

# Tax Briefing

*Office of the Chief Inspector of Taxes*

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## Preliminary Tax - Paying the right amount of Tax on time

### Preliminary Tax 1997/98

*The Revenue Commissioners wish to remind tax practitioners that, to avoid liability to interest charges, the Preliminary Tax payments due on 1 November 1997 in respect of the 1997/98 tax year must comply with the rules for self-assessment, i.e.*

- 90% of current years liability (1997/98)
- or**
- 100% of preceding years liability (1996/97)
- or**
- in the case of those paying Preliminary Tax by Direct Debit - 105% of the pre-preceding years liability (1995/96)

As in previous years, Revenue will be reviewing payments of Preliminary Tax to ensure compliance with the self-assessment criteria and cases not meeting the criteria will be liable to interest at the rate of 1.25% per month or part month on all underpayments and late payments.

### Review of Preliminary Tax Payments made for 1996/97

There may be cases where, for example because of a change in circumstances, the amount of Preliminary Tax already paid for 1996/97 does not meet the self-assessment criteria. When determining the Preliminary Tax liability for 1997/98, practitioners are advised to review, at the same time, the amount paid for 1996/97. Where the amount paid is not sufficient, interest charges can be reduced if arrangements are made to make an appropriate "top up" payment.

In making any top up payment for 1996/97, the payment must be returned separately from the 1997/98 Preliminary Tax payment and accompanied by a covering note setting out the appropriate details i.e. tax reference number, tax type, year of assessment (1996/97) and reason for payment. Under no circumstances should the "top-up" payment be returned with the Preliminary Tax payment for 1997/98.

#### **Remember**

#### **Late or inadequate**

***Preliminary Tax can give rise to an interest charge***

**pay the right amount of Preliminary Tax**

**and**

**.....pay it on time**

## Documentation used for Professional Services Withholding Tax (PSWT)

### Background

*Tax Briefing* - Issue 18 contained an article on the revised PSWT documentation which was introduced with effect from 6 April 1995.

Difficulties have arisen in relation to the use of the form F43, which was introduced to deal with situations where a form F45 was incorrect or was mislaid. This article clarifies the circumstances in which forms F43 should be sought from accountable persons (employing authority). In particular, the F43's should not be requested as a means of checking that the client has retained all F45's or as an alternative to the client retaining forms F45. We also want to make it clear that summary statements from accountable persons of PSWT deducted are not an acceptable alternative to forms F45/F43 in support of a claim for PSWT credit.

### Instances where practitioners/clients are requesting forms F43

It has come to light that for the purposes of completing their 1995/96 return of income, some taxpayers have requested accountable persons to issue forms F43 in respect of every form F45 referable to that tax year. It appears that such requests are made for one of two reasons i.e. either

- The taxpayer has not retained any of the forms F45 referable to the tax year
  - or
  - The F43's are being used to check that none of the original forms F45 are missing.
- Where a taxpayer has not retained any of the forms F45 referable to an accounting period or basis period, credit for PSWT can be given by the Inspector only on receipt of forms F43 in replacement of the original forms F45.

Taxpayers and practitioners are reminded that forms F45 are valuable documents and should be retained. **Form F43 is intended for use in exceptional circumstances only.** Where a taxpayer requests forms F43 in respect of numerous payments, it is open to the employing authority to refuse to issue same - the employing authority has already satisfied the obligation imposed by Section 16(2) Finance Act 1987 by the issue of a form F45 in relation to a payment.

Requests for forms F43 to check that none of the forms F45 are missing places a high and unnecessary administrative burden on the accountable person to whom the request is made. Taxpayers and practitioners are asked not to request forms F43 in these circumstances.

Where taxpayers or their accountants wish to make such a check, accountable persons may agree to issue a statement setting out F45 details for a basis period or accounting period. Any such statement issued by an accountable person is for the information of the taxpayer or his/her agent only. **It will not be accepted by the Inspector for the purposes of a claim for PSWT credit.** Practitioners should note that accountable persons are not obliged to issue such statements.

### Form F43 replaced Special Letters/Statements

As stated in *Tax Briefing* - Issue 18, the purpose of form F43 was to provide a secure form which replaced the special letters/statements issued by accountable persons in cases where forms F45 were lost etc. Such letters or statements, including a summary issued by the accountable person of PSWT deducted in a basis period or accounting

period, are no longer acceptable as an alternative to forms F45 (and exceptionally F43) in support of a claim for PSWT credit.

*Practitioners are asked to notify clients within the PSWT scheme of the above.*

## Completion of Tax Returns 1996/97 & Documents to be Enclosed

### Early Filing

As usual at this time of the year we would like to encourage practitioners to file their clients 1996/97 tax returns **as early as possible** - well in advance of the 31 January 1998 deadline.

Early filing of returns can be of particular benefit in the calculation of the preliminary tax due for 1997/98. If the return for 1996/97 is processed in time for the issue of a notice of assessment prior to 1 November 1997 then the final liability figure for 1996/97 can be used to accurately calculate the preliminary tax for 1997/98.

Again we would like to remind practitioners that there is no disadvantage in filing returns early. Provided adequate preliminary tax was paid for 1996/97, by 1 November 1996, **the balance of tax due for 1996/97 (if any) will not have to be paid until 30 April 1998** regardless of the date on which the return is filed. Where the preliminary tax rules have not been complied with the due date for payment is the preliminary tax due date regardless of when the return is filed.

Filing early does not increase the possibility of audit.

### Survey of 1995/96 Amendments

As part of our ongoing policy of seeking to improve the quality of service which we provide we have been examining why amendments to assessments arise. Overall, approximately 16% of assessments for 1995/96 required amendment. Our aim in processing returns is to "get it right first time". However, we are some way from achieving this.

During the month of April 1997 a survey was undertaken in all tax districts to establish the main reasons for amendments to 1995/96 income tax assessments.

The examination also focused on whether the amendments arose due to errors or omissions made by Revenue or by tax practitioners/taxpayers. The table on page 5 sets out an analysis of the main areas in which errors/omissions arose.

The results of the survey show that if there is to be any significant improvement in the level of accuracy of processing, it must be tackled jointly by ourselves and tax practitioners.

### Results of Survey

A total of 4,224 amended assessments were examined. Of these 62% of the amendments were attributable to tax practitioners/taxpayers and 38% were attributable to Revenue. [In an earlier smaller survey the results were roughly 50/50].

### Comments

The survey has indicated that the main reason for amendments is what has been termed "**instalment filing**" i.e. returns being submitted without full back-up documentation or without including all claims that should be made with the returns. This is one area where we are asking practitioners to make a particular effort to improve matters for 1996/97. Two areas where we recognise that having correct

documentation by the return filing date can in some instances cause difficulty are in respect of BES/Film Relief and Retirement Annuity Relief (these give rise to significant amendments of assessments at present).

## Changes

To assist in this we are prepared, on a trial basis, to accept claims in respect of these two reliefs where the amount claimed is included on the return but the relevant certificates is not available at return filing time.

This should give rise to a significant improvement in the accuracy of assessments and eliminate the need for amendments in this area.

As a control measure, we will be undertaking verification audits to ensure that amounts claimed are supported by correct documentation. Claims which are not ultimately supported by the correct documentation will be subject to the appropriate interest /penalty provisions.

## Documents which should be enclosed with returns

### BES/Film relief

Fully completed RICT or Film 3 forms where available at the date of return filing.

### Retirement Annuity Contributions

RAC certificates where available at the date of return filing.

### Trade/Profession

Accounts of the trade or profession together with computations of profit (loss), capital allowances and balancing charges. *Remember, the correct figures are required to be entered on the return.*

### Health Expenses Relief

Form Med 1 should be attached to the return where a claim for health expenses is being made. Where a claim for dental expenses is being made forms Med 1 **and** Med 2 should be attached.

### Withholding Tax

Forms F45/F43 for the relevant credit period.

## Pointers on Completion of Returns

### Interest Paid

The loan account number should be stated if the loan is from a Building Society or Local Authority. The gross interest paid figure should be shown without any adjustments such as the 80% restriction on relief.

### Losses

The sections on losses should be fully completed to indicate how the loss is to be utilised i.e. set off against other income under Section 307 ITA 1967 or carried forward under Section 309 ITA 1967. If a loss is to be created or augmented by Capital Allowances and claimed under Section 318 ITA 1967 this should be stated.

## Urban Renewal Relief

Claims under this heading should be dealt with as follows:

- *Capital Allowances on Industrial Buildings*  
include in capital allowance computation in the normal way
- *Double Rent Allowance*  
include in computation of profit/(loss) for the trade
- *Rented Residential Accommodation*  
include in rental income computation in the normal way
- *Owner/Occupier Relief*  
this can be claimed under the section headed “Other Allowances and Reliefs” (Sections 46 & 47 on Form 11).

Analysis of Main Errors/Omissions		
Amendment due to	Country	Dublin
RICT	19%	28%
Capital Allowances	10%	5%
Case I/II	8%	5%
Losses	8%	5%
Retirement Annuity	7%	9%
Mortgage Interest	7%	6%
Health Expenses	5%	13%
Medical Insurance	5%	4%
Withholding Tax	5%	10%
PAYE Income / P60s	5%	5%
Surcharge	4%	3%
PAYE / PRSI Allowance	4%	1%
Case V	2%	2%
Personal Allowances	1%	2%
Single Parent Allowance	1%	1%
Child Exemption	1%	1%
Permanent Health Benefit	1%	-
Separate Assessment	1%	-
Age Allowance	2%	-
Marginal Relief	2%	-

## Capital Acquisitions Tax

### Succession Act

The Family Law (Miscellaneous Provisions) Act 1997 (No. 18 of 1997) became law on 5 May 1997. Section 6 of the Act inserts a new Section 72A into the Succession Act, 1965, to clarify the law in relation to the distribution of a disclaimed estate on intestacy. Section 72A provides that where the estate, or part thereof, of a person who dies intestate is disclaimed after 5 May 1997 (otherwise than under Section 73 of the Succession Act 1965), the estate, or part of the estate as the case may be, shall be distributed in accordance with Part VI of the Succession Act 1965:

- As if the person disclaiming had died immediately before the death of the intestate  
**and**
- If the person disclaiming is not the spouse or a direct lineal ancestor of the intestate, as if that person had died without leaving issue.

The effect of Section 6 of the Family Law (Miscellaneous Provisions) Act 1997, is that where there are any possible successors of the intestate, other than the person who disclaims his/her interest, they will take precedence over the State for the purposes of succession and intestacy.



## Collector General

### GIRO Payslips on Tax Documents

Reference has been made in several issues of *Tax Briefing* to the importance of the encoded payslip which is part of Forms P30, VAT3, Notices of Preliminary Tax (taxpayer and agent copy) and Notices of Assessment.

The encoding facilitates accounting and ensures that all accompanying payments are correctly and accurately brought to account in accordance with the wishes of the remitter.

Despite repeated requests over the past three years, the Collector-General continues to encounter serious problems of payment misappropriation **caused by tax practitioners altering one client's payslip, particularly Preliminary Tax payslips to accompany another client's remittance.**

We would again remind practitioners that:

- All payslips are dedicated at production stage to **one** taxpayer/tax type/tax period
- One taxpayer's payslip **cannot be adapted** to accompany another taxpayer's payment
- Payslips attached to agent copy notices are only to be used for the client referred to thereon
- The **correct payslip** must be submitted, even when declaring a "Nil" liability
- Never write on or near the **OCR line** on a payslip or fold the slip in this area
- If you/your client has mislaid a payslip, **never** be tempted to adapt that of another client. Instead, furnish the details (registration number, tax type, tax period breakdown) in an accompanying letter with the payment
- Always ensure that you/your client examine all **receipts** for tax payments and notify any discrepancy to Revenue promptly.

By adopting the above simple guidelines you will assist Revenue in ensuring that your clients' payments are correctly allocated and receipted without delay, and that **compliance costs both to your client and your practice are kept to a minimum.**

### Payment of tax by means of post-dated cheques

Tax practitioners are reminded that where taxpayers experience difficulties in meeting their tax obligations, they should make contact at the earliest opportunity with the Office of the Collector-General, to agree a suitable payment arrangement. Appropriate interest charges will form part of any arrangement agreed.

It has been noted that, in an increasing number of cases, taxpayers are paying tax liabilities by means of a series of post-dated cheques without making any submissions about their ability to pay and without any prior agreement with the Office of the Collector-General. Like any late payment, a liability to interest at the rate of 1.25% per month or part thereof arises in these cases.

**Without prejudice to the right to pursue interest in relation to previous instances, taxpayers and practitioners should note that it is the intention to raise and pursue interest charges in respect of all future payments of this type.**

# Taxation Treatment of Redundancy / Termination Payments

## Introduction

The purpose of this article is to outline the taxation treatment of redundancy payments. It also highlights for practitioners the fact that specific prior Revenue approval is not required by employers when granting the basic exemption of £6,000 plus £500 for each complete year of service or, if higher, the alternative Standard Capital Superannuation Benefit exemption.

## Types of Redundancy Payments

A composite redundancy lump sum might typically include the following elements:

- Statutory Redundancy Payments
- Ex-Gratia/Compensation Payments from Employers
- Company car transferred to employee
- Pension Scheme Refunds
- Pension Scheme Lump Sums (Commutation)

The tax treatment of the above sums varies and can be summarised as follows:

### Statutory Redundancy Payments

Statutory redundancy payments made under the Redundancy Payments Acts 1967 to 1991 are exempt from income tax under Schedule E. They do not reduce in any way the exemptions which are available in respect of other redundancy payments

### Ex-Gratia/Compensation Payments from Employer

Ex-gratia payments, that is, payments made by the employer over and above the statutory redundancy payment are taxable. However, there are a number of exemptions which reduce the amount charged to tax and a further relief which reduces the tax chargeable. These exemptions and reliefs are discussed later in the article.

### Company Car

A common feature of a redundancy package is that an employee is allowed to retain a company car. The market value of the car is treated as part of the ex-gratia payment and is therefore taxable.

### Pension Scheme Refund of Contributions

Any refund of contributions provided for under an approved superannuation scheme is not regarded as income in the hands of the employee and it does not reduce his/her entitlement to the various exemptions available in respect of other taxable lump sums. However, a charge to tax of 25% is imposed on a pension scheme in respect of such refunds (including interest).

### Pension Scheme Lump Sums (Commutation)

Some pension schemes have a facility whereby an individual can opt to take a lump sum and a reduced pension.

An employee who retires before reaching normal retirement date may take a lump sum and begin to receive his/her pension immediately if the retirement is due to



incapacity, or takes place on or after the employee's 50th birthday, subject, of course, to the benefit terms of individual schemes.

Although the pension scheme lump sum is itself tax free, it can have an effect on the exemptions available in respect of other lump sum payments.

## Exemptions and Reliefs

Some payments are not taxable, for example, statutory redundancy payments, refunds of certain pension scheme contributions and certain pension scheme lump sums. All other payments are subject to tax but may be covered by the following exemptions:

### Basic Exemption

The first £6,000 plus £500 for each **complete year** of service in the office or employment in respect of which the payment is made is exempt from tax. The figure of £500 cannot be apportioned to give additional relief for part of a year of service.

### Increase up to £4,000 on the Basic Exemption

The basic tax-free exemption of £6,000 plus £500 for each complete year of service may be increased by a maximum figure of £4,000 if the following two conditions are satisfied:

- The employee has never previously claimed relief in excess of the basic tax-free exemption
- and**
- The employee is not entitled to receive a tax-free lump sum from an approved pension scheme in excess of £4,000. Where an amount less than £4,000 is received or receivable from a pension scheme, the increase to the basic exemption will be £4,000 less that amount.

It should be noted that a pension scheme lump sum **received or receivable** can limit the entitlement to the increased exemption. Where the pension lump sum is receivable in the future, its actuarial value is taken into account. In practice, the administrator of the pension scheme provides details of the lump sum payable under the scheme or its actuarial value. Revenue approval must be sought for this increase in basic exemption.

### Standard Capital Superannuation Benefit (SCSB)

The Standard Capital Superannuation Benefit is an **alternative** exemption which is available to all employees but is of benefit mainly to employees with high earnings and long service. This alternative exemption can give rise to a higher maximum exemption than the increased basic exemption.

The formula for calculating SCSB is as follows:

$$\text{SCSB} = \frac{(A \times B)}{15} - C$$

where:

A = Average annual emoluments, including benefits-in-kind, for the last three years of service to date of departure (or for the whole period of the service, if less than three years)

B = Number of **complete** years of service

C = Any lump sum pension entitlements i.e. any tax-free lump sum received or receivable under an approved superannuation scheme.

## Amount Chargeable to Tax

The excess of any taxable lump sum over the relevant exemption figure is chargeable to tax as extra income earned in the year of assessment in which the termination of the employment occurs. If an employee is already paying tax at the top rate of 48%, all of the extra income will be charged to tax at 48%.

The taxable lump sum is not regarded as reckonable income for the purpose of PRSI but is liable for the Health Contribution (1%) and Employment and Training Levy (1.25%).

## Top-Slicing Relief

The amount of the tax charged may also be reduced by what is known as “**top-slicing relief**”. There is a formula for calculating the relief, the effect of which is to reduce the tax rate on the lump sum payment to the individual’s average rate of tax for the previous five tax years. Where an employee feels that such relief is due he/she should contact the tax office. Top-slicing relief is not normally given until after the end of the year of assessment.

## Procedures and Application of PAYE

The basic exemption of £6,000 plus £500 for each complete year of service or, if higher, the alternative Standard Capital Superannuation Benefit exemption may be allowed by the employer before applying PAYE to the lump sum payment - **specific prior Revenue approval is not now required**. Revenue approval is, however, required for an increase in £4,000 over the basic exemption. This will only arise when this increased exemption exceeds the SCSB.

Where a payment exceeds the basic exemption or SCSB exemption or such higher exemption figure approved by Revenue the employer is required to deduct and to account to Revenue for tax under PAYE and levies charged on the excess.

The employer is required to maintain satisfactory supporting records of redundancy/termination payments made.

## Further Assistance

Any practitioner or employer who requires further assistance with the taxation of redundancy payments should contact their local tax office or the **Central Telephone Information Office** at

(01) 878 0000.

An explanatory leaflet on the subject is being prepared and will be available shortly.

## GMS Superannuation Plan - Retirement Annuity Relief

### Background

Section 12(3) Finance Act 1991 effectively provides that the GMS income of doctors who participate in the General Medical Services Superannuation Plan does **not** come within the definition of “relevant earnings” for the purposes of relief for retirement annuities under Section 235 Income Tax Act 1967. Where such doctors have effected approved retirement annuity policies in respect of private practice income, it is necessary to apportion the overall practice expenses between the non-relevant (GMS)

receipts and the relevant (private practice) fees to arrive at the “net relevant earnings” for relief purposes.

This content is more than 5 years old.  
Where still relevant it has been incorporated  
into a Tax and Duty Manual  
or other website text.

## Review

Following discussions with the Technical Committee of the Institute of Taxation, the method of calculating the allowable deduction for retirement annuity purposes has been reviewed. This article sets out an alternative method of calculating 'net relevant earnings' and retirement annuity relief in respect of private practice income of members of the GMS Superannuation Plan. The alternative method as outlined may be applied for years 1996/97 onwards.

## Examples

The following examples will illustrate both the existing method of calculation and the alternative acceptable method of calculating relief, based on the following figures:

	£
GMS Receipts	75,254
[Capitation 49,960	
Non-Capitation 25,294]	
Private Practice Fees	<u>39,227</u>
Total	114,481
Less: Expenses	<u>42,391</u>
Net profit	72,090
Capital Allowances	<u>2,413</u>
<i>Profit net of</i>	<i>69,677</i>
<i>Capital Allowances</i>	

## Existing Method of Calculation

### Example 1

Under the existing method, the expenses of £42,391 and capital allowances of £2,413 will be effectively apportioned between the relevant earnings of £39,227 and the non-relevant earnings of £75,254.

This is achieved by applying the formula:

$$A \times \frac{B}{C}$$

where:

- A** is private practice fees of £39,227  
**B** is profit net of capital allowances of £69,677  
**C** is gross receipts of £114,481

Therefore \*NRE is

$$\frac{39,227 \times 69,677}{114,481} = 23,875$$

(\*net relevant earnings)

Retirement Annuity deduction is  $23,875 \times 15\% = \text{£}3,581$

## Alternative Method of Calculation

Before setting out the alternative method of calculation, it might be appropriate to refer to the composition of the GMS income of £75,254 and here it will be seen that this comprises 'capitation' income of £49,960 and 'non-capitation' income of £25,294. In fact, the GMS Superannuation Plan contributions of 10% by GMS Payments Board and 5% by doctor members are made only in respect of the 'capitation' amounts. In this regard, it is acknowledged that the existing method (Example 1) does have a significant impact on the calculation of overall retirement relief in cases where the GMS income includes a relatively high proportion of non-capitation income.

### Example 2

Using the same figures as in Example 1, the revised approach would be to firstly set the expenses of £42,391 against the GMS non-capitation income of £25,294 with the balance of £17,097 being apportioned between the GMS capitation income and private practice income as follows:

Expenses	42,391
Less: Non-Capitation	<u>25,294</u>
Net Expenses	17,097
Plus: Capital Allowances	<u>2,413</u>
Adjusted Expenses	19,510
Private Practice Fees are	£39,227

The amount of adjusted expenses attributable to private practice fees is:

$$39,227 \times \frac{19,510}{39,227 + 49,960} = 8,581$$

$$89,187^*$$

Therefore the amount of private practice income which is available for retirement annuity relief is: £30,646 (i.e. 39,227 - 8,581)

Retirement Annuity deduction is £30,646 x 15% = **£4,597**

It will be seen that Example 2 provides for a retirement annuity deduction of £4,597 as against the amount of £3,581 in Example 1.

### Simple Formula

In relation to Example 2, the same result can be arrived at by a simple formula of:

$$A \times \frac{B}{C}$$

where:

**A** is adjusted profit after capital allowances

**B** is private practice fees

**C** is capitation fees plus private practice fees.

$$69,677 \times \frac{39,227}{69,677 + 49,960} = 30,646$$

$$89,187$$

Therefore \*NRE = 30,646

(\*net relevant earnings)

Retirement annuity deduction is £30,646 x 15% = £4,597

It is expected that this formula will be used in practice.

It should also be pointed out that the examples have been worked on the basis of a rate of 15%. The rate of 20%, where applicable, should be substituted, in accordance with the provisions of Section 13 Finance Act 1996.

## Benefit-in-Kind on Company Cars

### Introduction

This article outlines the tax position where a company car is made available to a director/employee for private use.

### Charge to benefit-in-kind on company cars

An employee is chargeable to tax on the benefit arising where, by reason of the employment, a car is made available (without a transfer of ownership) to him/her and the car is, in the tax year, available either for that individual's private use or to his/her family or household.

A car made available to an employee by his/her employer (or a person connected with the employer) is regarded as being made available by reason of the employment.

A car made available to an employee is deemed to be available for private use unless the **terms** on which it is made available **prohibit** private use and no such use is made of the car in the tax year.

Once a car is available to the employee for private use, it is irrelevant whether or not any private use is made of it.

The car benefit-in-kind provisions apply both to **directors** and to other **employees**, irrespective of the level of emoluments from their offices or employment's. They also apply whether the office or employment is taxable under Schedule E or, in the case of a foreign office or employment, under Schedule D, Case III.

### Pool Cars

A car which is included in a car pool for the use of employees of one or more employers is treated as not available for the private use of employees if, in the tax year, **all** of the following conditions are met:

- The car was available to, and actually used by, more than one of the employees concerned
- In the case of each employee, the car was made available to him/her by reason of the employment
- The car was not ordinarily used by any one employee to the exclusion of the others
- In the case of each of the employees concerned, any private use of the car made by him/her was merely incidental to his/her other use of it in the year
- The car was not normally kept overnight on or in the vicinity of the employees' homes.

### Calculation of car benefit-in-kind

The calculation of the benefit-in-kind of the use of a car is summarised as follows:

**Benefit-in-Kind is equal to the cash equivalent** of the benefit of the car **less amounts made good** to the employer by the employee in respect of the costs of providing or running the car.



**Cash equivalent of the benefit of the car is equal to the original market value** of car x 30% (20% 1982/83 to 1991/92 inclusive). The cash equivalent is reduced, for years 1992/93 et seq. by:

- 4½% (3% for years 1982/83 to 1991/92 inclusive) of the original market value of car, where no part of the cost of private fuel is borne by the employer
- 3% (2% for years 1982/83 to 1991/92 inclusive) of the original market value of car, where no part of the cost of car insurance is borne by the employer
- 3% (2% for years 1982/83 to 1991/92 inclusive) of the original market value of car, where no part of the cost of repair and servicing of the car is borne by the employer
- 1% (½% for years 1982/83 to 1991/92 inclusive) of the original market value of car, where no part of the motor tax is borne by the employer.

### Amounts made good by employee

The deduction in respect of amounts made good by the employee to the employer is not to include any costs borne by the employee for which he/she was allowed a percentage reduction in the cash equivalent of the benefit.

### Original Market Value

The original market value of a car is the price which it might reasonably have been expected to fetch if sold in the State singly in a retail sale in the open market, immediately before the date of its first registration (in the State or elsewhere) i.e. the Irish open market price for a single retail sale immediately before the date on which the car was **first** registered. For example, the original market value of a car first registered in the UK on 1 July 1994 and imported into Ireland on 1 November 1996 (and registered in Ireland in November 1996) would be the **Irish** open market price for a single retail sale immediately before 1 July 1994. Original market value includes vehicle registration tax (VRT).

In practice, the original market value is considered by reference to list prices. Where it is established that a discount was involved and such discount was normally obtainable in respect of a single retail sale in the open market, the list price may be reduced accordingly. In cases where an exceptionally large discount was obtained (e.g. a quantity or fleet discount) or the discount cannot be determined (e.g. a car has been traded in against a new car) or the car involved was purchased second-hand, claims in respect of discounts must be limited to the discounts normally obtainable in respect of a single retail sale on the open market. Reductions for discounts do not usually exceed 10%.

Claims for reductions must be considered on a case-by-case basis and an automatic reduction (of any percentage) cannot be applied. For example, a discount would not normally be obtainable where the model of car is in scarce supply. The objective in each case is to determine the original market value.

### Car available for less than full year

Where a car is available for only part of the tax year, the cash equivalent for that year is adjusted in the same proportion as that part of the year bears to the full year. Cases where a car is made available to the employee for the first time during the tax year (e.g. on taking up employment) or a car is no longer available to the employee during the tax year (e.g. due to cessation of employment) would be examples of when this apportionment can apply.

## Reduction for high business mileage

Where the business mileage for a tax year exceeds 15,000 miles (10,000 for the years 1982/83 to 1991/92 inclusive) the cash equivalent of the benefit of the car is reduced by applying the scales shown on page 17.

## Business mileage in absence of particulars

In a case where a person fails to give particulars of business mileage or private mileage for the year, or where the particulars delivered are not satisfactory, the business mileage may, in the absence of sufficient evidence to the contrary, be determined by deducting 5,000 from the total number of miles travelled in the year.

## Annualising business mileage

In general, the business mileage is the actual business mileage travelled in the tax year. However, where the car is available for only part of the tax year e.g. the car is made available to the employee on taking up of the employment during the tax year, the business mileage may be "annualised" for the purpose of determining the percentage charge to be applied in the calculation of the cash equivalent of the benefit of the car. The following formula may be applied to determine the annualised business mileage:

$$A \times \frac{B}{C}$$

**A** Actual business mileage

**B** Full Year

**C** Part of Year in which car is available

### Example

A company car is made available to an employee for private use on 6 November 1996. The original market value of the car is £18,000 and the employer bears all the costs in respect of private fuel, insurance, repair and servicing and road tax. The actual business mileage in 1996/97 is 8,250 miles. The employee makes good to the employer £750 in respect of the cost of providing or running the car. As the car is made available for part only of the year i.e. for 5 months from 6 November 1996 to 5 April 1997:

- the cash equivalent is adjusted by  $\frac{5}{12}$
- the actual business mileage may be annualised to 19,800 miles i.e.  $8,250 \text{ miles} \times \frac{12}{5}$

The percentage charge to be applied in determining the cash equivalent of the benefit of the car for 1996/97 is 80% (see scales on page 17).

The 1996/97 **benefit-in-kind** calculation is:

**Benefit-in-kind is equal to the cash equivalent** of the benefit of the car less £750 (amounts made good)

Cash equivalent of the benefit of the car is equal to the OMV of car  $\times 30\% \times \frac{5}{12} \times 80\%$

which is:

$$£18,000 \times 30\% \times \frac{5}{12} \times 80\% = £1,800$$

**Benefit-in-Kind is: £1,800 less £750 = £1,050**

### Reduction of 20% in certain circumstances

For the tax year 1996/97 et seq. if an employee does not qualify for tapering relief the cash equivalent may be reduced by 20% if the following conditions are met:

- The employee works an average of 20 hours per week
- Travels at least 5,000 miles per annum on employers business
- Spends at least 70% of working time away from employers premises

### Example

A company car is made available to an employee on 6 April 1996. The original market value of the car is £18,000. All running costs are met by the employer. The employee works full-time for the firm and travels 6,000 miles on company business. The employee spends more than 70% of working time away from employers premises.

#### Benefit-in-kind 1996/97

£18,000 x 30%

£  
5,400

Less reduction of 20%

1,080

*Benefit-in-kind*

4,320

A condition for this relief is that an employee must retain a log book detailing business mileage, business transacted, business time travelled and date of journey. This log should then be certified by the employer as being correct.

### Foreign Earnings Deduction Relief

A special deduction is provided in certain circumstances where an individual works abroad for part of the tax year. (This is covered in paragraph 7 of explanatory residence Leaflet RES 1 - April 1997). The gross benefit-in-kind falls to be included in the earnings by reference to which this deduction is calculated. **No further reduction will therefore arise.**

### Overseas duties and Benefit-in-Kind

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

- No claim to foreign earnings deduction relief (if any) is made in respect of the car benefit
- The aggregate number of days spent outside the State for the purpose of performing the duties of the office or employment is at least 30 complete days in the tax year (any holiday period abroad is excluded). A day for this purpose must include an overnight stay.
- The director/employee travels abroad without the car
- The car is not available for use by the director/employee's family or household during the director/employee's period of absence outside the State.

## Business Mileage Tables

Years 1982/83 to 1991/92 inclusive

Business Mileage		
Lower limit (1)	Upper limit (2)	% of cash equivalent (3)
Miles	Miles	
Up to	10,000	100%
10,001	11,000	95%
11,001	12,000	90%
12,001	13,000	85%
13,001	14,000	80%
14,001	15,000	75%
15,001	16,000	70%
16,001	17,000	65%
17,001	18,000	60%
18,001	19,000	55%
19,001	20,000	50%
20,001	21,000	45%
21,001	22,000	40%
22,001	23,000	30%
23,001	24,000	20%
24,001	25,000	10%
25,001		Nil

Years 1992/93 et seq.

Business Mileage - Percentage of Cash Equivalent						
Lower Limit (1)	Upper limit (2)	1992/93 %	1993/94 %	1994/95 %	1995/96 %	1996/97 & subsequent years %
Up to	15,000	100	100	100	100	100
15,001	16,000	97.5	97.5	97.5	97.5	97.5
16,001	17,000	95	95	95	95	95
17,001	18,000	90	90	90	90	90
18,001	19,000	80	80	85	85	85
19,001	20,000	70	70	75	75	80
20,001	21,000	60	60	65	70	75
21,001	22,000	50	55	60	65	70
22,001	23,000	40	45	50	55	65
23,001	24,000	35	40	45	50	60
24,001	25,000	30	35	40	45	55
25,001	26,000	25	30	35	40	50
26,001	27,000	20	25	30	35	45
27,001	28,000	17	20	25	30	40
28,001	29,000	14	18	22	28	35
29,001	30,000	10	15	20	25	30
30,001	-	5	10	15	20	25

# Taxation of Part-Time Lecturers / Teachers / Trainers

## Introduction

The question as to whether part-time lecturers/trainers are engaged under contracts of service (employees) or under contracts for service (self-employed) arises regularly.

## Revenue Position

**Revenue's view is that part-time lecturers/trainers are employees.**

Payments are to be made to these individuals net of statutory deductions for PAYE and PRSI.

## Case Law

Revenue's position is founded on a number of precedents, which can be summarised as follows:

### Irish Cases

- In the Circuit Court, in 1992, it was held that part-time lecturers employed in a school were engaged under a contract of service (employee).
- In the High Court, in 1986, Mr Justice Murphy held in the case of *Stephen Barcroft v Minister for Health and Social Welfare and James Agnew (Social Welfare Appeals Officer)*, that the teachers engaged by him performed their work under a contract of service and that the employments were insurable.
- A Social Welfare Appeals Officer, in 1996, upheld a Deciding Officer's decision that individuals engaged as part-time lecturers, in a teaching establishment, were insurable under the Social Welfare Acts.

### UK Cases

- *Fuge v McClelland* (High Court Chancery Division, 22 June 1956). This case involved a full-time teacher who also taught adult evening courses. It was held that the night work also came under Schedule E, just as much as the day-time activities.
- *Mitchell & Eden v Ross* (House of Lords, May/July 1961). In this case it was held that part-time specialists (hospital consultants) engaged under the Health Act 1946 were assessable under Schedule E.
- *Sidey v Phillips* (Chancery Division 5 December 1986). In this case it was held that a non-practising barrister was properly assessable under Schedule E in respect of his part-time lecturing fees.
- *Walls v Sinnett* (Chancery Division). This case upheld a decision that a professional singer who lectured in music at a technical college for 4 days each week was assessable under Schedule E.

## Exceptions

Revenue accepts that the above position need not apply in situations where the lecturers/trainers give "once off" lectures. Lecturers/trainers in these positions will generally only give lectures once or twice a year for the same body.

Such lecture fees must, of course, be returned by the individuals concerned under the self-assessment rules.

**It would not be accepted, however, that lecturers/teachers/trainers who give a series of “once off” or guest lectures for the same body are outside the scope of PAYE /PRSI.**

Any cases of doubt under this heading can be clarified by contacting the relevant tax office.

## **Value-Added Tax: Veterinary Services**

### **Background**

The provisions of the EU Second Simplification Directive (Council Directive 95/7/EC of 10 April 1995) were incorporated into Irish VAT law initially by the European Communities (Value Added Tax) Regulations 1995 (S.I. 363 of 1995) and subsequently by Sections 87-90 Finance Act 1996. Those provisions dealing with contract work on movable goods were also treated as applying to services provided in the State by Irish established veterinary surgeons on animals (mainly racehorses) whose owners were established and VAT registered in another Member State. The net effect of this treatment was that no Irish VAT was charged on the services and the customer was liable under a reverse charge mechanism in the other Member State.

### **Review**

The European Court of Justice in the case of *Maatschap MJM Linthorst, KGP Pouwels and J Scheres cs v Inspecteur der Belastingdienst/Ondernemingen Roermond* (Case C-167/95) examined which sub-section of Article 9 of the Sixth Directive (77/388/EEC) applied to the services of veterinary surgeons.

It considered Article 9(2)(c) [Section 5 (6) (c) (iv) VAT Act 1972] which deals with valuations of movable tangible property and work on movable tangible property and Article 9(2)(e) which covers services contained in the Fourth Schedule of the VAT Act.

It concluded that the principal work of veterinary surgeons was the provision of therapeutic treatment administered in accordance with scientific rules and that it did not come within the sub-sections stated above.

Consequently the place of supply of the services of veterinary surgeons is deemed to be supplied where the supplier has established his business or has a fixed establishment from which the service is supplied in accordance with Article 9(1) [Section 5 (5) VAT Act 1972].

### **Revised Practice**

As a consequence of the decision that the service is not work on movable tangible property, **the services of veterinary surgeons cannot be regarded as qualifying for treatment as contract work under the EU Second Simplification Directive and Irish VAT must be charged on such services.**

**The revised practice applies from 1 September 1997.** Foreign VAT registered owners will however be able to apply for refunds under the 8th Directive (79/1072/EEC) from:

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



Telephone: (065) 41200  
              Extns. 2407 / 2409  
Dublin callers (01) 677 4211  
Fax: (065) 40394

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## Queries

### Social Welfare Equal Treatment Compensation Payments

#### Question

Are compensation amounts included in the Equal Treatment payments made by the Department of Social, Community & Family Affairs taxable? Are such payments taxable in the year to which they relate or in the year in which the payment is received?

#### Answer

The Social Welfare equal treatment payments made by the Department of Social, Community & Family Affairs in recent years have included an increase based on the Consumer Price Index. The Revenue view is that the increase forms part of the basic Social Welfare payment to which it relates.

Revenue are treating the payments as relating to each year of assessment over which the payments accrued rather than to the year(s) of assessment in which they were received.

Consequently, if a payment was not regarded as taxable in the relevant year(s) of accrual e.g. Disability Benefit pre-April 1993, Unemployment Benefit pre-6 April 1994 etc., it would not be regarded as taxable in the year(s) of receipt.

If a payment was always taxable e.g. invalidity pension, it would be regarded as taxable in each year of accrual e.g. if the year(s) of accrual were say years of assessment 1983/94 - 1986/87, the payments accrued in each of those years would be regarded as taxable in each of those years.

### Taxation of Couriers

#### Question

How are couriers treated for tax purposes?

#### Answer

Couriers are regarded as self-employed for PRSI purposes as a result of a Social Welfare Appeals Officer's decision. In the interest of uniformity Revenue decided, without prejudice, to treat them as self-employed for tax purposes.

Many courier firms have opted to implement a voluntary PAYE system of tax deduction in respect of couriers engaged by them. The PAYE allowance of £800 is given to the couriers who are subject to this voluntary PAYE deduction system.

A special flat-rate expense allowance regime has been agreed for couriers on voluntary PAYE. Basically, to reduce the administrative overhead, this involves treating expenses as being a percentage of income. The PAYE principles of disregarding the allowable expenses for tax purposes (instead of allowing them in tax-free allowances) before operating PAYE was applied.

Any courier firm wishing to join the voluntary PAYE scheme should contact their Inspector of Taxes.

# Signature of New Tax Convention between Ireland and the United States

## Introduction

The Minister for Finance *Mr. Charlie McCreevy TD* and *Mrs. Jean Kennedy Smith* the United States Ambassador to Ireland signed a new Double Taxation Convention between Ireland and the United States in Dublin on 28 July 1997. The new Convention will enter into force when ratification procedures are completed.

## Background

The current Ireland/US Double Taxation Convention was ratified in 1951 and is the oldest that both countries have. There have been a number of attempts over the years to update it and in 1986 a draft text was substantially agreed. It was not concluded, however, due to changes in US tax laws and Treasury personnel and discussions only recommenced in earnest in July 1995. After that there were several rounds of intensive negotiations culminating in the signature of the new Convention in July. The Convention must be ratified by each country in accordance with its constitutional procedures before it can enter into force. It is expected that the process leading to ratification and entry into force will be completed this year.

## New Convention

The new Convention brings the tax relationship between the two countries up to date in the context of the OECD Model Convention. From a US perspective it also includes a comprehensive Limitation on Benefits Article in line with its current treaty policy.

*The following is a summary of some of the important matters contained in the Convention. The Convention itself is 55 pages long so that in a short article it is possible only to discuss some of the main features which will effect businesses and individuals. These are discussed mainly from the perspective of Irish residents in receipt of US income.*

## Limitation on Benefits -Article 23

The most significant change in the new treaty is the inclusion of a Limitation on Benefits (LOB) Article. All modern US treaties contain a comprehensive LOB Article designed to ensure that only intended residents of the treaty partner country may avail of treaty benefits. Accordingly, it is not sufficient to be a resident of the other treaty country, a person must also be a “qualified person” or satisfy some other tests which exclude certain intermediate entities. This reflects a US concern about treaty shopping. Although the LOB Article in the new Convention is reciprocally drafted Ireland does not have the same degree of concern about this issue.

Rather the concern of the Irish negotiators has been to gain acceptance from the US side that its standard LOB Article, which severely restricts foreign ownership of qualified entities, would damage Ireland to a much greater extent than some other countries. This is because of Ireland’s position as a small open economy heavily dependent on inward investment. Accordingly, the new LOB Article differs in some important respects from other recent US treaties.

Under Article 23 all US and Irish resident individuals are qualified persons. For persons other than individuals, there are a number of tests which apply to Irish or US

residents in order that they may qualify for treaty benefits. Each of these tests is a “safe harbour”, which means that only one of them has to be satisfied to qualify for treaty benefits. The main safe harbours may be summarised as follows:

- “ownership/base erosion”
- “quoted company”
- “subsidiary of a quoted company”
- “derivative benefits”
- “active business”

If a person does not qualify under any of these safe harbours, treaty benefits may still be granted by the competent authority of the source State through a discretionary ruling process, [Article 23(7)]. Unlike the other tests which are self executing discretionary relief requires an application for relief to the competent authority of the source State.

### Ownership / base erosion safe harbour

The ownership/base erosion test is met if a resident person is ultimately owned, to the extent of 50% at least, by Irish or US resident individuals, US citizens, Irish or US public companies, or certain other “good” residents of Ireland or the US and if the person also passes the base erosion test.

Under the base erosion test, amounts which are deductible expenses and are paid or accrued as to persons other than qualified persons or US residents or citizens may not exceed 50 per cent of gross income in the fiscal year. For this purpose arm’s length payments for goods or services and payments in respect of financial obligations to banks carrying on business in the US or Ireland are not considered deductible expenses. The exclusion from the base erosion test of payments in respect of financial obligations to banks carrying on business in Ireland or the US irrespective of whether they are qualified persons is unique to the Irish treaty. This exclusion is needed because some banks operating in Ireland may not be qualified persons and it would be inappropriate to distinguish payments to such banks. The base erosion test may be briefly summarised as:

**“Bad Payments” < 50% of  
Gross Income      Gross Income**

where bad payments are broadly payments outside Ireland or the US in respect of obligations such as interest or royalties.

The rationale for this two part test is that treaty benefits can be indirectly enjoyed not just by equity holders but also by various classes of obligee such as lenders.

### Quoted company safe harbour

The quoted company test is satisfied by Irish or US resident companies whose principal class of shares is substantially and regularly traded on certain recognised stock exchanges. An annual turnover of 6% of the principal class of shares is considered substantial. A Building Society is deemed to meet this test.

### Subsidiary of a quoted company safe harbour

An Irish or US resident company that is a 50 per cent subsidiary of a company, resident in either State, which meets the public company test will itself be a qualified person. Unlike other recent US treaties subsidiaries of public companies are not required to satisfy a base erosion test.

## Derivative benefits safe harbour

Article 23 includes a derivative benefits safe harbour that builds on some other recent US treaties. Broadly speaking this provision allows a company that is at least 95 per cent owned by certain “good” residents of countries in the European Union (EU) or North American Free Trade Agreement (NAFTA) and which satisfy a base erosion test to qualify for all of the benefits of the treaty. The base erosion test is the one described above but with the addition that payments to “good” EU or NAFTA residents are not considered “bad” on base eroding. Good residents of EU or NAFTA countries are those which would themselves satisfy a comprehensive US - LOB test. However, in the case of dividends, interest or royalty income there is an additional restriction, or anti conduit rule.

In order to obtain the benefits of reduced withholding taxes on these payments the 95 per cent ownership requirement must be satisfied by shareholders that would have been entitled to equivalent withholding tax benefits in respect of such income under their own treaties with the state of source if the income had been received directly. The derivative benefits test is one which many foreign companies operating in Ireland will rely on. Its significance is that there is no requirement for Irish ownership. This is a significant shift in US treaty policy and an extremely important one for Ireland. There are, however, negative aspects to the test in that it is limited to EU and NAFTA countries and it incorporates a blunt anti conduit rule. This means that Irish companies with parents in non EU/NAFTA countries such as Japan, Switzerland or Australia, which have less favourable withholding tax rates in their treaties with the US, cannot qualify for benefits under this test. Similarly there is no provision for a “look through” which would allow an Irish subsidiary of, say, a Belgian company to qualify for equivalent benefits to those available under the Belgian treaty with the US, although this seems a logical extension of the derivative benefits concept. Instead the company will be knocked out of benefits altogether under this test, in respect of dividends, interest and royalties, but not other benefits.

Switzerland and Luxembourg have recently negotiated broadly similar derivative benefits tests with the US. The new Ireland/US Convention is unique, however, in that there is a stay of 2 years on the operation of the anti conduit rule in addition to the general one year transitional arrangement. Existing companies owned by shareholders from affected EU or NAFTA countries will therefore continue to receive gross payments of US source interest until 1 January 2001.

## Active business safe harbour

Even if all of the ownership tests are failed, so that a person is not a qualified person or does not qualify for the derivative benefits safe harbour, it is still possible to qualify for treaty benefits with respect to particular items of income if a complex active business test is satisfied. Again the test has two parts.

First the person must be engaged in the active conduct of a trade or business as opposed to mere investment business. (The limitation on investment business does not apply to banks or insurance companies acting in the ordinary course of their business). The determination of whether an active business is being carried on will be made by the country from which benefits are claimed on an analysis of all the relevant facts and circumstances. Although it was intended to preclude exclusive reliance on domestic law in making this determination the active/passive distinction is one which exists in US domestic law and it is likely to be applied adversely against agency structures. Added to exclusion of investment business, a term which is left undefined,

it is likely that some financial services enterprises will not qualify under this safe harbour.

Second the relevant income must be connected with or incidental to that trade or business. In the case of “connected” income there is an additional hurdle where the person has an ownership interest in the activity in the other state that generated the income. In that event the active business in the state of residence must be substantial. This requirement is intended to prevent third country residents accessing treaty benefits by means of a limited business presence in one of the Contracting States. This safe harbour is similar but not identical to that in other recent US treaties. Also, it is qualified by some important protocol provisions.

Among other things these allow for the attribution of activity between connected persons and provide that banks which were licensed at the date of signature of the Convention are deemed to satisfy the active business text.

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In summary the LOB Article for all of its complexity will have no impact on US investment into Ireland. A limited impact may be expected in the case of Irish investment into the US. Enterprises which are ultimately Irish owned or EU/NAFTA owned where the owners are entitled to equivalent benefits under their own countries treaties with the US should not be adversely affected. For others the active business and discretionary relief provisions may provide access to treaty benefits but some financial services enterprises will find it difficult to qualify under these headings.

## Withholding Tax Provisions

### Dividends

The Convention generally retains the 5 and 15 per cent US withholding rates for direct investment and portfolio dividends respectively. However the rule now is that the lower rate applies where the beneficial owner is an Irish company which holds at least 10 per cent of the voting stock of the company paying the dividends. Under the old Convention a 95 per cent interest was required to qualify for the lower rate. Ireland does not impose a withholding tax on dividends. Instead US residents other than direct corporate investors, that are the beneficial owners of shares in Irish companies are to be given an entitlement to a tax credit and may be taxed at a rate of 15 per cent on the aggregate amount of the dividend and the credit. The US shareholder will be entitled to repayment of any excess of the credit over the Irish tax payable.

Dividends are defined to include income on certain debt obligations. An associated protocol provision, which is of interest mainly to US recipients of Irish source interest, prohibits the reclassification of interest as a dividend, because it is paid to a non resident, provided it does not exceed an arm's length rate. While the provision might not be said to override Irish domestic law, the clear consequence is that a withholding tax cannot be applied and the intention is to conform the treatment of these payments under domestic law with their treatment under the Convention.

### Interest

Under the new Convention interest will generally be exempt from tax at source.

Under the current Convention interest payments between 50 percent connected US and Irish corporations had been subject to withholding tax.

The tax exemption, in Ireland, for US source interest which existed under Article XV of the current Convention is not being brought forward into the new Convention.

### Royalties

In the case of royalties the exemption from tax in the country of source has been continued in the new Convention.

There is also a full definition of royalties in the new Convention. It includes, among other things, gains from the alienation of intangible property if the gain is contingent on the productivity or use of the property.

## Other Provisions affecting Businesses

### Permanent Establishment

A number of Articles touch on the taxation of enterprises with branches in the other state. First Article 5 - (Permanent Establishments) and Article 7 - (Business Profits)

now follow the OECD norm. As such they are an improvement on the old treaty because they, respectively, raise the threshold at which a taxable presence is established in the other State, in some cases, and eliminate the old “force of attraction” principle.

Article 10, (Dividends), authorises the US to impose its branch profits tax, though at a rate that does not exceed 5 per cent compared to a 30 per cent rate permitted under domestic law. On the positive side Article 11 (Interest), exempts Irish enterprises with US permanent establishments from the US branch level interest tax on excess interest.

### Capital Gains - Article 13

Unlike the existing Convention the new Convention deals with capital gains, broadly in line with the OECD Model. The general rule is that gains from the sale of property are taxable only in the State of residence of the seller. To this rule there are exceptions most notably for immovable property, shares deriving the greater part of their value from immovable property and the business property of a permanent establishment.

### Collective Investment Undertakings/Transparent Entities

Uniquely by comparison with other Irish treaties special provisions have been included in the new Convention to allow Collective Investment Undertakings avail of treaty benefits such as lower withholding tax provided they satisfy the normal LOB provisions.

A protocol provision dealing with other transparent entities such as partnerships provides that benefits will be available to the members of such entities under certain condition, rather than to the entity itself. The conditions are that the member is a resident of a Contracting State and that the foreign source income is treated as the members income for tax purposes in that state. For example, an Irish partner in an Irish partnership could claim treaty benefits in respect of his share of US source partnership income. However, a German partner in the same partnership could not rely on the Irish/US Convention.

### Provisions affecting Individuals

A number of new provisions will be of particular interest to individuals.

#### **Pensions, Social Security and Annuities - Article 18**

Under the new Convention pensions and social security payments are generally taxable only in the state of residence of the recipient.

At present US social security payments paid to non resident aliens are subject to a 25.5 per cent withholding tax in the US. There had been many representations from Irish resident recipients in relation to this issue. The US has now agreed to exempt Irish recipients from the withholding tax. Although there are similar exemptions in some of the older US treaties the exemption obtained for Irish residents is a first in modern US treaties.

Article 18 also contains provisions concerning alimony and provides for recognition of contributions made to pension funds in the other State under certain circumstances.

### Relief from Double Taxation - Article 24

Individual recipients of US dividends are likely to be adversely affected by the new double taxation relief provisions. Up until now they would have been entitled to a credit for underlying tax in addition to any withholding tax suffered in the US. The

position under the new Convention is that relief for underlying tax will only be given to direct investors.

### Professors and Teachers

The existing Convention provides for a two year exemption from tax on income from teaching for visiting teachers or professors who visit the other country for the purposes of teaching. This exemption has not been carried into the new Convention. Accordingly, the ordinary personal services provisions will apply to Irish teachers visiting the US. This will often result in a liability for US tax from the date of a teaching appointment is taken up.

### Directors Fees - Article 16

The current Convention does not contain a separate directors fees article. Such fees are therefore subject to the ordinary personal services rules. The new Convention contains a separate article on directors fees. The main principle is that such fees may be taxed in the State of which the company is resident. There is however an exception to this principle. Directors fees will be taxable only in the state of which the director is resident if the fees are paid in respect of attendance at meetings in that state.

### Entry into Force

This is an important issue from an Irish point of view. It is fair to say that the current treaty which does not have a comprehensive LOB Article is more favourable in some respects than modern US treaties generally, and the new Convention.

Under the commencement provisions, the new Convention will have effect in respect of companies and withholding taxes from 1 January, in the year after the instruments of ratification are exchanged and from 6 April, for income tax.

However, there is a twelve month transition (or "grandfathering") period incorporated into the commencement provisions. This means that if any resident has greater benefits under the old Convention these are preserved for 12 months after commencement of the new Convention.

If as expected the new Convention is ratified later this year, it will not have effect as respects less favourable provisions until January 1999. As stated above there is also a further 2 year period in which the anti conduit rule will not be applied to existing residents.

### Copies of the Convention

The full text of the Convention is available on the Revenue Commissioners website at **<http://www.revenue.ie>**.

Printed copies of the Convention will shortly be available from *the Government Publications Sales Office*,  
*Sun Alliance House*,  
*Molesworth Street*,  
*Dublin 2*.

Price £3.20, postage .72p.

## Gifts for Education in the Arts - Approved Bodies

Name of Approved Body	Approval Effective from
ABBEY CENTRE OF BALLYSHANNON 3/10/92	
ABBEY THEATRE (National Theatre) 0/08/85	
ACTORS' CENTRE COMPANY LTD (Centre for the Performing Arts) 5/05/87	
ALCHEMISER LIMITED	8/02/93
ALTERNATIVE ENTERTAINMENTS COMMUNITY ARTS GROUP 1/01/89	
ARAS NAISIUNTA	2/07/96
ARCHBISHOP MARCH'S LIBRARY 6/03/91	
ARCHITECTURAL ASSOCIATION OF IRELAND 7/07/86	
ARTHOUSE LTD.	7/06/95
ASSOCIATION OF ARTISTS IN IRELAND 7/07/86	
ASSOCIATION OF FRIENDS OF THE HUNT MUSEUM 1/07/94	
ASSOCIATION OF IRISH CHOIRS /08/85	
ASSOCIATION OF IRISH COMPOSERS 0/08/85	
ASSOCIATION OF IRISH MUSICAL SOCIETIES LTD 1/09/90	
BACKWATER ARTIST LTD. 01/07/97	
BALLINGLEN ARTS FOUNDATION 19/05/94	
BANTRY 1796 FRENCH ARMADA TRUST 22/11/91	
BELLTABLE ARTS CENTRE COMPANY LTD 30/12/87	
BLACK CHURCH PRINT STUDIO LIMITED 15/08/89	
BLACKCASTLE THEATRE CO. 12/07/96	
BLUE RAINCOAT THEATRE COMPANY LTD. 01/07/97	
CALYPSO PRODUCTIONS 04/11/96	
CASTLETOWN FOUNDATION 30/08/85	
CENTRE FOR THE PERFORMING ARTS(Actors' Centre Company Ltd.) 15/05/87	

CEOL SCOIL CHIARRAI TEORANTA  
18/11/94

CHESTER BEATTY LIBRARY AND GALLERY OF ORIENTAL ART  
25/10/85

CHRIST CHURCH CATHEDRAL CHOIR 500 FOUNDATION  
10/11/94

COISCEIM DANCE THEATRE LTD.  
01/09/95

COLLEGE OF DANCE  
24/06/92

COMHALTAS CEOLTOIRI EIREANN  
25/10/85

CONTEMPORARY IRISH ART SOCIETY  
07/07/86

CONTEMPORARY MUSIC CENTRE  
19/02/92

CORK INTERNATIONAL CHORAL FESTIVAL LTD.  
01/09/95

CORK THEATRE COMPANY LIMITED  
25/10/85

COTHU  
27/06/96

COUNTY DONEGAL SCHOOL OF MUSIC  
07/03/96

CRAWFORD MUNICIPAL ART GALLERY  
25/10/85

DANCE THEATRE OF IRELAND  
07/03/96

DESIGNYARD LIMITED  
02/09/94

DOUGLAS HYDE GALLERY  
30/08/85

DOWN TO EARTH THEATRE COMPANY  
20/10/92

DROICHEAD ARTS CENTRE  
30/06/93

DRUID PERFORMING ARTS LIMITED  
07/07/86

DUBLIN CITY BALLET  
30/08/85

DUBLIN FILM FESTIVAL LIMITED  
10/02/93

DUBLIN GRAND OPERA SOCIETY  
13/12/85

DUBLIN INSTITUTE OF TECHNOLOGY  
07/06/95

DUBLIN INTERNATIONAL ORGAN AND CHORAL FESTIVAL  
28/04/94

DUBLIN INTERNATIONAL PIANO COMPETITION CO. LTD  
15/07/87

DUBLIN THEATRE FESTIVAL  
30/08/85

DUBLIN YOUTH THEATRE LTD.  
01/05/97

DUN LAOGHAIRE COLLEGE OF ART & DESIGN	
12/07/96	
EVERYMAN PALACE LIMITED	
10/11/88	
EXILES THEATRE LTD.	07/06/95
<b>Name of Approved Body</b>	<b>Approval</b>
	<b>effective from</b>
FEIS CEOIL ASSOCIATION	
30/08/85	
FILM BASE (CENTRE FOR FILM AND VIDEO) LTD	
15/04/88	
FIRE STATION ARTISTS' STUDIO	
26/06/91	
FOLK MUSIC SOCIETY OF IRELAND	
15/04/88	
FRIENDS OF THE CHORAL ARTS	
30/06/97	
FRIENDS OF THE NATIONAL COLLECTIONS OF IRELAND	
28/11/91	
FRIENDS OF THE NATIONAL COLLEGE OF ART AND DESIGN	
31/05/93	
FRIENDS OF THE NATIONAL GALLERY OF IRELAND	
28/09/92	
FRIENDS OF THE VOCAL ARTS IN IRELAND	
15/04/88	
GALLOGLOSS THEATRE CO.	
07/06/95	
GALWAY ARTS FESTIVAL LTD	23/06/88
GALWAY CONCERT ORCHESTRA	
12/07/96	
GALWAY MUNICIPAL TRUST	
26/07/94	
GARAGE THEATRE	
14/09/94	
GARTER LANE ARTS CENTRE (Baker Arts Centre Ltd.)	
30/12/87	
GATE THEATRE	22/11/89
GLASNEVIN MUSICAL SOCIETY	
15/08/89	
GORDON LAMBERT MODERN CHARITABLE FUND	
07/06/95	
GRAFFITI (The Theatre-in-Education Group within the Graffiti Theatre Co. Ltd.)	23/06/88
GRAPEVINE ARTS CENTRE (Dublin)	
30/08/85	
HAWK'S WELL THEATRE (Sligo)	30/08/85
HUGH LANE GALLERY	30/08/85
HUNT MUSEUM	11/07/94



INTERNATIONAL CARTOON FESTIVAL  
 07/03/96  
 IOMHA ILDANCH THEATRE COMPANY  
 29/07/92  
 IRISH FILM CENTRE  
 06/03/91  
 IRISH FILM INSTITUTE 02/09/86  
 IRISH GEORGIAN FOUNDATION  
 02/09/86  
 IRISH INTERNATIONAL FOLK COMPANY LTD  
 16/04/87  
 IRISH NATIONAL BALLET TRUST FUND  
 20/07/84  
 IRISH TRADITIONAL MUSIC ARCHIVE  
 20/09/89  
 IRISH VISUAL ARTS FOUNDATION LIMITED  
 31/01/89  
 IRISH WRITERS' CENTRE  
 22/11/91  
 IRISH YOUTH ORCHESTRA  
 30/08/95  
 ISLAND THEATRE CO.  
 12/07/96  
 JUNIOR DUBLIN FILM FESTIVAL LTD.  
 26/09/91  
 KERRY CULTURAL & LITERARY CENTRE  
 07/03/96  
 KILKENNY ARTS WEEK 11/12/86  
 KILKENNY SCHOOL OF MUSIC TRUST  
 30/08/85  
 LIMERICK COLLEGE OF ART, COMMERCE AND TECHNOLOGY  
 07/07/86  
 LIMERICK EXHIBITION OF VISUAL ART  
 23/05/94  
 MIFI LIMITED (Musical Instrument Fund of Ireland Ltd.)  
 05/06/97  
 MOVING THEATRE  
 10/02/87  
 MUSIC ASSOCIATION OF IRELAND  
 30/08/85  
 MUSIC FESTIVAL IN GREAT HOUSES 30/08/85  
 MUSIC FOR GALWAY  
 27/05/88  
 NA PIOBAIRI UILLEANN 30/08/85  
 NATIONAL ASSOCIATION FOR YOUTH DRAMA  
 07/03/96  
 NATIONAL CHAMBER CHOIR LTD.  
 01/07/97  
 NATIONAL COLLEGE OF ART AND DESIGN  
 20/07/84

NATIONAL CONCERT HALL

09/02/87

NATIONAL CONCERT HALL ORGAN TRUST FUND

15/08/89

NATIONAL GALLERY OF IRELAND

01/11/89

NATIONAL SCULPTURE FACTORY LTD

31/05/93

NATIONAL THEATRE (Abbey Theatre)

30/08/85

NEW IRISH CHAMBER ORCHESTRA

30/08/85

NORTH-WEST THEATRE PROJECT

12/07/96

**Name of Approved Body**

**Approval  
effective from**

OPERA THEATRE COMPANY LIMITED

27/01/93

PASSION MACHINE LIMITED

19/09/88

PATRONS OF LIMERICK UNIVERSITY CONCERT HALL

20/08/93

PROJECT ARTS CENTRE

30/08/85

PUNCHBAG PRODUCTIONS LTD

01/09/95

RATHMINES & RATHGAR MUSICAL SOCIETY

16/04/87

RED KETTLE THEATRE COMPANY LIMITED

27/02/89

ROSC

30/08/85

ROUGH MAGIC LIMITED

19/08/88

ROYAL ACADEMY OF MUSIC

21/02/85

ROYAL HIBERNIAN ACADEMY GALLERY TRUST

20/02/87

ROYAL HIBERNIAN ACADEMY OF ARTS

07/07/86

SCHOOL OF ARCHITECTURE, UCD

31/01/89

SCHOOL OF ART AND DESIGN (within the College Script Craft Ltd.)

01/05/97

SCULPTORS SOCIETY OF IRELAND LIMITED

08/11/89

SIAMSA TIRE TEO

30/08/85

SLIGO ART GALLERY

26/06/91

SLIGO COMMUNITY ARTS GROUP

26/09/91

SOCIETY OF IRISH PLAYWRIGHTS  
 30/08/85  
 SOUTH TIPPERARY ARTS CENTRE  
 12/07/96  
 ST. PATRICKS BAND, GALWAY 07/03/96  
 TALAGHT COMMUNITY ARTS CENTRE LTD.  
 01/07/97  
 TEAM THEATRE CO  
 30/08/85  
 TEMPLE BAR GALLERY AND STUDIOS LTD  
 23/06/88  
 THE ARK 01/05/97  
 THE ARTS COUNCIL  
 01/05/97  
 THE CORK THEATRE COMPANY  
 25/10/85  
 THE HERITAGE COUNCIL  
 01/05/97  
 THE IRISH ARCHITECTURAL ARCHIVE  
 01/07/97  
 THE MODEL ARTS CENTRE LTD.  
 01/07/97  
 THE MUSIC NETWORK LTD.  
 01/09/95  
 THEATRE UNLIMITED (Studio Theatre Limited)  
 18/08/87  
 TIPPERARY EXCEL HERITAGE CO.  
 07/03/96  
 TRINITY COLLEGE DUBLIN  
 30/08/85  
 TRISKEL ARTS CENTRE, TOBINS ST., CORK  
 09/12/85  
 TYRONE GUTHRIE CENTRE  
 06/08/86  
 UNIVERSITY COLLEGE DUBLIN  
 20/10/92  
 WATERFORD FESTIVAL OF LIGHT OPERA LTD  
 21/09/90  
 WEST CORK ARTS CENTRE LTD  
 31/05/93  
 WET PAINT ARTS GROUP LTD. 01/09/95  
 WET PAINT THEATRE 02/09/86-  
 31/08/95  
 WEXFORD FESTIVAL TRUST  
 30/08/85  
 WRITER'S WEEK (Listowel)  
 30/08/85  
 YEW THEATRE PRODUCTIONS LTD.  
 01/07/97

YOUNG IRISH FILM MAKERS  
23/08/93

This content is more than 5 years old.  
Where still relevant it has been incorporated  
into a Tax and Duty Manual  
or other website text.

## VAT on Horticultural Produce

**Tax Briefing** Issue 27 contained a summary of the VAT changes included in the Finance Act 1997. On page 19 under the heading Amendment to Section 8 in relation to Garden Centres etc. it states that Section 113 reduces the rate on horticultural products from 21% to 12%, this should read **12½%**.

A Statement of Practice SP-VAT/1/97 outlining the changes in relation to horticultural products is available from local tax offices or from the

**Revenue Forms & Leaflets Service** at (01) 878 0100.

The Statement of Practice is also available for reading or downloading from the Revenue Website at **info@indirect-taxes.revenue.ie**.

## PRSI and Self-Employed

The following two sections of the Department of Social, Community and Family Affairs have relocated to Waterford:

- Self-Employment Section
- PRSI Special Collection Section

The new address and telephone numbers are:

Social Welfare Services Office,

Department of Social, Community and Family Affairs,

Cork Road,

Waterford.

Telephone: (01) 874 8444

(051) 874177

Fax: (051) 877838

## Finance Act 1997 Guidance Notes

Practitioners are reminded that detailed Guidance Notes on the provisions of the Finance Act 1997 are now available. The notes provide a comprehensive explanation of each section in the Act and include examples, tables and cross references to related legislation.

Copies, which cost £10 each, are available :

### **By Mail Order\* from:**

*Government Publications Trade Section,*

*4-5 Harcourt Road,*

*Dublin 2.*

Telephone: (01) 661 3111

Extns. 4040 / 4045

Fax: (01) 475 2760

### **Over the counter from:**

*Government Publications Sales Office,*

*Sun Alliance House,*

*Molesworth Street,*

*Dublin 2.*

or through any major bookseller\*

\*Plus Postage £2.85 (Payment may be made by cheque or credit card)

Copies can also be downloaded from the Revenue Internet Web site at

**www.revenue.ie/inform.htm**

## Change of Address

The Irish Unit - Aonad 880 - which deals with employees who wish to conduct their tax affairs in Irish, has moved from Findlater House,

28/32 Upper O'Connell Street,

Dublin 1 to:

*14/15 Upper O'Connell Street,*

*Dublin 1.*

Telephone: (01) 874 6821

Fax: (01) 878 6920

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Where still relevant it has been incorporated  
into a Tax and Duty Manual  
or other website text.

## Key Dates/Reminders

Date	Tax Type	What's Due
<b>OCTOBER 1997</b> 14 1-28  1-31 1-31	PAYE/PRSI Corporation Tax  Corporation Tax Corporation Tax	Monthly Remittance for month ended 5 October 1997 Preliminary Tax and ACT for A.P.s ending between 1-30 April 1997 Returns for A.P.s ending between 1-31 January 1997 Returns of Third Party Information for A.P.s ending between 1-31 January 1997
<b>NOVEMBER 1997</b> 1 1 14 19 1-28  1-30 1-30	Income Tax Capital Gains Tax PAYE/PRSI VAT Corporation Tax  Corporation Tax Corporation Tax	Preliminary Tax for 1997/98 Preliminary Tax for 1996/97 Monthly Remittance for month ended 5 November 1997 Remittance for period September/October 1997 Preliminary Tax and ACT for A.P.s ending between 1-31 May 1997 Returns for A.P.s ending between 1-28 February 1997 Returns of Third Party Information for A.P.s ending between 1-28 February 1997
<b>DECEMBER 1997</b> 14 1-28  1-31 1-31	PAYE/PRSI Corporation Tax  Corporation Tax Corporation Tax	Monthly Remittance for month ended 5 December 1997 Preliminary Tax and ACT for A.P.s ending between 1-30 June 1997 Returns for A.P.s ending between 1-31 March 1997 Returns of Third Party Information for A.P.s ending between 1-31 March 1997