland. The account can be operated in any of the following financial institutions: Allied Irish Bank, Bank of Ireland, Ulster Bank, Trustee Savings Bank, National Irish Bank, Irish Permanent Building Society, First National Building Society, Irish Nationwide Building Society.

Use of a separate account for VAT repayments

The Revenue Commissioners are aware that some customers may not find it convenient to have repayments credited directly to their existing bank account. In such circumstances the customer may prefer to open a separate account at any bank of their choosing for the purpose of receiving VAT repayments.

Change of account

The details notified now may of course be altered by the customer if, at a later date, it is desired to direct VAT repayments to a different account. The VAT3 return form can be used to notify change of details when a future VAT repayment is being claimed.

Confirmation of account details supplied

All account details, including amended details, as supplied by the customer will be confirmed in writing.

Confirmation of payment

When VAT repayments are made under the new scheme, customers will receive notification in the post confirming that the repayment has been sent to the nominated account.

Further information

If customers require any further information/assistance on this issue, they should contact:

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

Telephone as follows:

for VAT Nos. ending in 1,2,3 & 4 (061) 316282

for VAT Nos. ending in 5 & 6 (061) 316246

for VAT Nos. ending in 7,8,9 & 0 (061) 316251

Fax: (061) 401013

REVENUE COMPLIANCE ACTIVITIES - A CLOSER LOOK AT RETURNS COMPLIANCE

Tax Briefing - Issue 25 outlined details of Revenue Compliance Activities with a brief mention of the Returns Compliance Programme.

Returns Compliance underpins the success of a self assessment system and the non-filers must get special attention as part of our obligation to compliant taxpayers. This article sets out in further detail Revenue activities under the Returns Compliance Programmes for 1997 for both Income Tax and Corporation Tax.

There are two aspects to Returns Compliance:

- Timely compliance
- Ultimate compliance

Timely Compliance

The numbers of returns received on time since the introduction of self assessment has been increasing very significantly each year and can be seen from the following

Tables:

Table 1 - INCOME TAX

Year	No. Returns received on time
1990/91	152,320
1991/92	165,487
1992/93	189,257
1993/94	188,209
1994/95	191,507

[Note : The particularly high filing rate for 1992/93 is due to the return filing conditions of the 1993 Tax Amnesty and the extension of the filing date by a month.]

Table 2: CORPORATION TAX

Year	No. Returns received on time
A/P 31/12/90	34,590
A/P 31/12/91	36,844
A/P 31/12/92	38,860
A/P 31/12/93	42,552
A/P 31/12/94	45,250
A/P 31/12/95	47,191

While the numbers received are increasing it should be noted that the numbers of new cases coming on record each year are also increasing at a rapid rate. A significant effort is therefore required by both Practitioners and Revenue to ensure that the filing rates are at least maintained if not improved in future.

Ultimate Compliance

This is where Revenue Compliance activities will be focused for the rest of the year.

Stage 1

- In January, we commenced a letter campaign for companies for outstanding returns for accounting periods to 31/12/95
- On 12 March each Practitioner was advised of the proposed changes to the Income Tax campaign for 1997

- On 26 March we wrote direct to all customers for their outstanding returns for 1995/96
- On 16 April reminder letters issued to those customers who still had not filed their returns.

While the direct issue of these letters has been applauded by many Practitioners, there have been a number of complaints received and reservations expressed. The responsibility for the submission of a return of income rests with the taxpayer. From previous contacts with Practitioners and from the experience under this programme in previous years, the delay in submitting returns rested with the taxpayers and not the Practitioner. If we had followed the procedure which applied in previous years, it would have resulted in a delay of up to two months in starting the 1995/96 campaign. Hence this year it was decided to write directly to our customers to make them aware of their obligations and the consequences of non-filing.

Stage 2

Following the issue of reminder letters in mid-April details of the remaining non-filers are advised to the individual Tax Districts in May for pursuit by telephone and visit. At this stage Districts will, on request, be able to provide Practitioners with a list of their outstanding cases.

Every effort is being made in 1997 to contact all non-filers for 1995/96 with a view to receiving the return or removing the case from our records where appropriate. Where you have information regarding clients commencing, ceasing, changing address etc. please inform the tax office immediately to avoid unnecessary contacts and to improve the integrity of the Tax Register.

The underlying tax, including surcharge, should be remitted with the return and will be sought by officers when visiting.

- It is proposed that the first group of cases to be targeted in 1997 will be those who are persistent non filers i.e. who have not filed returns for 1995/96 and one or more earlier years
- A constant flow of cases will be referred to the Revenue Solicitor for prosecution under Section 94 Finance Act 1983
- The books and records of certain non-filing cases will be examined in detail (this examination will be somewhat similar to an audit) to determine the level for estimated assessments etc.
- Unpaid tax will be sent to the relevant enforcement agencies for pursuit.

Conclusion

The success of any Compliance Programme is measured by reference to the improvement in the filing rate and the successful pursuit of those who continue to ignore the system but it must also take account of the increased awareness of taxpayers of their obligation to file their returns on time in future. This should be reflected in improved timely filing rates in 1998 and subsequent years which is the ultimate goal.

EMPLOYMENT GRANTS AND RECRUITMENT SUBSIDIES

General

The tax treatment of grants which are received by traders, depends on the nature of the grant involved. Where a grant is of a capital nature it is not taken into account in arriving at trading profits but reduces the amount of expenditure which qualifies for capital allowances. Allowable costs for Capital Gains Tax purposes are also reduced by the amount of capital grants.

Grants of a revenue nature **should be included** when calculating trading profits.

Where a payment is received which increases a trader's income or reduces the trader's revenue expenditure it is normally of a revenue nature and accordingly is liable to Income Tax or Corporation Tax, as appropriate.

Employment Grants and Recruitment Subsidies

These payments are of a revenue nature and accordingly are liable to Income or Corporation Tax unless specifically exempted by tax legislation. A summary of the sections in the Finance Acts which provide exemption and full details of the payments exempted by each section is given hereunder.

Summary of Sections

Section 25 Finance Act 1976

Payments made under The Employment Incentive & Employment Maintenance Schemes of the Minister for Labour

Section 18 Finance Act 1981

Payments out of Employers' Temporary Subvention Fund

Section 18 Finance Act 1982

Payments under the Employers' Employment Contribution Scheme and employment grants under Section 2 of the Industrial Development (No 2) Act 1981.

Section 37 Finance Act 1993

Údúráis na Gaeltachta and small enterprise grants

Section 38 Finance Act 1993

Market Development Fund and Employment Subsidy Scheme

Section 43 Finance Act 1995

Certain employment grants to industrial undertakings

Section 40 Finance Act 1996

Various employment grants and recruitment subsidies

Note: The effect of each exemption is to exempt the payments in the hands of the **employers** who receive them. It does not affect the relationship between an employer and an employee. Any payment of emoluments made by an employer to an employee is chargeable to tax under Schedule E in the hands of the employee and PAYE/PRSI should be operated accordingly.

Exempted Payments

Section 25 Finance Act 1976

Under this section any payment made to an employer, whether before or after the passing of this Act, in respect of a person employed by him, is disregarded for all the purposes of the Tax Acts if made under

- The Employment Incentive Scheme of the Minister for Labour
- or
- The Employment Maintenance Scheme of the Minister for Labour.

Section 18 Finance Act 1981

Under this section any payment made to an employer, whether before or after the passing of this Act, in respect of a person employed by him, is disregarded for all the purposes of the Tax Acts if made out of the fund known as the **Employer's Temporary Subvention Fund**.

Temporary Subvention Fund.

This fund was established on 28 August 1980 and is administered by a committee representative of the Irish Congress of Trade Unions, the Federated Union of Employers and the Confederation of Irish Industry.

Section 18 Finance Act 1982

Under this section any payment or grant made, whether before or after the passing of this Act, is disregarded for all the purposes of the Tax Acts, being:

- A payment to an employer under the Employers' Employment Contribution Scheme in respect of a person employed by him
- or
- An employment grant under Section 2 of the Industrial Development (No 2) Act, 1981.

Section 37 Finance Act 1993

This section provides that any grant made, **on or after 1 April 1993**, under Section 10(5)(a) of the Údúráis na Gaeltachta Act 1979, or Section 21(5)(a) (as amended by the Industrial Development (Amendment) Act 1991) of the Industrial Development Act 1986, being an employment grant:

- In the case of Section 10(5)(a), under the scheme known as “Deontais Fhostaíochta ó Údarás na Gaeltachta do Thionscnaimh Sheirbhíse Idir-Náisiúnta” or the scheme known as “Deontais Fhostaíochta ó Údarás na Gaeltachta do Thionscail Bheaga Dhéantúsaíochta”
- or
- In the case of Section 21(5)(a), under the scheme known as “Scheme Governing the Making of Employment Grants to Small Industrial Undertakings”.

will be disregarded for all the purposes of the Tax Acts.

Section 38 Finance Act 1993

This section provides that any payment made to an employer, whether before or after the passing of this Act, in respect of a person employed by him will be disregarded for all the purposes of the Tax Acts if made under:

- The Market Development Fund established on 6 October 1992 and administered by An Bord Tráchtála - The Irish Trade Board
- or
- The Employment Subsidy Scheme, established 1 February 1992 and administered by an Foras Áiseanna Saothair.

Section 43 Finance Act 1995

This section provides that any grant made, **on or after 1 April 1995**, under Section 10(5)(a) of the Údúráis na Gaeltachta Act 1979, or Section 21(5)(a) (as amended by the Industrial Development (Amendment) Act 1991) of the Industrial Development Act 1986, being an employment grant:

- In the case of Section 10(5)(a), under the scheme known as “Deontais Fhostaíochta ó Údúras na Gaeltachta do Ghónthais Mhóra/MheánmheideThionsclaíochta”
or
- In the case of Section 21(5)(a), under the scheme known as “Scheme Governing the Making of Employment Grants to Medium/Large Industrial Undertakings” will be disregarded for all the purposes of the Tax Acts.

Section 40 Finance Act 1996

This section provides that **as and from 6 April 1996** certain employment grants and recruitment subsidies are to be free of tax in the hands of employers who receive them. The grants and subsidies referred to in Section 40 are as follows:

- Those made under a scheme known as the “Back to Work Allowance Scheme” which was established on 1 October 1993 and is administered by the Department of Social Welfare. Under the scheme, a recipient of the Back to Work Allowance who employs another person who is in receipt of the Back to Work Allowance may receive an employment grant of up to £1,400. The scheme provides for the grant to be paid in two equal parts in respect of persons who have been unemployed for at least 12 months. The first payment is made on recruitment of the new employee and the second payment 12 months later if the employee is still in employment. The amount of the grant is equal to 25% of the amount of the person’s weekly unemployment payments annualised over 12 months. The grants average around £1,400 per new employee (i.e. under £30 per week).
- Those made under a scheme launched by the Minister for Enterprise and Employment in May 1996 whereby a subsidy of £80 per week is paid to employers who employ persons who are long-term unemployed. The scheme is administered by FÁS.
- Grants which are made by County Enterprise Boards under operating agreements between the Minister for Enterprise and Employment and such Boards for the employment of persons on a full-time basis in eligible projects. These grants are payable in two instalments, 50% on a date agreed between the Boards and the promoters of a project and 50% six months later, provided the employment of the person who is the subject of the grant has not been terminated in the interim period. The Boards are not to make an employment grant in excess of £5,000 in respect of any one full-time employee, or exceeding a maximum of £50,000 in aggregate. Employment grants are not to be made in respect of projects in receipt of fixed capital grants.
- Employment grants which are made under the European Union Leader II Community Initiative (1994-1999) which is administered in accordance with operating rules determined by the Minister for Agriculture, Food and Forestry. Assistance for recruitment in the form of employment grants may be offered under LEADER to local job creating projects as an alternative to, but not in addition to, capital grant aid whether provided by LEADER or not. This form of assistance is subject to the condition that the grant may not exceed £100 per week subject to a maximum of £5,000 per person employed in a newly created job. Also, 50% of the grant may be paid when the employee is taken on. The name of the employee and their RSI number must be supplied in advance of payment to the LEADER Group.
- Employment grants which are made by Area Development Management Limited under the European Union Operational Programme for Local Urban and Rural Development.

- Employment grants which are made under the Special European Union Programme for Peace and Reconciliation in Northern Ireland and the Border Counties of Ireland which was approved by the European Commission on 28 July 1995.
- Employment grants which are made under the Joint Northern Ireland/Ireland INTERREG Programme 1994 to 1999, which was approved by the European Commission on 27 February 1995.
- Employment grants which are made under any initiatives of the International Fund for Ireland which was designated by the International Fund for Ireland (Designation and Immunities) Order, 1986 (S.I. No. 394 of 1986), as an organisation to which Part VIII of the Diplomatic Relations and Immunities Act 1967, applies.

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EMPLOYERS PRSI CONTRIBUTIONS INDUSTRIAL TRAINING APPRENTICESHIP LEVY

Under the Industrial Training (Apprenticeship Levy) Act 1994, all employers in the **Construction, Printing & Paper, Motor and Engineering (Mechanical but not Electronics) Industry** sectors are liable to pay a 0.25% Apprenticeship Training Levy. All employers in these Industry sectors are liable to pay this Levy irrespective of whether or not they employ apprentices.

This Levy is payable on the reckonable earnings of all employees up to the employer's PRSI ceiling, which for the 1996/97 tax year was £26,800. This is being increased to £28,800 in 1997/98. The Levy should be added to the employer's portion of PRSI and remitted in the usual manner.

Employers are also required to account separately for the total amount paid under the Levy when returning their P35. An additional box is provided on the P35 Declaration for this purpose.

Enquiries

Clarification of **designated employers** and further information regarding the Levy may be obtained from:

*FÁS - Management Services
Department,
27-33 Upper Baggot St.,
Dublin 4.*

Telephone: (01) 668 5777

Any enquiries concerning the payment of the Apprenticeship Levy should be addressed to:

*Revenue Commissioners,
Employers P35 Unit,
Government Offices,
Nenagh,
Co. Tipperary.*

Telephone: (067) 33533 or (01) 677 4211 (Dublin area)

Intoxicating Liquor Licences & Tax Clearance

Practitioners are reminded that Section 115 Finance Act 1995 provides that a temporary licence, or extension of an existing one, may be obtained pending the processing of an application for a tax clearance certificate.

To avail of this provision applications for tax clearance certificates in respect of licences due to commence on 1 October 1997 must be submitted to:

*Collector-General's Office,
Sarsfield House,
Limerick.*

on or before 31 May 1997.

A temporary licence or extension of an existing one may also be obtained in the case of an appeal, pending the final determination of that appeal.

1996/97 P35 End-of-Year Return

Introduction

By now all employers should have received their P35 end-of-year stationery for 1996/97. The deadline for submission of fully completed returns is 30 April. Returns should be sent to the

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

Returns on Diskette

Practitioners are reminded again that an attractive alternative to making paper returns is the facility to return employee details on diskette. The last few years have seen a surge of interest in this method of filing returns and amongst the benefits to be gained are:

- Less form filling
- Tax-free allowance details can be supplied on diskette in subsequent years
- Less time required to make the return.

Most computer payroll systems can now produce the P35 employee details on diskette and it is usually just a case of choosing the diskette option from the menu.

A Helpline is available for anyone experiencing difficulties or requiring assistance or information about their P35 -

Telephone: (067) 33533
or (01) 677 4211 (Dublin area).

Detailed advice on the diskette system can be obtained by contacting John Grace on the Helpline number.

CRITERIA & GUIDELINES ON PERMANENT ESTABLISHMENT (PE)

Introduction

The profits of an enterprise of a country with which Ireland has a double taxation convention are generally taxable in the State only where the enterprise has a Permanent Establishment (PE) here. This article:

Sets out the criteria for determining the existence of a PE

and

Gives guidelines on how these criteria are applied in the construction industry.

Given the level of cross border business activity, particular reference is made to the Ireland/UK Convention. **The text of Article 5 of the Ireland/UK Convention is given on Page 14.**

Definition

Article 5(1) of the Ireland/UK Convention defines the term ‘permanent establishment’ as being

“a fixed place of business in the State in which the business of the enterprise is wholly or partly carried on”.

Article 1(d) of the Convention provides that, “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively

- An enterprise carried on by a resident of a Contracting State and
- An enterprise carried on by a resident of the other Contracting State.

Article 5(2) of the Convention contains a list of examples of what is generally regarded as constituting a PE. However, the examples listed are PE’s only where they fall within the terms of the definition in Article 5(1).

Criteria to determine if a PE exists

Whether or not a PE exists is a question of fact. Each case must be considered on its own facts. Below are guidelines for determining whether a PE exists, i.e. whether there is “a fixed place of business in the State in which the business of the enterprise is wholly or partly carried on”.

There must be a place of business

A place, though normally a particular portion of space, is to be read in the context of it being used to define “establishment”. The term “place of business”, therefore, means all the tangible assets used for carrying on the business. It covers any premises, facilities or installations used for carrying on the business whether or not they are used exclusively for that purpose. Thus, a place of business may exist where no premises are available or required for carrying on the business of the enterprise and it simply has a certain amount of space at its disposal.

The place of business may be situated in the business facilities of another enterprise. It may be owned or rented by or be otherwise at the disposal of the business.

The place of business must be fixed

- The place of business must be established at a certain place. In this regard it is necessary that a link exists between the place of business and a specific geographical point.

- For equipment to constitute a PE, it must remain on a particular site but does not have to be fixed to the soil on which it stands. Where roads are being built, canals constructed etc. and the activities performed at each particular spot are part of a single project, the project is regarded as a PE.
- The place of business must have a certain degree of permanency. Mere business relations with enterprises or other customers in the contracting State do not give the requisite degree of permanency. Similarly, a place of business which is of a purely temporary nature cannot constitute a PE, e.g. a once-off stall at a trade exhibition. A place of business which is not of a purely temporary nature can be a PE even if it exists in practice only for a very short period of time because of
 - the special nature of the activity (e.g. a building site), or
 - as a consequence of special circumstances (e.g. death of the taxpayer, investment failure), it was prematurely liquidated.

The business must be wholly or partly carried on in the fixed place of business

For a place of business to constitute a PE, the enterprise using it must carry on its business wholly or partly in it. The activity need not be of a productive character. Interruptions of operations encountered in the normal course of the business of an enterprise do not affect the permanence test, provided the business activities are resumed at the same place. Operations must be carried out on a regular basis. For example, a space in a market place could be a PE provided it is occupied regularly over a period.

Agents

Article 5(4) of the Ireland/UK Convention deals with dependent agents. A dependent agent of a UK enterprise who has and habitually exercises in the State, an authority to conclude contracts in the name of the enterprise, constitutes a PE here.

Dependent

The agent must be dependent on the enterprise he/she represents. He/she must not have independent status of the kind referred to in Article 5(6) (e.g. brokers, general commission agents). An agent who is bound to follow instructions relating to the business is dependent on the enterprise. Employees of an enterprise are always dependent agents. An agent must have power to bind the enterprise.

Authority to Conclude Contracts

The dependent agent must have authority to conclude contracts in the name of the enterprise he/she represents. Whether or not an agent has such authority is a question of fact and is normally decided against the background of the economic situation. If there are valid reasons for the enterprise to reserve its right to conclude contracts itself (e.g. where major contracts are involved) the agent may be considered not to have an authority to conclude contracts. If the agent has authority to negotiate all elements of a contract in a way which is binding on the enterprise, the agent is regarded as exercising his/her authority in the State, even if formal signature of the contract is made by some other person outside the State. The authority could be restricted to specific lines of business within the enterprise's overall business activities. If this is the case, the profits attributable to the PE would be restricted to profits arising from business contracted by the agent. Direct transactions by the enterprise would be disregarded for the purposes of determining profits attributable to the PE.

Habitual Exercise

The agent must habitually exercise in the State his/her authority to conclude contracts in the name of the enterprise. There must be a certain degree of permanence. An agent would not constitute a PE on the basis of the conclusion of a single contract. The frequency with which an agent concludes contracts will amount to habitual exercise if it corresponds with what is normal in the line of business concerned. In cases of doubt, the continuity of the agent's exercise of authority should be measured by application of the same criteria as those applied under the general PE concept laid down in Article 5(1). It is not necessary that the continuous activity be exercised throughout by the same person. It is sufficient for the post of dependent agent to have been established.

Residence

It is not necessary that the agent must be resident in the State. It is considered that where the foreign enterprise is a sole trader or partnership, the sole trader or any of the partners would be an agent for this purpose. Thus, a Northern Ireland subcontractor who habitually concludes contracts in the State in the name of the enterprise constitutes a PE of the UK enterprise.

Construction Industry - Existence of a PE

Under Article 8 of the Ireland/UK Convention, the profits of a UK based enterprise are taxable in the State only if the enterprise carries on business here through a PE situated here. While all the general principles outlined earlier apply to the construction industry, particular difficulties arise in determining whether a PE is in existence in construction cases. This is especially so where the question to be determined is whether, in a particular case, a building site constitutes a PE. Given the high number of Northern Ireland based enterprises who carry out construction work in the State, Article 5 of the Ireland/UK Convention is regularly invoked to establish the existence or otherwise of a PE in the State. Article 5(3) of the **OECD Model**

Convention provides

"A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 12 months."

Unlike the OECD Model Convention, the Ireland/UK Convention makes no reference to building sites.

Revenue's view is that, as the Ireland/UK Convention does not specify a period of time before which a building site cannot be a PE, every building site which is a fixed place of business in which the business of the enterprise is wholly or partly carried on, is a PE.

In this context:

- The **place of business** is the building site itself
- The place of business is at a **fixed location** - the site
- The **work is wholly or partly carried on in the building site.**

A building site is generally regarded as having the requisite degree of permanency as regards a contractor, if the contractor is present on the site for two or more months.

However, a building site is regarded as a PE if in existence for a shorter period, where:

- A contractor brings a significant amount of plant, machinery or equipment onto it,

or

- The contract is a significant one. In general, Revenue would regard any contract valued at £500,000 or more as constituting a PE.

Revenue also takes the view that in the case of roadbuilding, the building site is any point along the roadway or proposed roadway where machinery may be left at night.

Meat Industry -Existence of a PE

Where a contractor provides services in a meat factory, the factory premises can constitute a PE where the requirements mentioned above under the heading “Criteria to Determine if a PE exists” are satisfied.

Mutual Agreement Procedure

Where a person has a PE in the State, he/she is taxable here on the profits attributable to the PE. Under the Ireland/UK Convention, a UK resident with a PE in the State is entitled to credit in the UK for tax paid in the State in respect of profits attributable to the PE. If the UK Inland Revenue rule that the person does not have a PE in this State, credit for Irish tax will not be allowed against the person's UK tax liability. In this event, the person should request a review under Article 24 of the Convention (i.e. mutual agreement). Under the terms of Article 24, the two authorities will arrive at a mutual determination regarding the existence of a PE in the State. The request for such a review should be made to the Revenue Authority of the State in which the person is resident.

Article 5 Ireland/UK Convention Permanent Establishment

- (1) For the purposes of this Convention, the term “permanent establishment” means a fixed place of business in the State in which the business of the enterprise is wholly or partly carried on.
- (2) The term “permanent establishment” shall include especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) office;
 - (d) a factory;
 - (e) workshop;
 - (f) a mine, oil well, quarry, or other place of extraction of natural resources;
 - (g) an installation or structure used for the exploration of natural resources.
- (3) The term “permanent establishment” shall not be deemed to include:
 - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for

similar activities which have a preparatory or auxiliary character, for the enterprise.

- (4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of independent status to whom the provisions of paragraph (6) of this Article apply - shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.
- (5) A person carrying on activities in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in a Contracting State shall be deemed to be carrying on a trade through a permanent establishment in that Contracting State.
- (6) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.
- (7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

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RETIREMENT RELIEF AND LIQUIDATIONS SECTION 26 CAPITAL GAINS TAX ACT 1975

Introduction

Where an individual aged 55 years or over disposes of his/her business, farm or shares in a family company retirement relief under Section 26 Capital Gains Tax Act 1975 may be due. If the consideration does not exceed £250,000 total relief from capital gains tax may be claimed. There is provision for marginal relief where the consideration does not greatly exceed £250,000.

Liquidations

Where an individual's family company is liquidated and a distribution in respect of shares in the company is made, this represents a disposal or part disposal of the shares by the individual. Retirement relief may be due in respect of such a disposal, subject to the limit of £250,000.

Section 26(5) provides that relief will **not** be due where the distribution consists of chargeable business assets. Where the distribution consists partly of such assets, then a fraction of the distribution may qualify for relief, that fraction being the ratio of the value of the distribution excluding the chargeable business assets to the value of the entire distribution i.e.

$$\frac{\text{Distribution} \times \text{Distribution excluding value of chargeable business assets}}{\text{Total Distribution}}$$

However, as for any other disposal of shares, the amount qualifying for relief under Section 26(1) is further restricted under Section 26(3) to the part of the consideration which is equal to the proportion which the company's chargeable business assets bears to the value of the company's total chargeable assets i.e.

$$\frac{\text{Consideration} \times \text{Chargeable business assets}}{\text{Total Chargeable assets}}$$

(as calculated above)

Revenue Practice

Where a company's chargeable business assets are sold as a preliminary to liquidation, a disproportionate part of the company's assets may be held in chargeable non-business assets at the date of disposal. In practice however, the proceeds of such sales may be included in the value of the company's chargeable business assets at the date of disposal. For this purpose, "preliminary" may be taken as meaning not more than six months before the date of disposal of the shares or date of appointment of the liquidator, whichever is the earlier.

Example

Balance Sheet of Company X

(At date of appointment of liquidator)

Fixed Assets	£130,000
Stock	£115,000
Debtors	£8,000
Cash	£19,000
Quoted Shares	<u>£110,000</u>
Total:	£382,000

CAPITAL GAINS TAX

Capital distribution

Fixed Assets	£130,000
Cash	<u>£245,000</u>
Total distribution:	£375,000

Assume chargeable gain: £75,000

Step 1

$$\begin{array}{rcll} \text{£375,000} & \times & \frac{\text{£245,000}}{\text{£375,000}} & = & \text{£245,000} \end{array}$$

Step 2

$$\begin{array}{rcll} \text{£245,000} & \times & \frac{\text{£130,000}}{\text{£240,000}} & * & \\ & & & & \text{£132,708} \end{array}$$

The qualifying part of the consideration is £132,708 and as this does not exceed the threshold of £250,000, relief is due as follows:-

Step 3

$$\begin{array}{rcll} \text{Gain of £75,000} & \times & \frac{\text{£245,000}}{\text{£375,000}} & = & \text{£49,000} \end{array}$$

Step 4

$$\begin{array}{rcll} \text{£49,000} & \times & \frac{\text{£130,000}}{\text{£240,000}} & = & \text{£26,541} \end{array}$$

The balance of the gain (i.e. £75,000 - £26,541 = £48,459) is chargeable. Relief under Section 16 (annual exemption) is **not** due where relief is allowed under Section 26 (retirement relief).

* Fixed Assets £130,000

** Fixed assets £130,000 + Quoted Shares

£240,000 £110,000 =

Improved Customer Service

The customer service dimension of our Audit programmes is constantly being reviewed with a view to improving the service given. Initiatives such as the Framework for the Audit review, the Code of Practice on Powers and the Guide to the Revenue Audit reflect our commitment to improving the service provided.

Developments of this strategy and new initiatives to be introduced in 1997 include:

- An undertaking to complete 70% of our audit enquiries within a three month period.
Revenue auditors are under instructions to issue a written report to each taxpayer after the conclusion of an audit. This applies to all audit types (Comprehensive, PAYE/PRSI, VAT and RCT).
- Revenue Auditors will, where possible, respond fully within two months where replies to audit enquiries have been received.

Exceptions may arise where specific issues are of such a complex nature that a full reply may not be possible within that time period. In such cases an interim reply explaining the position will normally be issued.

Computer Auditing

As part of the continuing development of the Revenue Audit Programme and the need to gather and develop new skills, the concept of computer auditing has been the subject of consideration for some time. As a result of a review of available systems, Revenue has commenced to use a commercially available package called IDEA (Interactive Data Extraction and Analysis).

What is Computer auditing ?

Computer auditing involves testing the accuracy and completeness of transactions recorded and processed on a taxpayer's computer system. Generally, the taxpayer is asked to provide specific aspects of the company's records on computer disk. These disks are then copied onto the auditors personal computer and the file interrogation software is used to examine the file records provided. There are a number of features on the software package which carry out a sequence of tests of the records provided.

Why a need for Computer auditing ?

The majority of the medium size businesses and almost all the large size businesses record and process their transactions using computer software which they have either bought in or developed themselves. In examining the records of a medium to large business the approach will be to examine the system of recording. From this we will identify those files which are relevant to the audit enquiry and identify individual transactions which are fundamental to the outcome of the audit. Computer auditing is now an additional audit facility which is used at present in our approach to the Large Case audit programme.

Use of Computer audit

When a medium or large case is selected for audit, the approach in procedural terms is no different from any other audit. A letter is sent to the company advising them that an audit is planned. At the initial interview, we will discuss the business, how it

operates etc. to give the auditor a broad overview of the company's systems and operations.

The next stage will be to discuss, usually with the appropriate manager, how the computer system supports the business functions, how transactions are recorded and verified, and what are the accounting systems of control. This will be particularly helpful in eliminating areas of error in the systems which are not relevant to the audit viz. minor clerical errors etc.

It is hoped that this computer system of auditing will help reduce the demands on practitioner time and help control the compliance cost of the audit enquiry for the taxpayer.

Internal Review Procedure and Revenue Audits

Practitioners will be aware that details of Revenue's Internal Review Procedures were set out in Issue 21 of *Tax Briefing*.

While no time limit was imposed in relation to seeking a review (where one is required), it was expected that a request would ordinarily be made before the making of the appeal - or shortly afterwards.

As the available time for listing of appeals and the time of the Appeal Commissioners are limited, it is inappropriate to delay seeking a review until notification of the time and date for the hearing of a client's appeal has been received - as has been happening with some practitioners.

Accordingly, practitioners are asked to ensure, where agreement on an audit settlement is not reached and a review is required, that it is requested as soon as possible after the formal written report at the conclusion of the audit is issued by the Inspector of Taxes.

For the future, once a notification of the time and date for the hearing of an appeal has been issued, the review procedure will cease to be available in relation to the matter which is the subject of the appeal.

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MEDICAL INSURANCE

SECTION 145 INCOME TAX ACT 1967 [AS AMENDED BY SECTION 7 FINANCE ACT 1996]

Relief for medical insurance premiums

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.

Policies which provide for cash benefits

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.

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.

Authorised Insurer

With effect from 1 July 1994, an **authorised insurer** means any undertaking entered in the **Register of Health Benefits Undertaking** established under Section 14 of the Health Insurance Act 1994 lawfully carrying on the business of insurance which provides for the reimbursement or discharge, in whole or in part, of actual medical, surgical or nursing expenses resulting from sickness of, or accident to, an individual, his/her spouse, children or dependants [or dependant of the spouse].

With effect from 1 July 1994, an authorised insurer also includes any undertaking which was authorised pursuant to three EU Directives and which was effected while the individual was not resident in the State but was resident in another Member State of the European Union.

The three directives are:

- Council Directive No. 73/239/EEC of 24 July 1973
- Council Directive No. 88/357/EEC of 22 June 1988
- Council Directive No. 92/49/EEC of 18 June 1992.

Insurers entered in the Register of Health Benefits Undertakings

Up to the time of going to press, the Department of Health has advised that the following have been entered in the **Register of Health Benefits Undertakings** established under Section 14 of the Health Insurance Act 1994:

- Voluntary Health Insurance Board [VHI]
- BUPA [see note on BUPA on page 17 of Issue 25 of Tax Briefing]
- CIE Clerical Staff Hospital Fund
- ESB Staff Medical Provident Fund
- ESB Marina Staff Medical Provident Fund
- Irish Life plc Medical Aid Society
- New Ireland/Irish National Staff Benevolent Fund
- Prison Officer's Medical Aid Society [POMAS]

- St. Paul's Garda Medical Aid Society
- Sun Alliance Ireland Staff Medical Expenses Scheme

Authorised insurers outside the State

An **authorised insurer** in the context of contracts of medical insurance effected in another Member State of the EU is an insurance undertaking:

- Duly authorised by the insurance supervisory authority of the Member State in which the policy was effected
- and**
- Which provides for the reimbursement or discharge, in whole or in part, of actual medical, surgical or nursing expenses resulting from sickness of, or accident to, an individual, his/her spouse, children or dependants [or dependant of the spouse].

The question of establishing whether or not an insurance undertaking is duly authorised by the insurance supervisory authority of a Member State is a matter for the taxpayer.

Insurers previously considered authorised insurers

Prior to the Health Insurance Act 1994, certain undertakings [i.e. other than those listed above] were considered to be authorised insurers for the purposes of relief under the provisions of Section 145 Income Tax Act 1967.

In cases where relief has been granted in respect of premiums payable under such undertakings, the relief may continue to be granted in respect of premiums paid up to 5 April 1997. As relief for medical insurance relief is on a preceding year basis, the tax year 1997/98 is the last year in which relief may be granted in respect of premiums payable on such undertakings [unless, of course, the undertakings are entered in the Register of Health Benefits Undertakings].

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DISABILITY BENEFIT

Introduction

The purpose of this Article is to set out for practitioners and employers:

- The changes in the taxation rules for Disability Benefit for the tax year 1997/98
- How Disability Benefit paid to employees while out sick in 1997/98 is to be brought into taxation by employers through payroll, having regard to the changes.

References in this article to Disability Benefit should be taken to include references to short-term Occupational Injury Benefit.

Disability Benefit - Taxation Rules since 6 April 1993

Disability Benefit became a taxable source of income with effect from 6 April 1993. With effect from 6 April 1995, the taxation rules applying to Disability Benefit were changed to exempt Child Dependant additions (i.e. additional payments made to claimants in respect of qualifying children).

For the tax year 1997/98 (i.e. from 6 April 1997), the taxation rules applying to Disability Benefit are being further changed to exempt from tax Disability Benefit payable for the first 3 weeks, i.e. the first 18 days, for which benefit is payable in the tax year.

Notification from the Department of Social Welfare

The Department of Social Welfare will notify all employers of the **amount** of the weekly Disability Benefit (excluding Child Dependant additions, if relevant) which an employee is entitled to receive while out sick and **the date the payment commenced**. A week's Disability Benefit consists of payment for 6 days (excluding Sundays). Therefore, the daily rate is one-sixth of the weekly rate.

Calculation of Exemption Period for 1997/98

Disability Benefit payable for the first 18 days in the tax year 1997/98 is exempt from tax.

Because the exemption applies to an aggregate period for which Disability Benefit is payable, Sundays and the 3 "waiting days" for which Disability Benefit is not payable are not included in calculating the 18 days for which exemption is due.

Where an employee uses the full exemption in one single sick period the exemption will, effectively, expire 21 days (excluding Sundays) from the first day of absence i.e. the 3 "waiting days" for which Disability Benefit is not payable plus the 18 days for which Disability Benefit is payable.

However, it should be noted that, where an employee uses the exemption over more than one period of absence where claims for Disability Benefit are separated by more than 3 days, the 3 "waiting days" for which Disability Benefit is not payable apply to each separate claim period. In such circumstances the aggregate 18 day exemption period may be increased by 3 days for each separate period of absence.

For example, in the case of three separate periods of absence, the employee would need to be absent for 27 days (excluding Sundays) i.e. 18 + 3 + 3 + 3 before any Disability Benefit becomes taxable.

When the period of exemption expires, Disability Benefit **subsequently** payable is taxable as before i.e. Disability Benefit payable less Child Dependant additions, if relevant.

Action by Employers - General

Because significant numbers of employees will be exempt from taxation of Disability Benefit as they will receive payment of Disability Benefit for less than 18 days in 1997/98, taxing Disability Benefit through payroll will not be relevant for many employers or employees.

Where it is relevant, the taxation of Disability Benefit through payroll will depend on the particular circumstances or arrangements between employers and employees while employees are out sick. These arrangements are set out in Sections A, B and C below.

As well as knowing the amounts of their employees' Disability Benefit payments, some employers will also be aware of the period to which the payments relate. Consequently, they will readily have the appropriate information to implement the new taxation rules, through payroll, for Disability Benefit for 1997/98. They should, therefore, in advance of receipt of the notification from the Department of Social Welfare, take immediate action in accordance with the appropriate section below, after the relevant exemption period expires to effectively tax Disability Benefit through payroll.

Where the employer is not aware of the amount of an employee's Disability Benefit but is otherwise in a position to take the necessary action, the basic personal rate of payment £64.50 (£67.50 from 9 June 1997) should be assumed until advised otherwise by the Department of Social Welfare or by the Inspector of Taxes.

Section A

Employers who pay wages, salary etc., to employees while out sick and recover the Social Welfare Disability Benefit from the employees

The arrangement between these employers and employees will be such that the employer will be aware of

- the date the employee went out sick
- the date from which Disability Benefit became payable
- the make-up of the Disability Benefit (e.g. Personal Rate, Adult Dependant and Child Dependant additions, if relevant etc.)

Appropriate action should be taken by such employers without reference to the notification from the Department of Social Welfare as they will already have all the relevant information to apply the new exemption and taxation rules for Disability Benefit.

The amount of Disability Benefit the employee is entitled to receive for 18 days in aggregate in the tax year 1997/98 is exempt and should be excluded from payroll for tax purposes. This means that only the **difference** between the wages, salary etc. paid and the Disability Benefit recovered is subject to tax and PRSI for the duration of the exemption period.

If an employee is still out sick after the exemption period expires and continues to receive and pay over Disability Benefit while out sick, tax should be deducted from the gross wages, salary etc., less the Child Dependant additions of Disability Benefit, if relevant. However, PRSI should only be charged on the difference between the gross wages, salary etc., and the amount of Disability Benefit recovered. While Disability Benefit less Child Dependant additions is taxable after the exemption period expires, it is not chargeable to PRSI.

Section B

Employers who pay wages, salary etc., to employees while out sick (top-up etc.) and the employees retain the Disability Benefit

Where an employer pays employee's partial wages while out sick and the employee retains the Disability Benefit, many employers, to maintain the cumulative system of PAYE, already include the Disability Benefit (less Child Dependant additions, if relevant) with earnings. Under such a procedure the combined amount would be charged to tax but only the actual earnings paid by the employer would be charged to PRSI (Disability Benefit is not chargeable to PRSI).

For the purpose of the new exemption such employers will be aware of the employees' circumstances as set out in Section A. Until the Disability Benefit exemption period expires, tax and PRSI should be charged only on the wages actually paid. When the period of exemption expires the Disability Benefit should be taxed through payroll as outlined above, that is, the Disability Benefit included with earnings should be subject to tax but not PRSI.

However, some employers may not be able to include taxable Disability Benefit with earnings. To maintain the cumulative system of PAYE, some employers opted in earlier years to reduce employees' tax-free allowances by taxable Disability Benefit on a cumulative basis. Where it was not possible to maintain the cumulative system, other employers opted to reduce employees' tax-free allowances by taxable Disability Benefit and allow the reduced tax-free allowances on a Week 1/Month 1 non-cumulative basis. Both these options continue to be available after the exemption period expires.

Section C

Employers who do not pay wages, salary etc., to employees while out sick and the employee retains the Disability Benefit (including employers who use official Tax Deduction Cards)

During the Disability Benefit tax exemption period, no adjustments for tax purposes are required and the cumulative system of PAYE continues unchanged where the employee returns to work before the end of the exemption period.

The exemption period should cover the majority of employees. However, if an employee is out of work due to illness after the exemption period expires, the following action should be taken.

Some employers who do not pay wages, salary etc., to employees while out sick may wish to maintain the cumulative system of PAYE. Taxable Disability Benefit payable after the period of exemption expires may be included as earnings on the tax deduction card and the cumulative system of PAYE continued as normal.

However, it may not be possible for other such employers to maintain the cumulative system. In those circumstances, when the employee returns to work, the tax-free allowances should be allowed against the employee's earnings on a Week 1/Month 1 (non-cumulative) basis -

- until the following 5 April or
- until confirmation is received from the tax office that the cumulative basis should be reinstated.

The provisions under which refunds may be made during periods of absence from work due to illness after the exemption period expires do not apply unless the tax office confirms that they should apply. It is essential that tax-free allowances are not accumulated and tax refunds inadvertently made.

If a cumulative tax-free allowance certificate or tax deduction card is received for an employee who is still out sick after the exemption period expires this documentation should only be used after checking with the tax office that it is in order to do so. The tax office may not be aware that the employee was out sick from work and in receipt of Disability Benefit.

Tax Documents etc.

Where taxable Disability Benefit is included with earnings and taxed through payroll as such, emoluments shown on tax documents e.g. P45, P60, P35 etc., should be inclusive of the taxable benefit.

Practitioners and employers are reminded that they should make their local PAYE tax office aware of the method of taxing Disability Benefit through payroll adopted by them.

Assistance

If any practitioner or employer requires assistance on the taxation of Disability Benefit through payroll he/she should contact their local tax office or the **Central Telephone Information Office at (01) 878 0000**.

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RESORT AREAS - CHAPTER III FINANCE ACT 1995

Capital Allowances in respect of holiday cottages, holiday apartments and other self-catering accommodation listed under Section 9 Tourist Traffic Act 1957

Introduction

The Finance Act 1995 introduced a scheme for the renewal and improvement of certain resort areas. Under Section 48 capital allowances were made available in respect of expenditure incurred on the construction or refurbishment of certain qualifying tourism facilities. Among the facilities which qualify under Section 48 are holiday cottages, holiday apartments and other self-catering accommodation listed under Section 9 Tourist Traffic Act 1957.

The rates at which capital allowances are available in respect of premises qualifying under Section 48 is as follows:

Owner-occupier

- Up to 75% free depreciation or 50% initial allowance in year 1, and 5% annual allowance thereafter to a maximum of 100%

Lessor

- 50% initial allowance in year 1, and 5% annual allowance thereafter to a maximum of 100%

Notes

- Where refurbishment is involved the expenditure on refurbishment must amount to not less than 20% of the site exclusive market value of the building or structure prior to refurbishment.
- The capital allowances mentioned above are now ring-fenced by virtue of the provisions of Section 49A Finance Act 1995 (as inserted by Section 30 Finance Act 1996) unless the conditions of Section 49A(5) have been satisfied.

Revenue Position

We have been asked whether owners of holiday cottages, holiday apartments and other self-catering accommodation listed under Section 9 Tourist Traffic Act 1957, who let such premises directly to tourists, are entitled to relief as owner occupiers i.e. free depreciation up to 75% of the capital expenditure incurred. **Revenue's view is that as such owners do not occupy the premises they are not entitled to the reliefs available to owner occupiers.**

Relevant Legislation

Section 48 (2) Finance Act 1995 applies the provisions relating to Industrial Buildings to "qualifying premises" by treating a qualifying premises as being in use for the purposes of a trade carried on in a mill, factory or other similar premises and by treating whatever activity is carried on in the premises as if it were a trade. The section does not specify by whom the activities in question are carried on. The subsection brings "qualifying premises" within the Industrial Buildings Allowances provisions.

Section 48(4) modifies Sections 254 and 264 Income Tax Act 1967 and Section 25 Finance Act 1978, as applied by subsection (2), in relation to “qualifying premises”. It is the provisions of these sections, as modified by Section 48(4), which decide the rate at which the capital allowances are available in respect of a qualifying premises.

Section 25 Finance Act 1978 applies only to buildings occupied by the person by whom capital expenditure on construction was incurred. Revenue’s view is that a holiday cottage, holiday apartment and other self-catering accommodation listed under Section 9 Tourist Traffic Act 1957 would not be occupied by the owner of such a premises. While the property is used commercially by the owner, in the sense that it is let out to holiday-makers, it is not occupied by the owner.

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RENTAL INCOME COMPUTATIONS

Legislation

Section 81(4) Income Tax Act 1967 sets out the computational rules for the assessment of profits or gains chargeable under Case V of Schedule D. Specifically the section provides that “rent” is the gross amount before any deduction for income tax and the amount of profits or gains is (subject to any relief afforded by Section 82) the aggregate of the surpluses computed in accordance with paragraph (c) reduced by the aggregate deficiencies as likewise computed in respect of each rent or easement.

Rental Computations

A computation of the surplus/ deficiency is required for each letting and for the total receipts from easements. The legislation does not permit the adding together of rent and expenses from various lettings to arrive at an overall surplus/deficiency.

Return Forms

The tax return forms for both companies and individuals in receipt of rents reflect the above requirements. The forms specify that “an itemised list should be attached showing gross rent from each letting and the expenses etc., deducted in arriving at the income figure shown”. This is reflected for companies on Form CT1 (Note 5) and for individuals on Panel 4 of the Form 11.

Conclusion

It appears from returns examined that some practitioners, whether in dealing with individuals or companies, are ignoring the requirements as set out above. Practitioners are therefore reminded that a separate computation in respect of each letting is required and the addresses of each of the let properties must be specified.

Relevant Contracts Tax

Regulations

The Income Tax (Relevant Contracts) Regulations 1996 provide that before entering into a relevant contract, the parties to the contract must make a declaration on Form RCT 1. The declaration is to the effect that the parties have examined the guidelines published by the Revenue Commissioners as to the distinction between contracts of employment and relevant contracts and are satisfied that the contract they propose to enter into is not a contract of employment. A relevant contract, which is defined in Section 17 Finance Act 1970, is a contract to which Relevant Contracts Tax applies.

Forms RCT 1 - Requirements

The operation of the existing requirements for completion of Forms RCT 1 has been reviewed. The review reveals that in cases of a continuing contractual relationship (rolling contract) repeated declarations are not only inconvenient for the contracting parties but futile to their stated purpose. Revenue therefore accepts in such cases that

a single RCT 1, completed annually, will suffice. This includes situations where the jobs do not succeed each other immediately. An example is an electrical contractor who has a maintenance contract with a Health Board. Each job will not be treated as a single contract for RCT 1 purposes.

Where the subcontractor has to **compete** for a new job, that job will be regarded as a new contract and an RCT 1 should be completed. In addition, an RCT 1 should be completed in respect of any relevant contract where the contractual relationship between the parties has changed - for example, where a former employee becomes self-employed and enters into a relevant contract with the former employer.

In cases where a subcontractor holds a current C2 (certificate of authorisation), it will be sufficient if the RCT 1 is completed when the principal and subcontractor are applying for a Relevant Payments Card (C47). The single declaration may be treated as covering all contracts between the registered subcontractor and the principal for that tax year.

Lloyds Underwriters - Irish Names

The following changes in relation to retirement annuity premium relief and Irish accountancy fees have been agreed by Revenue with the Irish Taxation advisor to Lloyds and with Lloyd's Taxation Department.

Retirement Annuity Premium Relief

For tax years up to and including 1995/96 a Name's underwriting profits are only treated as **earned** income for retirement annuity purposes, where that Name is a "working Name" - paragraph 3.8 of Tax Briefing Issue 19 refers.

From and including the 1996/97 tax year a Name's underwriting profits and income arising from Funds at Lloyd's will be treated as earned income for retirement annuity purposes without reference to the concept of "working Name".

Allowance for Irish Accountancy Fees

Whilst recognising that UK accountancy fees deductible in the UK cover the allowable accountancy expenses required to produce the UK taxable result, it is acknowledged that additional work is necessary in Ireland to adjust the UK figures for the purposes of reporting in Ireland. For tax years up to and including 1995/96 an allowance based on the UK scale fee was permitted whereby one-third of the permitted UK scale was allowed as an expense in addition to the scale charge.

However, the UK scale fee regime is being phased out in the UK and will completely cease after the 1993 year of account. Consequently, from and including the 1996/97 tax year a deduction may be claimed for Irish tax purposes for Irish accountancy expenses incurred in arriving at the Irish Lloyds taxable figures on an actual basis, subject to any necessary apportionment where any such expenses also relate to non-Lloyds related aspects.

Lloyds Conversion Rates

For Lloyds accounts the conversion of sterling should be calculated by reference to the sterling rate on the last market day of the calendar year in which the account is closed.

The selling rate for 1996 was

Stg£1 = IR£0.9926

For reference earlier years were as follows:

1995	Stg£1 = IR£0.9687
1994	Stg£1 = IR£0.9995.

Residential Property Tax Certificate of Clearance

Introduction

Practitioners are no doubt aware that Residential Property Tax has been abolished with effect from 5 April 1997. However, the existing tax clearance arrangements in the case of sales of houses above a specified value threshold are being maintained. The value threshold relating to the Residential Property Tax Certificate of Clearance procedure is £115,000 in 1997 (formerly £101,000).

Tax Clearance procedure

The new threshold, which relates exclusively to the tax clearance procedure, applies to house sale contracts **executed on or after 5 April 1997**. From that date, where the sale consideration for residential property exceeds **£115,000** the vendor must provide the purchaser with a Certificate from the Revenue Commissioners indicating that all Residential Property Tax due **for years for which the tax was in operation** has been paid. Otherwise the purchaser must deduct an amount ("specified amount") from the purchase price and remit it to the Revenue Commissioners.

Applications

Practitioners are once again requested to make applications for Residential Property Tax Clearance Certificates **immediately** a contract for sale is executed and **well in advance of the closing date**. Failure to submit an application until days before the closing of a sale will prejudice the timely issue of the Clearance Certificate. Assistance or information regarding the Clearance Certificate may be obtained by calling:

(01) 679 2777
Exts. 4308, 4626 and 4628

QUERIES

*This section of **Tax Briefing** sets out the answers to some queries which have been raised with our Technical Service Units. We have published these as they may be of general interest to readers.*

Relevant Contracts Tax

Question

Are persons who become involved in land development without taking any active part in the actual erection of buildings required to operate Relevant Contracts Tax under Section 17(2) Finance Act 1970 ?

Answer

Under Section 17(2)(b)(i) Finance Act 1970, **a person carrying on a business which includes the erection of buildings** is required to operate RCT on making payments to subcontractors. Under the legislation, a person can be within the RCT scheme even if he/she does not take an active part in the actual erection of buildings. The requirements are that:

- The person must be carrying on a business and
- The business must include the erection of buildings.

Land developers carry on a business of developing land. Thus, where a land developer engages a building contractor to erect a building, he/she is a principal contractor to whom Section 17(2)(b)(i) Finance Act 1970 applies. This general position is modified by Section 17(12) Finance Act 1970 which provides that the erection of a building which is to be used or occupied by a person carrying on a business or by that person's employees will not result in the business being treated as a business which includes the erection of buildings.

Generally, Revenue treats a developer as carrying on a business which includes the erection of buildings where the developer's intention is to develop property for either sale or letting. However, Revenue regards the modification in Section 17(12) Finance Act 1970 as applying to a person who arranges to have a building erected with the sole intention of letting the building. Accordingly, such an investor is not regarded as a principal contractor for the purposes of RCT.

Since principal contractors may be liable for RCT which should have been deducted, they should, where there is a doubt, check with their tax office (in the Dublin area, this is Dublin Audit District 1) whether they are obliged to operate RCT.

Rental Income - Deduction for the cost of management of the premises

Question

Is it standard Revenue practice to allow a deduction for management expenses equal to a percentage of gross rental income ?

Answer

As discussed in the article on Rental Income in **Tax Briefing** Issue 25, February 1997, Section 81(5)(d) Income Tax Act 1967 authorises a deduction for the cost of management of rented premises borne by the person chargeable to tax in respect of rent from the premises.

The deduction which is allowed is the actual cost to the lessor for the management of the premises. Where a percentage commission is charged by, say, a letting agent for

the collection of rent, this amount is an allowable deduction, being part of the actual cost of management of the premises.

Special Savings Accounts (SSAs)

Question

What is Revenue's view on the status of SSAs which are transferred from one branch of a bank to another branch of the same bank ?

Answer

Section 37A Finance Act 1986 sets out the conditions which an account must meet in order to be a SSA within the meaning of Section 31 Finance Act 1986. Under Section 37A(1):

- No withdrawal of money is to be made from the account for a period of three months commencing with the date on which the account was opened (Section 37A(1)(b))
and
- The terms on which the account is opened must require the account holder to give the relevant deposit taker at least 30 days notice in relation to the withdrawal of money from the account.

The transfer of an account from one branch of a bank to another branch of the same bank will frequently involve the allocation of a new account number to the account. Where all that is involved is the transfer of a SSA from one branch of a bank to another branch of the same bank, Revenue is prepared to accept that the transfer does not constitute the closure of one SSA and the opening of a new SSA. The three month and 30 day requirements set out above will apply from the date on which the SSA was opened in the first branch.

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Capital Gains Tax Clearance Certificate (Forms CG50)

Practitioners are reminded that application forms CG50 should be sent to the tax office at least three working days in advance of the closing date of the sale. Completed forms should be sent for processing directly to the relevant Inspector of Taxes who deals with the tax affairs of the vendor. **Failure to submit timely applications may delay the issue of the Clearance Certificate.**

Issue of Returns for 1996/97

The number of Returns issued for 1996/97 is as follows:

Form 12		96,536
Form 11	194,050	
Form 11 Short	44,869	
Form BP1		8,787
Form AG12	23,731	
Form 1	3,252	
Form 1 Firms	13,580	
Form 54 Claims	23,090	
Form 54D		19,019

Health Expenses Certain Dental Bridgework

Expenses incurred on or after 14 July 1995 for dental treatment consisting of an enamel-retained bridge or a tooth-supported bridge are now allowable under Section 12 (2) Finance Act 1967.

Form 11 1996/97 & VSA Sheet (Form SA1)

In keeping with our continuous policy of providing an improved service and in response to practitioners requests for tax return forms to be issued earlier, we have examined the most effective way of issuing Forms 11 for 1996/97.

Practitioners will by now have received Forms 11 for 1996/97 in respect of their clients. To achieve an earlier issue time and also to avail of other improvements e.g. bulk mailing, we have decided to use the services of an external printer to print, package and address the forms ready for posting, in accordance with instructions supplied by Revenue. We hope practitioners find the new procedure beneficial. Needless to say, the printing company used was carefully selected and was required to comply with the conditions in the Government Supplies Agency contract regarding secrecy. However to ensure that the information supplied for the purposes of addressing the return forms - names, addresses, etc. of taxpayers and practitioners - remains secure and that it will not be used for any other purposes, Revenue have required the company to sign an additional undertaking that the information will be used exclusively for that purpose and that it will be returned to Revenue immediately on completion of the work.

The Form 11 for 1996/97 has been re-designed and simplified. It has been reduced from 12 pages to 8. We would welcome practitioners comments on the revised layout. We have found that very few practitioners who calculate their clients tax used the VSA calculation sheet incorporated in the Form 11. Accordingly, the VSA calculations have been omitted from the form and a separate computation sheet (Form SA1) is available to anyone who wishes to use it to calculate tax liability.

Copies of Tax Briefing

We currently issue one copy of *Tax Briefing* to each firm of practitioners on our mailing list. We have received a number of requests from practitioners for additional copies or to have additional named employees of firms added to our mailing list. Unfortunately, for a number of operational reasons we are unable to facilitate these requests. However, we would like to remind practitioners that Tax Briefing is available on 3 1/2" diskettes, for those using Microsoft Word, Version 6.0. These diskettes are available free of charge.

Return by Employers of Benefits - Forms P11D

A selective issue of Forms P11D will take place at the end of April in respect of the year ended 5 April 1997. The Form P11D requires the employers concerned to return details of benefits, non-cash emoluments and payments not subjected to PAYE provided to employees with emoluments of £1,500 or more and to all directors. Only those employers to whom the forms issue will be required to make a return. **The return filing date for these forms is 30 June 1997.**

New Revenue Publications

Motoring Expenses

A new information leaflet "Employees' Motoring Expenses" (IT 51) was issued in February 1997. The leaflet covers re-imbursement of motoring expenses to employees (including directors).

Finance Leasing

A leaflet outlining the Taxation Treatment of Finance Leases (IT 52) is enclosed with this issue of *Tax Briefing*. The leaflet also sets out details of the taxation treatment of finance leases and of the transitional measures for finance leases entered into prior to 31 December 1996.

Tax Implications on a Death

Capital Taxes Division in conjunction with the Office of the Chief Inspector of Taxes has published a new guide entitled "**What to do about tax when somebody dies**" (REV 1).

The guide is aimed primarily at those who;

- May find themselves acting as personal representatives or trustees
- May be beneficiaries of a deceased's estate

- May be surviving spouses

A copy is enclosed with this issue of *Tax Briefing*.

Euro Guide

A Revenue booklet “Preparing for the EURO - A Guide for Business on the taxation and Customs aspects of the changeover to the EURO” was launched recently and is enclosed with this issue. In it Revenue undertake to offer a wide range of taxpayer services in EURO from 1 January 1999 and to provide business with early advice on technical taxation issues associated with the changeover.

Copies of these latest publications or any other Revenue publications can be obtained from local tax offices or the Revenue Forms and Leaflets Service at (01) 878 0100 (*available 24 hours a day*).

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Key Dates/Reminders

Date	Tax Type	What's Due
APRIL 1997		
14	PAYE/PRSI	Monthly Remittance for month ended 5 April 1997
14	PAYE/PRSI	Employees should receive Form P60 for 1996/97
1-28	Corporation Tax	Preliminary Tax and ACT for A.P.s ending between 1-31 October 1996
1-30	Corporation Tax	Returns for A.P.s ending between 1-31 July 1996
1-30	Corporation Tax	Returns of Third Party Information for A.P.s ending between 1-31 October 1996
30	PAYE/PRSI	P35 for year 1996/97
30	Income Tax	Balance of 1995/96 liability
MAY 1997		
1	Income Tax	Last date for upward revision of Preliminary Tax -Direct Debit payments
14	PAYE/PRSI	Monthly Remittance for month ended 5 May 1997
19	VAT	Remittance for period March/April
1-28	Corporation Tax	Preliminary Tax and ACT for A.P.s ending between 1-31 November 1996
1-31	Corporation Tax	Returns for A.P.s ending between 1-31 August 1996
1-31	Corporation Tax	Returns of Third Party Information for A.P.s ending between 1-31 August 1996
JUNE 1997		
14	PAYE/PRSI	Monthly Remittance for month ended 5 June 1997
1-28	Corporation Tax	Preliminary Tax and ACT for A.P.s ending between 1-31 December 1996
1-30	Corporation Tax	Returns for A.P.s ending between 1-31 September 1996
1-30	Corporation Tax	Returns of Third Party Information for A.P.s ending between 1-31 September 1996
30	PAYE	Return Filing Date for Form P11D

Sterling Rate 1996/97
(Punt Equivalent of Sterling Pound)

DATE	APR 6-MAY 5	MAY 6-JUNE 5	JUNE 6-JULY 5	JULY 6-AUG 5	AUG 6-SEPT 5	SEPT 6- OCT 5	OCT 6-NOV 5	NOV 6-DEC 5	DEC 6-JAN 5	JAN 6-FEB 5	FEB 6-MAR 5	MAR 6-APR 5	YLY AVERAGE
6	NONE	NONE	0.9681	NONE	0.9519	0.9560	NONE	0.9791	0.9790	0.9985	1.0020	1.0235	
7	NONE	0.9569	0.9671	NONE	0.9506	NONE	0.9654	0.9791	NONE	0.9965	1.0030	1.0251	
8	NONE	0.9579	NONE	0.9662	0.9524	NONE	0.9631	0.9791	NONE	0.9985	NONE	NONE	
9	0.9597	0.9579	NONE	0.9652	0.9551	0.9551	0.9631	NONE	0.9790	1.0015	NONE	NONE	
10	0.9597	0.9606	0.9676	0.9662	NONE	0.9569	0.9640	NONE	0.9809	1.0020	1.0010	1.0204	
11	0.9574	NONE	0.9657	0.9657	NONE	0.9583	0.9640	0.9791	0.9794	NONE	1.0035	1.0188	
12	0.9583	NONE	0.9662	0.9662	0.9542	0.9583	NONE	0.9791	0.9794	NONE	1.0147	1.0194	
13	NONE	0.9615	0.9648	NONE	0.9537	0.9588	NONE	0.9791	0.9804	1.0005	1.0106	1.0142	
14	NONE	0.9620	0.9634	NONE	0.9547	NONE	0.9711	0.9791	NONE	0.9995	1.0076	1.0173	
15	0.9597	0.9620	NONE	0.9652	0.9556	NONE	0.9720	0.9791	NONE	1.0005	NONE	NONE	
16	0.9588	0.9611	NONE	0.9643	0.9560	0.9583	0.9720	NONE	0.9818	1.0025	NONE	NONE	
17	0.9588	0.9611	0.9629	0.9629	NONE	0.9583	0.9772	NONE	0.9833	1.0065	1.0055	NONE	
18	0.9574	NONE	0.9634	0.9569	NONE	0.9588	0.9791	0.9791	0.9862	NONE	1.0076	1.0116	
19	0.9569	NONE	0.9639	0.9574	0.9565	0.9602	NONE	0.9791	0.9886	NONE	1.0050	1.0101	
20	NONE	0.9606	0.9634	NONE	0.9556	0.9597	NONE	0.9791	0.9896	1.0055	1.0086	1.0112	
21	NONE	0.9602	0.9629	NONE	0.9551	NONE	0.9791	0.9791	NONE	1.0081	1.0076	1.0101	
22	0.9592	0.9606	NONE	0.9556	0.9551	NONE	0.9791	0.9791	NONE	1.0081	NONE	NONE	
23	0.9592	0.9602	NONE	0.9537	0.9556	0.9625	0.9791	NONE	0.9896	1.0055	NONE	NONE	
24	0.9597	0.9606	0.9639	0.9547	NONE	0.9620	0.9791	NONE	0.9906	1.0025	1.0091	1.0132	
25	0.9597	NONE	0.9648	0.9551	NONE	0.9639	0.9791	0.9791	NONE	NONE	1.0106	1.0173	
26	0.9588	NONE	0.9652	0.9542	0.9528	0.9608	NONE	0.9791	NONE	NONE	1.0096	1.0194	
27	NONE	0.9611	0.9639	NONE	0.9524	0.9636	NONE	0.9791	NONE	0.9975	1.023	1.0235	
28	NONE	0.9611	0.9634	NONE	0.9524	NONE	NONE	0.9791	NONE	0.9980	1.0209	NONE	
29	0.9588	0.9620	NONE	0.9542	0.9533	NONE	0.9791	0.9791	NONE	0.9960	NONE	NONE	
30	0.9574	0.9643	NONE	0.9547	0.9524	0.9640	0.9791	NONE	0.9945	0.9930	NONE	NONE	
31	NONE	0.9657	NONE	0.9542	NONE	NONE	0.9791	NONE	0.9926	0.9921	NONE	NONE	
1	0.9574	NONE	0.9639	0.9542	NONE	0.9636	0.9791	NONE	NONE	NONE	NONE	1.0267	
2	0.9547	NONE	0.9648	0.9537	0.9551	0.9673	NONE	0.9833	0.994	NONE	NONE	1.032	
3	0.9565	NONE	0.9667	NONE	0.9569	0.9678	NONE	0.9862	0.994	0.9906	1.0225	1.0325	
4	NONE	0.9695	0.9667	NONE	0.9574	0.9675	0.9791	0.9818	NONE	0.9970	1.023	1.0325	
5	NONE	0.9685	0.9662	NONE	0.9560	NONE	0.9791	0.9814	NONE	0.9980	1.0241	NONE	

MTLYAVG	0.9583	0.9617	0.9650	0.9590	0.9544	0.9610	0.9743	0.9798	0.9861	0.9999	1.0110	1.0199	0.9775
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FISCAL YEAR AVERAGE MARKET MID-CLOSING EXCHANGE RATES V. IRISH POUND

	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97
U S Dollar	1.7024	1.5917	1.6771	1.441	1.5171	1.6048	1.6051
Sterling	0.9204	0.9179	0.996	0.9576	0.9746	1.0263	1.0116
Deutschmark	2.6756	2.6712	2.6122	2.4134	2.3623	2.2973	2.4923
French Franc	9.0216	9.0844	8.8474	8.2717	8.1325	7.9607	8.438
Dutch Guilder	3.0146	3.0089	2.9406	2.7091	2.6488	2.5724	2.7955
Belgian Franc	55.13	54.99	53.79	50.46	48.64	47.23	51.34
Danish Krone	10.2382	10.3231	10.0743	9.4937	9.2952	8.9241	9.5694
Italian Lira	1989.57	1998.93	2189.19	2311.51	2427.69	2583.78	2500.8
Greek Drachma	271.4	299.25	331.94	340.77	361.74	374.84	393.84
Spanish Peseta	167.32	167.69	176.76	192.91	198.86	197.23	209.95
Portuguese Escudo	236.07	231.36	229.06	241.01	243.05	240.24	253.21
Japanese Yen	239.1	211.65	208.84	155.22	150.44	155.19	180.92
Swiss Franc	2.2713	2.3407	2.3647	2.1086	1.9884	1.8776	2.0844
Swedish Krona	9.8577	9.6875	10.3668	11.3854	11.4479	11.2042	11.0045
Norwegian Krone	10.394	10.4533	10.601	10.3968	10.33	10.1331	10.4499
Finnish Markka	6.3638	6.7385	8.0209	8.1706	7.5123	6.9929	7.5312
Austrian Schilling	18.83	18.8	18.39	16.98	16.62	16.16	17.54
Hong Kong Dollar	13.2522	12.3501	12.9714	11.1441	11.7282	12.4129	12.4186
Canadian Dollar	1.9743	1.8325	2.0612	1.8884	2.0967	2.1864	2.1847
Australian Dollar	2.1701	2.061	2.3364	2.1075	2.045	2.159	2.0358
ECU	1.2987	1.3038	1.3105	1.25	1.2419	1.2439	1.3048
E.E.R. Index	68.34	67.27	69.69	65.12	65.65	67.4	69.01

TABLE OF CAPITAL GAINS TAX INFLATION MULTIPLIERS

April Year Expenditure Incurred	Multiplier for Disposal in year ended 5									
	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
1974/75	4.84 8	5.00 9	5.22 1	5.35 5	5.55 2	5.65 6	5.75 4	5.89 9	6.01 7	6.11 2
1975/76	3.91 6	4.04 6	4.21 7	4.32 6	4.48 4	4.56 8	4.64 7	4.76 4	4.86 0	4.93 6
1976/77	3.37 3	3.48 5	3.63 3	3.72 6	3.86 3	3.93 5	4.00 3	4.10 4	4.18 7	4.25 3
1977/78	2.89 2	2.98 8	3.11 4	3.19 4	3.31 2	3.37 3	3.43 2	3.51 8	3.58 9	3.64 6
1978/79	2.67 2	2.76 0	2.87 7	2.95 1	3.05 9	3.11 7	3.17 1	3.25 0	3.31 6	3.36 8
1979/80	2.41 0	2.49 0	2.59 6	2.66 3	2.76 0	2.81 2	2.86 1	2.93 3	2.99 2	3.03 9
1980/81	2.08 7	2.15 6	2.24 7	2.30 5	2.39 0	2.43 4	2.47 7	2.53 9	2.59 0	2.63 1
1981/82	1.72 5	1.78 2	1.85 7	1.90 5	1.97 5	2.01 2	2.04 7	2.09 9	2.14 1	2.17 4
1982/83	1.45 1	1.49 9	1.56 3	1.60 3	1.66 2	1.69 3	1.72 2	1.76 5	1.80 1	1.82 9
1983/84	1.29 0	1.33 3	1.39 0	1.42 5	1.47 8	1.50 5	1.53 1	1.57 0	1.60 1	1.62 7
1984/85	1.17 1	1.21 0	1.26 1	1.29 4	1.34 1	1.36 6	1.39 0	1.42 5	1.45 4	1.47 7
1985/86	1.10 3	1.14 0	1.18 8	1.21 8	1.26 3	1.28 7	1.30 9	1.34 2	1.36 9	1.39 0
1986/87	1.05 5	1.09 0	1.13 6	1.16 5	1.20 8	1.23 0	1.25 2	1.28 3	1.30 9	1.33 0
1987/88	1.02 0	1.05 4	1.09 8	1.12 6	1.16 8	1.19 0	1.21 0	1.24 1	1.26 6	1.28 5
1988/89		1.03 4	1.07 7	1.10 5	1.14 6	1.16 7	1.18 7	1.21 7	1.24 2	1.26 1
1989/90			1.04 3	1.07 0	1.10 9	1.13 0	1.14 9	1.17 8	1.20 2	1.22 1
1990/91				1.02 6	1.06 4	1.08 4	1.10 2	1.13 0	1.15 3	1.17 1
1991/92					1.03 7	1.05 6	1.07 5	1.10 2	1.12 4	1.14 2
1992/93						1.01 9	1.03 7	1.06 3	1.08 4	1.10 1
1993/94							1.01	1.04	1.06	1.08

	8	3	4	1
1994/95		1.02	1.04	1.06
		6	6	3
1995/96			1.02	1.03
			1	7
1996/97				1.01
				6

NOTE : The year 1974/75 means the year commencing on 6 April 1974 and ending on 5 April 1975.

Other years are described similarly.

No indexation is available for expenditure made within 12 months prior to the date disposal.

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