

TAX BRIEFING

Office of the Chief Inspector of Taxes

Issue 32 - June 1998

Contents

Compliance (Strike-off of non-filing companies)	2
Revenue Internet Site Update	4
IFSC Certificates	5
The EURO and Tax (Corporation Tax)	6
Notional Loans relating to shares	8
Customs & Excise (Exports to non-EU Countries)	9
DTR (Foreign Effective Rates)	12
Collector General (Post-Dated Cheques)	12
Vehicle Registration Tax (Launch of Information Kiosks)	13
VAT (Change in Repayment System)	14
CGT (Transfer of assets within an EU group)	14
BES (Seed Dressing)	15
Finance Act 1998 Summary	16
Finance (No. 2) Act 1998 Summary	30
Widow's Social Welfare Contributory Pension	37
VAT (AI Services & Post-Letting Expenses)	37
Staff Suggestion Schemes	40
Tax Registration (New Forms)	43
Employment Inducement Payments	45
Revenue News	

**Customer Service Unit,
Office of the Chief Inspector of Taxes,
4th Floor
Setanta Centre,
Nassau Street,
Dublin 2**

**Editor:
Telephone No.**

**Assistant Editor:
Telephone No.
Fax No.**

Design

John Leamy
(01) 6716777 Extn. 4325
Rosemary O'Rahilly
(01) 6716777, Extn 4310
(01) 6710960
Customer Service Unit

While every effort is made to ensure that the information given in this publication is accurate, it is not a legal document.

Responsibility cannot be accepted for any liability incurred or loss suffered as a consequence of relying on any matter published herein.

Compliance - Strike-off of Companies

Big CRO Strike-off of non-filing companies

In the last edition of *Tax Briefing* we briefly mentioned the recent initiatives announced by the Companies Registration Office in relation to non-filers. This article gives further details of those initiatives.

The ultimate aspiration of the Companies Office is that all companies file returns on time. This unfortunately is far from the case at present and an analysis of compliance statistics over recent years shows that the overall compliance rate is still only in the region of 35%.

Where a company has not furnished returns for two consecutive years the Registrar is authorised by law to initiate strike-off procedures. The strike-off of a company is a very serious matter as it removes the cover of limited liability and makes directors personally liable for debts in certain circumstances.

Strike-off notices

It has been the practice of the Companies Office to intermittently select large numbers of non-compliant companies and issue them with strike-off notices (normally 5,000 to 10,000 cases at a time). Starting shortly, the Companies Office will issue strike-off notices to 500 companies almost every day. By the end of 1998 such notices will have been issued to at least 20,000 companies. Over a twelve month period the Companies Office will review every company eligible for strike-off. Where a company requests more time to file returns the Registrar will postpone strike-off for one month but will entertain no further postponement.

Furthermore, the Registrar will initiate prosecutions against directors and secretaries who persist in non-compliance with the filing requirements. Where necessary, the Companies Office will seek Court disqualification for directors and secretaries who seem truly determined to ignore their responsibilities.

Revenue response to non-filing

Companies

Revenue are working in conjunction with the Companies Office in the pursuit of persistent non-filing companies. The visiting and prosecution programme is now well under way for corporation tax. The persistent non-filing companies have been identified and are being prioritised as part of the programme. In addition to surcharge, interest and pursuing non-filers for criminal prosecution under **Section 1078 Taxes Consolidation Act 1997**, Inspectors will now also refer cases to audit for examination of the books and records. Inspectors are also authorised to pursue outstanding taxes directly through to enforcement.

Individuals & Directors

Practitioners may be aware of the latest Revenue media campaign in May targeted at the income tax non-filers for 1996/97. The message was clear - *file now or face the possibility of a criminal prosecution*. Districts are now commencing the second phase of the income tax compliance programme i.e. telephoning, interviewing and visiting with particular attention being paid to the persistent non-filers. As with corporation tax, districts are considering a number of options in pursuit of the outstanding returns. Every effort should be made therefore to get those outstanding returns in now and avoid further problems.

Jail sentence for Income Tax non-filing

Alongside this new campaign for 1998, a large number of the 1995/96 non-filing cases are now coming before the Courts for prosecution. [There had been some delay late last year due to the ruling in the McCracken case (i.e. ruling on the District Court clerk's appointment) and cases were deferred pending clarification]. Cases are ongoing throughout the country and fines up to £5,000 have been imposed. Indeed in one instance a Defendant was sentenced to one month's imprisonment on each of five charges of non-filing, the sentence to run consecutively.

KEY DATES '98

July

- 5 **Income Tax**
Deadline for claiming Separate Assessment.
Deadline for nominating Assessable Spouse.
- 14 **PAYE/PRSI**
Monthly remittance for month ended 5 July 1998.
- 19 **VAT**
Remittance for period May/June.
- 1-28 **Corporation Tax**
Preliminary Tax and ACT for A.Ps. ending between 1-31 January 1998.
- 1-31 **Corporation Tax**
Returns for A.Ps. ending between 1-31 October 1997.
- 1-31 **Corporation Tax**
Returns of Third Party Information for A.Ps. ending between 1-31 October 1997.

August

- 14 **PAYE/PRSI**
Monthly remittance for month ended 5 August 1998.
- 1-28 **Corporation Tax**
Preliminary Tax and ACT for A.Ps. ending between 1-28 February 1998.
- 1-31 **Corporation Tax**
Returns for A.Ps. ending between 1-30 November 1997.
- 1-31 **Corporation Tax**
Returns of Third Party Information for A.Ps. ending between 1-30 November 1997.

INTERNET SITE Update

REVENUE'S INTERNET SERVICE

<http://www.revenue.ie>

A number of forms can now be downloaded from Revenue's web site. We plan to make further return forms available for downloading in the near future. Also available on the web site is a Contents Index of all editions of *Tax Briefing* issued to date to facilitate easy retrieval of articles.

Revenue's Rules and Procedures Reference Manuals as required by *Section 16 of the Freedom of Information Act* will shortly be published on the web site. Copies of the manuals are currently available in CD - ROM format and the CD can be purchased from:

*Freedom of Information Central Unit,
5th Floor Wicklow House,
South Great George's St.,
Dublin 2.*

Telephone: 01 - 702 0850

Fax: 01 - 670 8418

email: info@foi.revenue.ie

The cost of the CD is £15 and cheques should be made payable to the Revenue Commissioners.

Forms available on the Internet

- Form 1 1997/98 [Return of Income - Trusts/Estates]
- Form 1 - Firms 1997/98 [Return of Income - Partnerships]
- Form 11 1997/98 [Return of Income]
- Form 11 - Short 1997/98 [Return of Income - Short Version]
- Form P11D 1997/98 [Return by employers of benefits]
- Form 12 1997/98 [Return of Income]
- Form AG 12 1997/98 [Return of Income - Farmers]
- Form BP 1 1997/98 [Return of Income - Small Business]
- Form 54 Claims 1997/98 [Claim for Repayment of Income Tax - non-PAYE]
- Form 54 D 1997/98 [Claim for Repayment of DIRT]
- Form MED 1 [Health Expenses - Claim for Relief]
- Form Rent 1 [Rent Relief]
- Form TFA 1 1998/99 [Revision of Tax-Free Allowances for 1998/99]
- Form CT1 [Corporation Tax]

IFSC CERTIFICATES

Explanatory Memorandum

IFSC CERTIFICATES: Condition 3(d) Explanatory Memorandum

Background

A company seeking to carry on certain trading operations in the International Financial Services Centre (IFSC) must be certified by the Minister for Finance under *Section 446 Taxes Consolidation Act 1997*. The IFSC certificate, as it is known, is subject to a number of conditions. One such condition is condition 3(d) which states that *a company carrying on trading operations in the IFSC with a connected person must not do so unless certain requirements are met*. The Explanatory Memorandum which follows provides guidance to practitioners on satisfying the terms of condition 3(d).

Revised version of Explanatory Memorandum dated 25/4/97

Prohibited Arrangements

Condition 3(d) is principally intended to prevent collusion by connected persons where there is an arrangement between such connected persons in the pricing of a transaction carried out by an IFSC company which results in profits being attributed to the IFSC company's trade in order to materially reduce tax payable by any of those connected persons other than the IFSC company.

Formal Procedures by IFSC Company

The company must put in place procedures to ensure that prohibited arrangements are not entered into. As part of these procedures the company must ensure that all directors, managers or other employees (or authorised agents) responsible for its pricing decisions:

- Are informed that it would be contrary to the express policy of the company to participate in the prohibited arrangements
- Are required to be able to provide a reasonable explanation for any pricing decisions for which they are responsible without reference to prohibited arrangements
- Are required to record and retain a brief account of the method of pricing an example of every type of recurring transaction and each material non-recurring transaction.

Revenue may approve alternative formal procedures proposed by IFSC companies where they consider such alternative procedures to be adequate.

Auditor's Report on Adequacy and Adherence

The Auditor's annual report should be returned as part of the company's annual submission of tax computations, unless the report is qualified. A qualified audit report should be sent to the Inspector of Taxes immediately upon completion, but should not be delayed for longer than one month after the statutory audit report is completed. Only the formal procedures outlined above or approved alternative procedures may be reported to be adequate.

Adherence to those procedures should be judged by reference to samples of each type of transaction between the IFSC company and connected companies. The auditor shall be required to report on significant deviations from excepted prices which in his judgement cannot be explained without reference to prohibited arrangements. In

forming his expectation of what the arms length price should be in any transaction the auditor should firstly seek information in relation to prices for similar transactions between unrelated parties or between the IFSC company and an unconnected party. If the auditor is satisfied that there are no similar transactions he should then consider the direct and indirect costs of the service or asset provided and the overall rate of profit enjoyed by the supplier of the service or asset.

The auditor shall not be expected to obtain explanations of prices which in his informed opinion are unexceptional.

THE EURO and TAX

Corporation Tax

In Issue 30 of *Tax Briefing*, we advised that in subsequent 1998 editions of the magazine we would provide details of the changeover procedures for businesses wishing to switch to euro. In this edition, we focus on the changeover procedures for **Corporation Tax**.

Euro Services from 1 January 1999

In Issue 30, we indicated that our approach to the provision of services from 1 January 1999 is to allow customers the maximum flexibility possible regarding:

- Making tax returns and paying liabilities in Irish pounds or euros
- The timing of the switch to euro as the reporting and payment currency for tax liabilities.

This approach will allow customers who wish to continue to avail of existing services in Irish Pounds to do so until the end of the euro transition phase. In addition, subject to some practical limitations regarding the timing of the switchover, we will provide existing services in euro to customers who wish to avail of them. The changeover procedures for Corporation Tax are fully explained in the following paragraphs.

Corporation Tax

Election for Euro

Customers who wish to deal with Revenue in euro must make the switch both for making tax returns **and** the payment of taxes. The facility to make returns, declarations and payments in euro will require an **irrevocable** election by customers to adopt the euro as the currency for reporting and payment purposes.

It will be possible for a customer to switch to euro for all taxes for which s/he is registered or for specific taxes only. However, in the case of Income Tax, Corporation Tax or Capital Gains Tax, an election to euro for one is taken to include an election for the other such taxes for which the customer is registered.

Election for euro services will be made by completing an election form. Election forms will be available in the fourth quarter of 1998 and will be issued to all customers. The election form will show the taxes for which the customer is registered. The customer will be asked to indicate the taxes for which s/he wishes to make returns and pay in euro from 1 January 1999. If a customer does not wish to switch to euro for any tax from the beginning of the transition phase, the election form can be retained for use at a future date. Where a customer elects to use the euro for **some** taxes only, a further election form will be readily available from Revenue when it is proposed to change to the euro for other taxes.

In the transition phase, where we do not receive a completed election form, we will continue to deal with the customer in Irish Pounds. Where an election form is returned

for some taxes only, we will continue to provide the full range of services in Irish Pounds for the taxes for which an election has not been made.

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.

Accounting Periods

For customers registered for Corporation Tax, any change to euro services will have to be related to a particular accounting period. Accordingly, election for euro services will be possible for accounting periods ending on or after 1 January 1999. A customer who, for example, has an accounting period ending on 31 March 1999 and who elects for euro for that accounting period and subsequent accounting periods will make returns and payments as follows:

- Preliminary tax for accounting period ending on 31 March 1999 [due by 30 September 1999] will be paid in euro
- Return for accounting period ending on 31 March 1999 [due by 31 December 1999] will be completed in euro
- Notice of Assessment for accounting period ending on 31 March 1999 will be issued in euro
- Balancing payment for accounting period ending on 31 March 1999 will be paid in euro.

It should be noted that in the above example the return for the accounting period ending on 31 March 1998 [which is due by 31 December 1998] or for any earlier accounting periods, should be submitted in Irish Pounds. The corresponding Notice of Assessment issued will also be in Irish Pounds.

Once an election for the euro has been made, demands for payment issued by the Collector-General's Office for **any** accounting period year [irrespective of whether the accounting period is pre or post the accounting period for which election for euro services commences] will be issued in euros.

Forms

In the transition phase, Revenue will produce euro version of forms for customers electing for the euro and Irish Pound version of forms for customers continuing to make returns and pay tax in Irish Pounds. Companies which switch to euro for CT purposes from the start of an accounting period will require euro version of Forms CT1, ACT1 etc. in respect of that accounting period.

To ensure that Revenue issue companies operating in euro with euro forms, companies must send in their election form to us at least six weeks before the end of the accounting period from which the election to euro is to take effect.

Take, for example, a company with an accounting year ending on 31 December which decides to switch its business operations to euro for the accounting period ending on 31 December 1999. Euro forms will be issued to the company in January 2000 in respect of accounting period year ended

31 December 1999. The company must return its completed election form for corporation tax by mid November 1999.

Record keeping

Companies which formally elect with Revenue to switch to euro for CT purposes must complete euro CT return forms. Annual accounts accompanying euro CT return forms must be expressed in euro.

Whether such companies maintain underlying records in Irish Pounds or in euro will be a business decision which will be influenced by factors such as the denomination used by suppliers and/or customers and capabilities of computer systems. Revenue does not require companies which have elected to deal with us in euro for corporation tax purposes to maintain underlying records exclusively in euro. However, it is crucial for audit purposes that adequate systems are in place to ensure that a clear and accurate link can be traced from the figures in the annual accounts to the records

maintained by the company for the accounting period to which such accounts are made up.

When preparing company accounts in euro, it is important to remember that amounts which are carried or brought forward from an 'Irish Pound' accounting period will have to be converted to euro at the fixed conversion rate. Examples of such figures are opening stock, fixed asset values, opening debtors and opening creditors.

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.

Income Tax

Companies which have an income tax liability on income included in the accounts of an accounting period must compute that income tax liability in the same expression of the currency as they make their corporation tax returns.

Chargeable Gains

Companies which have chargeable gains, including gains arising from the disposal of development land, must compute those gains in the same expression of the currency as they make their corporation tax returns.

SHARES

NOTIONAL LOANS relating to Shares

Section 122A Taxes Consolidation Act 1997 [as inserted by Section 15 Finance Act 1998] and Approved Share Option Schemes & Approved Profit Sharing Schemes

Revenue have received a number of queries on the effect of *Section 122A Taxes Consolidation Act 1997* [as inserted by *Section 15 Finance Act 1998*] on shares obtained by directors/employees under:

- Rights acquired between the 6 April 1986 and 28 January 1992 (both dates inclusive) under a share option scheme approved by the Revenue Commissioners for the purposes of *Section 10 Finance Act 1986*
- Revenue approved profit sharing schemes.

Revenue are prepared to accept that the provisions of:

- *Subsection (2)* - charge in respect of a notional loan and
- *Subsection (6)* - charge in respect of a deemed write off of a notional loan of *Section 122A Taxes Consolidation Act 1997* [as inserted by *Section 15 Finance Act 1998*] **will not apply** to shares acquired by directors/ employees as outlined above.

It will not be necessary, therefore, to include the acquisition of such shares in the normal benefit-in-kind returns.

It must be emphasised, however, that:

- This practice relates only to the provisions of *Subsections (2) and (6) of the new Section 122A* and in relation only to shares acquired as above and
- *Subsection (7)* [an income tax charge where shares are disposed of at an overvalue] of *Section 122A* will apply to these shares.

CUSTOMS & EXCISE

Exports to non-EU Countries

Preferential treatment for exports to non-European Union Countries

Introduction

The European Union has concluded trade agreements with certain non-EU countries which allow exports from the EU to enter the markets of these countries at a reduced or nil rate of duty. These agreements are known as Preferential Trade Agreements and the duties involved are referred to as preferential rates of duty.

Markets

Countries with which the EU has signed Preferential Trade Agreements are as follows:

Country Code	Country
208	Algeria
093	Bosnia-Herzegovina
021	Canary Islands
068	Bulgaria *
022	Ceuta
092	Croatia
600	Cyprus
061	Czech Republic *
220	Egypt
053	Estonia *
041	Faroe Islands *
064	Hungary *
024	Iceland *
624	Israel *
628	Jordan
054	Latvia *
604	Lebanon
055	Lithuania *
037	Liechtenstein *
096	Macedonia (Former Yugoslav Republic of)
046	Malta
022	Melilla
204	Morocco
028	Norway *
060	Poland *
066	Romania *
063	Slovak Republic *
091	Slovenia *
039	Switzerland *
608	Syria
625	The Territories of the West Bank and the Gaza Strip
212	Tunisia
052	Turkey (Chapters 26, 27, 72 and 73 & Agricultural Products) *
094	Yugoslavia (Federal Republic of)

Qualifying goods

In order to qualify, goods must meet the following conditions:

- They must be eligible for preference under the agreements
- They must be accompanied by documentary evidence of origin such as a Movement Certificate EUR1 (these are available on request from any Custom House) or an invoice declaration
- They must normally be transported directly from the export to the import market
- Non originating materials may also qualify depending on the level of working or processing carried out on them. However, for exports to the countries marked (*), all import duties must be paid on these materials prior to the export of the finished product.

Turkey

In addition to the Preferential Trade Agreement between the EU and Turkey for goods of Chapters 26, 27, 72 and 73 of the Harmonised System and agricultural products, the Customs Union effective from 1 January 1996, enables goods which are in free circulation in the EU to be regarded as being in free circulation in Turkey, and vice-versa. Evidence of free circulation status is provided by an accompanying certificate ATR which has a validity period of three months from date of endorsement by Irish Customs. There is provision for the issue of a retrospective ATR and a duplicate similar to the provisions for EUR1's. Invoice declarations are not acceptable under the terms of the Customs Union with Turkey. However, it is possible to have ATR's stamped in advance. Preference is available at a reduced rate for agricultural products which originate in the EU. Such goods must be accompanied by an ATR when exported.

Invoice declarations - simplified procedure

Exporters claiming preferential treatment for exports, will be interested to know that there is a simpler option available which dispenses with the need to use EUR1's. Instead, export documentation may be enclosed to the effect that the goods qualify for EU origin status. The advantages of this procedure are that exporters do not have to complete EUR1 certificates nor present them to Customs. This reduces export delays and should also minimise administrative costs. At 1 July 1997, invoice declarations were acceptable in the following countries:

Bosnia - Herzegovina

Bulgaria

Ceuta

Croatia

Czech Republic

Estonia

Hungary

Iceland

Israel

Latvia

Liechtenstein

Lithuania

Macedonia (Former Yugoslav Republic of)

Melilla

Norway

Poland

Romania

Slovak Republic
Slovenia
Switzerland
The Territories of the West Bank and the Gaza Strip
Turkey (Chapters 26, 27, 72 and 73 & Agricultural Products)
Yugoslavia (Federal Republic of)

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.

C & E

Customs approval is required to use this procedure. Application forms for invoice declarations can be obtained from:

*Office of the Revenue Commissioners,
Customs Economic Procedures Unit,
Government Offices, Nenagh,
Co Tipperary.*

Telephone: 067 - 33533

Ext. 3213 or 3260

Pan-European cumulation system

During 1997 modifications were made to the protocols on rules of origin contained in agreements between the European Union and the following countries:

Bulgaria	Lithuania
Czech Republic	Norway
Estonia	Romania
Hungary	Slovak Republic
Iceland	Slovenia
Latvia	Switzerland

These modifications created what is referred to as a Pan-European cumulation system which aligned the rules of origin between all of these countries and the EU and which has contributed to simplifying customs procedures. The implementation of this new origin network has two major consequences for European manufacturers. Firstly, semi-finished products originating in any country of the system and which are assembled in the EU are always considered as originating products. Secondly, originating products can be traded between any of the countries involved in the system.

Before the introduction of Pan-European cumulation, trading of originating products was seriously limited.

Suppliers declarations

Exporters sending goods via other EU Member States to a final destination in a third country with which the EU has a preferential agreement should ensure that they are accompanied by a suppliers declaration. Further information can be obtained from Customs Economic Procedures Unit.

Information for Importers

Generalised System of Preferences (GSP)

Importers will be aware that the current scheme is becoming more targeted in that preferences are being restricted to imports from developing countries. In the past two years a number of countries have been excluded from the scheme in respect of particular products. Since 1 May 1998, South Korea, Hong Kong and Singapore have been excluded completely from benefit in respect of all products.

Importers making purchases under the GSP scheme are advised to ensure that their suppliers in the relevant third countries are complying with relevant origin criteria. This is important as importers claiming preference on foot of certificates of origin (Forms A), which have been issued incorrectly, may become liable for the full duty.

DTR

DOUBLE TAXATION RELIEF Foreign Effective Rates

The following is an updated list of foreign effective rates:

Belgium	48%
Canada	47%
France	46%
Germany	42%
Italy	47%
Japan	44%
Luxembourg	44%
Norway	35%
USA*	42%

* Under the provisions of the new Ireland/US Double Taxation Convention portfolio investors will not be entitled to credit for underlying taxes. They are only entitled to credit for withholding taxes (15%).

Note:

The Double Taxation Conventions with Cyprus, Pakistan, Russia and Zambia contain similar provisions. Because of the number of possible rates of withholding tax/underlying tax which could apply in those countries, no acceptable rate can be published for them.

COLLECTOR GENERAL'S Post-Dated Cheques

Tax practitioners are reminded that payment by means of post-dated cheques is not normally an acceptable method of meeting tax liabilities. Exceptionally, a deferred payment arrangement may be allowed where:

- Special circumstances or particular hardship exists
- The arrangement has been agreed **in advance** by Revenue
- A sum to pay the interest charges legally due is included in the arrangement.

Where practitioners believe that the circumstances of a particular case justify a post-dated approach they should contact the Collector-General's Office to agree the terms of an appropriate arrangement. **It is not acceptable to simply forward post-dated cheques without any prior agreement to do so.**

VEHICLE REGISTRATION TAX

Launch of Information Kiosks

Launch of Vehicle Registration Tax (VRT) Information Kiosks

VRT Information Kiosks have recently been installed in:

The Vehicle Registration Office,

St John's House,

Tallaght,

Dublin 24

and

The Central Revenue Information Office,

Cathedral Street,

off O'Connell St.,

Dublin 1.

The VRT Information Kiosk has been developed in response to the large number of VRT enquiries which are received at Vehicle Registration Offices by telephone or fax on a daily basis. These enquiries concern the amount of VRT payable on used cars which members of the public intend to purchase abroad.

Using the VRT Information Kiosk, the customer can now access the VRT enquiry system directly using a touch sensitive screen which provides tax information on almost 10,000 different used cars. Additional factors such as age and mileage can be input in order to arrive at a tax assessment which fully reflects the vehicle which is the subject of the enquiry. The tax quotation given is based on a car in good condition, of standard specification and is subject to verification at the time of declaration for registration. A print out of the information is possible.

The new Kiosk was developed in partnership with Eirtrade/Telecom Internet and is the first customised Internet based kiosk system in Ireland.

Publication of Vehicle Registration Tax (VRT) Statements of Practice

Statements of Practice on VRT repayment schemes are now being published by Revenue. To date two Statements have been published. These are:

- SP - VRT 1/97 - Repayment of VRT in respect of vehicles acquired for leasing or hiring or providing instruction in the driving of vehicles
- SP - VRT 1/98 - Repayment of VRT in respect of motor vehicles used solely for hiring to others under short-term self-drive contracts.

These statements provide comprehensive information on all aspects of the relevant repayment scheme including the qualifying criteria and the procedure for obtaining a repayment. Copies can be obtained from:

The Central Repayments Office,

Coolshannagh,

Monaghan.

Telephone: 047 - 82800.

or

from the *Revenue Forms & Leaflets Service* at 01 - 878 0100.

Statements on other schemes are in the course of preparation.

VAT

Change in Repayment System

Previous Issues of *Tax Briefing* have provided details on the changeover to the Direct Repayment System for VAT repayments to VAT registered traders with effect from **1 July 1998**. Any VAT registered traders who have yet to provide bank or building society account details to avail of the faster, more efficient electronic system of VAT repayments are running out of time.

Any trader making a VAT repayment claim after this date and who has not furnished the necessary account details will experience a substantial delay in receiving repayment. The details required to enable a VAT repayment be credited to the traders nominated bank/building society account are:

- Name and Address of Trader
- VAT Number
- Name and Address of Bank/Building Society
- Branch Sort Code
- Bank/Building Society Account Number

Further Information

Further information and assistance on all aspects of the system are available from:

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

Telephone: 061 - 310310

CGT

Transfer of Assets

Relief for assets transferred within an EU Group

This article is intended to remind practitioners that:

- A separate return is required where relief from capital gains tax is sought, on the transfer of assets within an EU group, as specifically provided for in *Part 21 Taxes Consolidation Act 1997 Sections 631 - 634 inclusive*
- *Section 636 Taxes Consolidation Act 1997* obliges the participating companies to file a return within 9 months from the end of the accounting period in which the transfer occurs.

Because the group structure in each case is unique to that group, it has not been possible to devise a specific form for this purpose. Accordingly, to assist practitioners in meeting their client's return filing obligations, it has been decided that a statement containing the following details will suffice:

- The name, country of tax residence and tax reference number of the transferor company
- The name, country of tax residence and tax reference number of the transferee company
- A brief description of the nature, location and value of the assets which are the subject of the transfer.

In addition, practitioners are requested to:

- Specify the section under which relief applies i.e. *Section 631,632,633 or 634 Taxes Consolidation Act 1997*
- Support the application with a “relevant certificate” vouching the quantity and date of payment of tax incurred in another Member State [indicating the equivalent IR/Euro amount paid] where credit is being sought for foreign tax suffered at source in respect of the same transaction [see *Section 643 Taxes Consolidation Act 1997*]
- Identity the ultimate group parent company and it’s tax residency [albeit the parent company itself may not have been directly involved in the asset transfer]
- Note *Section 980 Taxes Consolidation Act 1997* applies to intra-group asset transfers where the value of the asset(s) being transferred exceeds £150,000 [or £100,000 if the transaction was effected prior to 27 March 1998].

For convenience, practitioners may wish to note that this statement can be submitted when filing their client’s Corporation Tax Return for the relevant accounting period. [Legislative reference:EU Council Directive 90/434/EEC: OJ No. L225. 20/8/1990 as enacted in *Part 21 Sections 630 to 638 (inclusive) Taxes Consolidation Act 1997*]

BES

BES RELIEF

Seed Dressing

Revenue have rejected a claim for BES clearance for a process by which seeds are chemically dressed on the basis that the process was not a manufacturing one. This decision relied on the general tests for manufacture as brought out in the Supreme Court decision in the case of *T.J. Brosnan v Leaside Nurseries Ltd.*, Supreme Court 30/10/1997, in which the appeal against refusal of manufacturing relief for a process of producing dwarfed, potted chrysanthemums was dismissed.

That case has added an important new dimension to the test for manufacture in the case of natural products. That is “*the question as to whether the end product under consideration was capable of being produced by what in ordinary language would be described as a manufacturing process*” [Keane J., pg. 6]. The *Leaside* case was one of those “*instances in which the end product is, in crude terms so close to nature that difficult questions arise as to whether it can properly be described as manufactured*” [Keane J., pg. 4]. Justice Barrington in the same case distinguished the process of producing the dwarfed plants from the *McCann* and *Strand Dairies* cases on the basis that “*milk and severed bananas are inanimate objects whereas chrysanthemums are growing plants*” [pg. 11]. On this basis he arrived at his conclusion that the *process* “*is a process of cultivation not of manufacture*” [pg. 12].

Applying these criteria it is Revenue’s view that dressed seeds were not capable of being produced by a manufacturing process.

FINANCE ACT 1998

SUMMARY

Special basis at commencement of trade or profession

Section 8 is intended to counter tax avoidance arrangements relating to the commencement rules for taxing the profits or gains of trades and professions. The section amends *Section 66 Taxes Consolidation Act 1997* to ensure that the assessment for the second year will be based on the profits of a twelve month period ending in the second year.

Relief for agreed pay restructuring

Section 10 amends *Section 202 Taxes Consolidation Act 1997* which provides relief from income tax for lump sum payments made to employees under certain company restructuring schemes involving agreed pay restructuring.

Section 10 provides that the relief will in future apply where:

- The restructuring scheme is necessary to ensure the current or future viability of the company
and
- 50% or more of the total employees are involved in the restructuring scheme of the company or more than 75% of a particular class or classes of employees of the company are party to the restructuring scheme, provided that the number of participating employees in that class or classes comprises at least 25% of the total employees.

Relief for new shares purchased on issue by employees

Section 11 amends *Section 479 Taxes Consolidation Act 1997*.

With effect from 12 February 1998, the "holding period" i.e. the period subsequent to which an individual may dispose of shares purchased without being liable to a clawback of the tax relief allowed is being reduced **from 5 to 3 years**.

Withdrawal of new shares relief can also arise on the disposal of any shares of the same class within the "holding period". An unintended interaction of this withdrawal of relief procedure with the BES and Profit Sharing legislation could result in a double or triple tax penalty on a single disposal of shares by an employee in his or her employer company. Both *Sections 479(5) and 498(4)* have been amended to prevent such a double or triple penalty occurring and to ensure that an employee will not be liable for more than one tax charge in respect of a disposal of shares.

Transfer of assets abroad

Section 12 is an anti-avoidance measure. It amends the legislation that prevents individuals ordinarily resident in this country from avoiding tax by means of a transfer of assets so that income arising as a result of the transfer becomes payable to persons resident abroad. The legislation has been amended by providing for its application where an individual is **resident or ordinarily** resident in the State.

Reduction in income tax for certain income earned outside the State

Section 13 gives relief to individuals who are resident in the State and who:

- Commute daily or weekly to their place of work outside the State **and**

- Pay tax on the income from the employment outside the State but in a country with which Ireland has a Double Taxation Treaty.

The effect of the new relief, which applies from the tax year 1998/99, is that such Irish resident individuals will only pay the Irish income tax attributable to income other than income from the foreign employment. The tax payable is determined by way of the formula:

$$\text{Total tax liability under Irish rules} \times \frac{\text{Income other than Foreign Employment Income}}{\text{Total Income}}$$

A single person or a married couple whose only source of income is from a foreign employment exercised outside the State will not pay any income tax in the State. Likewise, a married couple on joint assessment where both spouses are working but one spouse has income in the State and the other has income from a foreign employment exercised outside the State, will pay only the tax attributable to the Irish income.

No relief is due in respect of income:

- Which is subject to the remittance basis
- Which is subject to the split year treatment
- Payable by a company to one of its proprietary directors.

Seafarer allowance

Section 14 provides for a new allowance of £5,000 for seafarers which can be set against the seafaring employment. The new £5,000 allowance is conditional on a seafarer being at sea on a voyage to or from a foreign port for at least 169 days in a tax year. A mobile or fixed installation in foreign waters may be treated as a foreign port for this purpose.

It will not apply in any year in which a seafarer claims the foreign earnings deduction. The foreign earnings deduction, which does not apply to the UK, is also being adjusted to ensure that seafarers on an international voyage making an incidental stop at a UK port do not lose out.

Notional loans relating to shares etc.

Section 15 counteracts a tax avoidance scheme which involves companies allowing directors and employees to acquire shares without having to pay the entire amount due on the allotment of such shares. The effect of this section is threefold:

Firstly, the unpaid balance known as a “call” is deemed to be an interest free loan and the interest-free loan is deemed to be a preferential loan for benefit-in-kind purposes. **Secondly**, where the “call” is written off by the company in favour of the director or employee, the amount outstanding on the “call” is deemed to be a taxable emolument. **Thirdly**, where the shares are sold at above market value, the difference between the market value and the sale price is deemed to be an emolument. This latter part counteracts a situation whereby an employer gives an employee an inflated price for shares.

See also the note on page regarding the effect of this section on approved share option schemes and approved profit sharing schemes.

Partially paid for shares - an outline of the CGT treatment

Four CGT issues arise in connection with this new provision in determining the allowable base cost applicable to these shares.

Payments made more than 12 months after the date when the shares were initially allotted are treated as enhancement expenditure (*Section 582 Taxes Consolidation Act 1997*).

Where partially paid for shares are disposed of during the life of the employee, a further charge to income tax may arise under *Section 15(7)*. To avoid double taxation, the amount brought into charge to income tax in this instance constitutes part of the base cost for CGT purposes (*Section 551(2) Taxes Consolidation Act 1997*) i.e. the base cost will be the actual subscription cost paid by the shareholding employee together with any amount charged to income tax under *Section 15(7)*

On the death of the employee, partially paid for shares pass to either the deceased's personal representatives or their beneficiaries at full market value for CGT purposes (*Section 573 Taxes Consolidation Act 1997*).

The tax treatment of share options remains totally unaffected by this new provision i.e. share options retain their separate tax treatment and identity - *Section 15(10)*.

[effective from 4 March 1998]

Relief for gifts made to designated schools

Section 17 provides for tax relief for gifts of money made to, or for the benefit of, designated schools. Income tax relief for personal donations, which will be standard rated, will be available on aggregate gifts of a minimum of £250 and a maximum of £1,000, in a single year of assessment. Tax relief on company donations will apply to aggregate gifts of between £250 and £10,000 given to any one designated school in an accounting period, subject to an overall limit of £50,000 or 10% of the company's profits where gifts are given to more than one disadvantaged school.

Certain foreign pensions

Section 18 amends *Section 200 Taxes Consolidation Act 1997* which provides that occupational and social welfare pensions that are not taxable in the hands of a resident of the country of source are granted similar exemption from tax in the hands of a resident of this country.

Under the new Double Taxation Treaty with the USA, which came into effect on 1 January 1998, United States social security pensions paid to Irish residents have been exempted from tax in the United States. Non-US citizens resident in Ireland, prior to that date, were subject to a 25.5% withholding tax in the US on these pensions. This exemption was conceded on the understanding that the pension would be fully taxable in this country.

Section 18 accordingly, removes United States social security pensions from the scope of *Section 200 Taxes Consolidation Act 1997*.

Registered nursing homes

Section 22 provides for the granting of a writing down allowance in respect of capital expenditure incurred on the construction, or refurbishment of buildings used as private registered nursing homes. The writing down allowance to be granted will be at a rate of 15% per annum for 6 years and 10% in year 7 of the capital expenditure incurred on the construction or refurbishment of the nursing home. The allowance will be available in respect of expenditure incurred on or after 3 December 1997.

Where a nursing home is sold the tax life for computing the writing down allowance available to the purchaser is 7 years beginning with the time when the building was first used. A balancing charge will arise if the nursing home is sold or ceases altogether to be used within 10 years of first being used. Therefore no allowance will

be available to the purchaser if the purchase takes place in years 8, 9 or 10 even though a balancing charge could arise in those years.

A building in use as a hotel that is converted into a qualifying nursing home is deemed to continue as a hotel. The normal writing down allowances for hotels will therefore apply. The tax life of the building will continue to be 7 years.

Whitefish Fleet

Section 23 provides for an improved scheme of capital allowances for whitefish fishing boats. The boats must be registered in a register maintained by the Department of the Marine and Natural Resources. Bord Iascaigh Mhara must certify that the expenditure was incurred in respect of the renewal of the whitefish fleet.

The scheme will apply for three years from a day appointed by order by the Minister for Finance. The order will be made following clearance of the scheme by the European Commission. The following allowances are available during a writing down period of 8 years:

Year 1 50 % of actual cost

Years 2-7 15 % of the balance of expenditure after deducting the year 1 allowance.

Year 8 10% of the same balance.

The section also relaxes the ringfence provisions applying to capital allowances claimed by lessors of these vessels. The section provides that, for expenditure incurred in the three year period of the scheme, capital allowances claimed by corporate lessors in respect of these vessels can be set against other income or profits. For individual lessors, the position is the same but only in respect of allowances relating to expenditure incurred in the first two years of the scheme.

Extension of qualifying period - Urban Renewal Scheme

Section 24 provides for the extension of the qualifying period of the 1994 Urban Renewal Scheme from 31 July 1998 to **31 December 1998**.

For this section to apply the following conditions must be met:

- An application for planning permission to be received by a planning authority by 1 March 1998 and
- Where the existing deadline of 31 July 1998 is not met, a certificate from the local authority stating that in its opinion the person had a reasonable expectation on 31 July 1997 that the expenditure to be incurred would have been incurred by 31 July 1998 and that the failure to meet this deadline was mainly due to delays outside their direct control.

Enterprise Areas

The section changes from 30 June 2000 to **31 December 1999**, the termination date for the tax reliefs for the enterprise areas of Cherry Orchard/Gallanstown, Finglas and Rosslare Harbour as well as any areas immediately adjacent to the regional airports to be designated as enterprise areas by Order.

For a company to be a qualifying company in an enterprise area, it must be approved for financial assistance by Forfás, Forbairt or the Industrial Development Agency (Ireland). The section amends the definition of qualifying company to also include reference to companies approved by Údarás na Gaeltachta.

The section extends the scope of the definition of qualifying trading operations to include freight forwarding and the provision of logistical services to the **freight**

forwarding business but only in areas adjacent to the seven regional airports. The provision is subject to a commencement order.

Extension of qualifying period - Multi-storey Car Parks & Seaside Resort Scheme

Section 26 and **Section 27** provide for the extension of the qualifying period in relation to multi-storey car parks and the seaside resort scheme from 30 June 1998 to **30 June 1999**.

The extension will only apply where the relevant local authority gives a written certificate, on or before **30 September 1998** to:

- The person constructing a qualifying multi-storey car park
- The person constructing, converting or refurbishing a qualifying building under the seaside resort scheme

The certificate must state that the local authority is satisfied that at least 15 % of the total cost of the building and site was incurred by **30 June 1998**.

Dublin Docklands Area

Section 28

Balancing charge

The Dublin Docklands Area legislation is amended to ensure that a **balancing charge** will only be made if the building is sold, demolished or ceases altogether to be used within 13 years of first being used.

Owner-occupier/Residential Accommodation

The second amendment relates to **owner-occupier** residential accommodation. It provides a link between the relieving provision and a supplementary provision which determines the extent to which expenditure on a qualifying premises is incurred in the qualifying period. This ensures that relief applies only to qualifying expenditure which is **properly attributable** to construction actually carried out during the qualifying period.

Motor vehicles - relevant limits

Capital allowances

Section 29 provides for the increase from £15,000 to **£15,500** in the “specified amount” in relation to expenditure incurred on or after 3 December 1997 on the provision or hiring of cars. This increase applies only to **new cars** which are first registered in the State without having been previously registered in an other State.

Running expenses

It also provides for an increase from £15,000 to £15,500 in the amount by reference to which **running expenses** of a car allowed as a deduction for tax purposes are restricted. This increase applies to such expenses incurred on or after 3 December 1997, and it is not relevant whether the car involved is new or second-hand.

Restriction of certain losses and capital allowances

Section 30 inserts two new sections into the *Taxes Consolidation Act 1997* - **Sections 409A and 409B**.

Section 409A

This section provides that where any allowance is to be made to an individual in respect of capital expenditure incurred after 3 December 1997 on a specified building **Section 305(1)(b) Taxes Consolidation Act 1997** will apply as if a new paragraph (b)

were substituted. The effect of this is to provide that the excess of allowances over the income of a particular class, (for example, rental income) **or £25,000 whichever is the lower** may only be set against other income. The balance can be carried forward against future rental income.

Section 392(1) Taxes Consolidation Act 1997 is similarly amended. This section is **aimed at individuals who are lessors or who are non-active partners in a partnership trade.**

Section 409B

This section provides for a total ring-fence of Capital Allowances where any allowance is to be made to an individual in respect of capital expenditure incurred after 3 December 1997 on a specified building. “Specified building” covers hotels and holiday camps except hotels located in certain **counties other than in seaside resort areas in those counties**. These counties are Cavan, Donegal, Leitrim, Mayo, Monaghan, Roscommon or Sligo. The section is aimed at **individuals who are lessors or who are non-active partners in a partnership trade**. The effect of the section is that capital allowances can only be set against an investors rental income or against the partners trading income from the hotel.

The transitional provisions apply equally to *Section 409A* and *Section 409B* except for the reference to IDA assisted projects. Hotels do not receive IDA grants. Transitional provisions included in the section are designed to ensure that pipeline projects are not affected. The new measures will not apply:

- Where the foundation of a building was in place before 3 December 1997
- Where, in the case of refurbishment, 5% of the cost of a project had been completed before 3 December 1997
- Where a building is provided for a project approved for grant assistance in the 2 years prior to 3 December 1997
- Where a planning application was received by a planning authority and a written contract was in place before 3 December 1997
- Where, in the absence of a planning application, it can be established that plans were in place and that detailed discussions had taken place with a planning authority and a written contract was in place before 3 December 1997
- Where a planning application was received or detailed discussions had taken place and negotiation were in progress before 3 December 1997 leading to the signing of a written contract before 1 May 1998.

Employee Share Schemes

Section 36 amends the provisions of the *Taxes Consolidation Act 1997* relating to approved profit sharing schemes (APSS) and employee share ownership trusts (ESOTs).

The section provides for the following changes to be made:

- Subject to certain conditions being satisfied, a participant in an APSS will be absolved, in relation to an appropriation of shares (made on or after the date of the passing of the *Finance Act 1998*) which have been transferred to the APSS by a Revenue approved ESOT, from the requirement to hold those shares for a period of 3 years in order to qualify for the tax relief in respect of those shares. The conditions in question are:
 - Immediately prior to the transfer of the shares from the ESOT to the APSS, the shares were held in the ESOT for at least 3 years

and

- The participant was a beneficiary of the ESOT for the full 3 year period ending on the date of appropriation of the shares.

Where these conditions are met, the participant will be able to dispose of his or her shares without any income tax implications immediately he or she receives them through the APSS.

- The trustees of a Revenue approved ESOT will be exempt from income tax on share dividends received by it on or after the passing of the *Finance Act 1998*, if and to the extent that the income is spent by the trustees within a qualifying period for one or more qualifying purposes. The trustees will, however, not be entitled to any tax credit in relation to these exempt dividends.
- Currently, an ESOT has to be set up by a founding company and must extend to all companies which that company controls. This latter condition is being relaxed, in relation to ESOTs approved on or after the date of the passing of the *Finance Act 1998*, to allow the founding company the option of selecting the companies it wants to include in the ESOT. This change aligns the ESOT legislation with the existing APSS legislation.
- In future, an APSS or an ESOT may not be approved by Revenue unless they are satisfied that it is not intended solely to confer benefits on the directors and higher paid employees of a group of companies. In addition, Revenue may not approve an APSS if they consider that there are features in the scheme which would act as a disincentive to employees of the company to participate in the scheme.
- The condition that, subject to service requirements, all employees of a company must be beneficiaries of an ESOT is being confined to those employees chargeable to tax under Schedule E i.e. basically Irish resident employees within PAYE. However, a company may at its discretion include other employees e.g. foreign based employees.

The criteria for the “material interest test” under which an employee could be debarred as a beneficiary of an ESOT is being eased. In future, the provision which disregards, for the purposes of that test, a trust set up for the benefit of directors and employees of a company as an associate of an employee, will also apply where such a trust includes former employees of the company.

Payments to subcontractors in certain industries

Section 37 amends *Sections 530 and 531 Taxes Consolidation Act 1997* which provide for the application of the Relevant Contracts Tax system in respect of payments to subcontractors in the construction, forestry and meat processing industries.

The section extends the meat processing operations covered by the RCT legislation to include the poultry trade. The principal contractors who will have to operate the scheme in the **poultry trade** are persons carrying on a business of meat processing operations in an establishment approved and inspected in accordance with the European Communities (Fresh Poultrymeat) Regulations, 1996 (S.I. No. 3 of 1996). It also extends the tax deduction system to certain haulage operations in the meat industry. These measures will be effective from **6 October 1998**.

Farm pollution control allowances

Section 38 provides for a change to the scheme of improved capital allowances introduced last year for farmers in respect of expenditure on necessary pollution

control measures. The farm pollution control allowances have been amended and in the **first year**, the allowance is now as follows:

- Where the capital expenditure was incurred prior to 6 April 1998 the allowance will be the lesser of 50% of the expenditure or £10,000 (i.e. a ceiling of £20,000)
or
- Where the expenditure is incurred on or after 6 April 1998 the allowance will be the lesser of 50% of the expenditure or £15,000 (i.e. a ceiling of £30,000).

Stock relief for young farmers

Section 39 provides that the special scheme of enhanced stock relief for young farmers will apply for **four** years instead of two years. Therefore, individuals who become qualifying farmers between

6 April 1997 and 5 April 1999 are entitled to a deduction of 100% of the increase in stock value for the year in which they become qualifying farmers and in the three years immediately following that year.

Shares taken in lieu of dividends - "scrip dividends"

Section 43

Shareholders, who possess either quoted shares or unquoted shares, are sometimes offered the opportunity to take a *scrip dividend* i.e. to receive additional shares instead of a cash dividend.

Quoted shares which generate scrip dividends

Quoted share scrip dividends were exempt from charge to income tax from 1993/94 to 1997/98 inclusive and were subject only to CGT. The charge to CGT did not arise until these shares were disposed of. At the time of their acquisition, having cost the shareholder nothing, these shares were treated the same as a *bonus issue*. Quoted scrip shares issued between 1993/94 and 3 December 1997 retain this *bonus issue* treatment (see below).

Section 43 restores an income tax charge at the *date of issue* of these shares. So for CGT, quoted scrip shares issued on or after 3 December 1997 are now to be treated like a *rights issue* (see below)

Unquoted shares which generate scrip dividends

For CGT purposes, the *rights issue* treatment has always and will continue to apply to all unquoted scrip shares issued since 1974.

The bonus issue treatment

The bonus issue treatment means that the cost referable to the original shares is now spread over the entire shareholding (original shares + bonus issue (including scrip shares)).

The rights issue treatment

The *rights issue* treatment ensures that the amount of the dividend forgone (not including the tax credit), which is brought into charge to income tax at the time of the issue of these shares, ranks as enhancement expenditure*. When establishing the base cost of each share, this enhancement expenditure must be apportioned over the entire shareholding (original shares + bonus issue + scrip shares).

The FIFO Share identification rules - continues to apply to all these shares.

[effective from 3 December 1997].(*see specific provision for same in *Section 584 4(b) proviso TCA 1997*)

Buildings used for third level educational purposes

Section 44 amends *Section 25 Finance Act 1997*, providing for capital allowances for third level educational institutions.

The definition of “approved institution” is amended to ensure that third level educational institutions which are not publicly funded can avail of the relief. It also amends the definition of “qualifying premises”. Previously a lessor could only lease back a premises to the institution at an arm’s length rent. This section removes that restriction.

Self-Assessment

Section 45 provides for a number of changes in the self-assessment system which cannot take effect before November 1999.

- Firstly, it is proposed that the **return filing date** be brought forward from **31 January to 30 November** in the year following the year of assessment.
- Secondly, the section provides for later payment of **preliminary tax** which would become payable on **30 November**, instead of 1 November in the year of assessment.

The effect of these changes would be an alignment of the date for payment of preliminary tax with the filing date for the previous tax year. However, the changes cannot take effect before 1998/99 in the case of the changes involving the return filing date and 1999/2000 in the case of the changes involving the preliminary tax payment date and then only where the Minister for Finance makes a commencement order. This will allow further discussions with interested parties and for an impact assessment of the proposal.

- Thirdly, the section provides, with effect from the tax year 1998/99, for the payment of the **full** amount of capital gains tax on the preliminary tax payment date for the year of assessment. At present, a taxpayer is required to pay 90% by 1 November following the year of assessment and the balance is payable with the return on the following 31 January.
- Finally, the section provides that instalments under the direct debit system for the payment of preliminary tax are to be changed from a calendar to a tax year basis with effect from the year 1999/2000.

Limited Partnerships

Section 50 amends the anti-avoidance provisions contained in *Section 1013 Taxes Consolidation Act 1997*, in relation to certain relief available to partners in a partnership. That section restricts the use of losses, capital allowances and certain interest payments available to a partner in certain types of partnerships. The amendment to Section 1013 adds a further type of partnership to which these restrictions will apply. These are **partnerships whose activities include producing, distributing or holding films or video tapes or exploring for or exploiting oil and/or gas resources**. A partner in such a partnership who does not work for the greater part of his or her time on the day-to-day management or conduct of the partnership trade will be subject to restrictions in respect of the use of losses, capital allowances and certain interest payments.

The section restricts the offset of capital allowances and losses claimed by the investor to the income he or she derives from the partnership and then, only to the extent that it does not exceed the investor’s capital contribution to the partnership.

Reduction in tax credits in respect of distributions

Section 51 reduces the tax credit which applies to dividends and other distributions from 21/79 to 11/89. The reduced rate of credit applies to distributions made on or after 3 December 1997. The rate for payments made from manufacturing profits remains at 1/18

Abolition of tax credits and ACT

Section 52 abolishes, with effect from 6 April 1999 the tax credit attaching to dividends. The abolition of the tax credits involves the abolition of Advance Corporation Tax, which is the amount of tax payable by a company when it pays a dividend to shareholders and is equal to the tax credit attaching to the dividend. Advance Corporation Tax will be abolished in respect of all distributions made on or after the 6 April 1999.

Rate of Corporation Tax

Section 55 reduces the standard rate of corporation tax from 36% to 32%, with effect from 1 January 1998.

The effective 10% rate of corporation tax is unchanged by these measures.

Reduced rate of Corporation Tax for certain income

Section 56 reduces the rate of corporation tax which applies to the first £50,000 of a company's income in an accounting year from 28% to 25%, with effect from 1 January 1998.

Credit for foreign tax not otherwise credited

Section 59 makes a technical amendment to clarify the scope of *Section 449 Taxes Consolidation Act 1997*. *Section 449* provides for limited unilateral credit relief to be given in certain circumstances where a company suffers foreign tax in a country with which Ireland does not have a double taxation agreement. The scheme applies to withholding tax on payments to companies involved in certain computer services, IFSC and Shannon activities. It provides that foreign tax which may be credited is tax **which is not allowable under tax treaty arrangements**.

This section provides that foreign tax which cannot be allowed under a treaty because of the limit on credit available does not qualify under *Section 449* for unilateral relief.

Relief for double taxation

Section 60 inserts two new paragraphs into *Schedule 24 Taxes Consolidation Act 1997*. The two new paragraphs provide a considerable level of double taxation relief to companies resident in the State which have overseas subsidiaries and it should help to prevent double taxation of dividends received by Irish multi-nationals from their overseas subsidiaries.

Corporate Donations To Eligible Charities

Section 61 provides for a new scheme to allow a tax deduction to companies for certain donations to eligible charities. An eligible charity must be authorised by Revenue and must have been granted tax exemption for at least 3 years prior to its application for authorisation under this section.

Relief will be given for donations made by a company after 6 April 1998 where the donation is more than £250. Relief will not be given in respect of the excess of a

donation over £10,000 in any (12 month) accounting period. The upper limit of relief for donations from a single company to more than one charity in such an accounting period is the lesser of £50,000 or 10% of the company's profits.

Relief for investment in renewable energy generation

Section 62 provides a new relief for corporate investment in certain renewable energy projects. The technology categories to which the reliefs will apply are solar power, windpower, hydropower, and biomass. The relief will be introduced from a date to be specified by order following clearance of the scheme by the European Commission and will last for 3 years.

Sections 65, 66 & 70

Capital Gains Tax Rates

	To 2/12/1997	31/12/1997 to 11/2/1998	12/2/1998 to 22/4/1998	From 23/4/1998
Life Insurance Policies with a Foreign Insurer & Units in Distributing Offshore Funds	40%	20%	40%	40%
Special Shares	26%	20%	20%	20%
Development Land	40%	40%	40%	40% or 20%*
Other Assets	40%	20%	20%	20%

* as part of the Government's response to the housing crisis special measures were announced on 23 April 1998 - these include a specially reduced rate of CGT for disposals of *development land with planning permission* - see page 35.

Restricting the offset of CGT losses

Sections 67 & 68

Where a company is dissolved or struck-off, any property in the company's ownership at that date falls to the state by virtue of a provision in the *State Property Act 1954*. However, the former shareholders may establish entitlement to this property and so can petition the Minister for Finance to waive his/her interest in the property in favour of them. In these circumstances, title to the property reverts to the former shareholders. *Sections 67 and 68* removes certain tax benefits which would otherwise accrue to the former shareholders as a consequence of this process.

Retirement relief and life interests

For a property to qualify for retirement relief both ownership and occupation of it for trade purposes are essential. **Section 69** attributes the life tenant's occupancy of the property to the trustees solely for the purposes of qualifying for retirement relief. The relief being given is the retirement relief which would have been given to the person entitled to the life interest if that person had owned the property absolutely since the commencement of the life interest. [effective from 12 February 1998]

CGT Retirement Relief

Section 72

In addition to *Section 69*, two other changes have been introduced in relation to retirement relief :

"Chargeable business assets" redefined

Qualifying assets are redefined for retirement relief purposes. This provision puts beyond doubt that only those assets which have been used for the purpose of a trade carried on by the individual (or his/her family company) for a minimum of 10 years ***immediately prior*** to their disposal will qualify for relief. **[effective from 6 April 1998]**

Farm land which has been leased

This amendment ensures that a farmer, who has participated in the 1992 EU Early Retirement Scheme by way of leasing land, is not then excluded from availing of retirement relief in respect of that land. **[effective from 6 April 1998]**

CGT Clearance Certificate (CG50): Threshold increased to £150,000

Section 74

Section 980 Taxes Consolidation Act 1997 obliges a vendor to provide the purchaser with a CGT Clearance Certificate, if he/she wishes the purchaser to pay over the full proceeds on the completion of a disposal. This process applies to certain assets, most commonly property. In the absence of a Clearance Certificate, the purchaser is required to retain 15% of the consideration and remit that amount to Revenue. Disposals of up to and including £150,000 are now excluded from the CG50 process. **[effective from 27 March 1998]**

Personal Exemption

Section 75

The £1,000 CGT personal exemption, if not utilized, can no longer be transferred to a spouse. **[effective from 6 April 1998]**

Section 76 introduces a new Urban Renewal Relief Scheme and *Section 77* provides for a pilot scheme of rural renewal. Both of these sections will be covered in detail in a future issue of ***Tax Briefing***.

VAT Summary of Provisions

F.A. '98 Section	Amending VAT Act	Description	Effective Date
105	Sec. 3 (1)(f)	Goods acquired under Section 3(5)(b)(iii) and diverted to non business use now to be treated as a self-supply	27 March 1998
106	Sec. 4(9)	Confirms that a supply of property is subject to VAT only once, unless redeveloped	27 March 1998
106	Sec. 4(10)	Allows deduction for VAT of specific post-letting expenses in certain circumstances	27 March 1998
107	Sec. 5(6)	Non EU person buying and using Irish telephone card or receiving financial services here	1 May 1998
107	Sec. 5(6A)	Refund of VAT to supplier of a telephone card purchased in the State but used outside EU.	1 May 1998
108	Sec. 8(a)	Farmer supplying livestock semen	1 July 1998
110	Sec. 11(f)	Increasing VAT Rate from 3.3% to 3.6%.	1 March 1998
111	Sec. 12(1)(b)(iii) and 12(2)	Treatment of lessors of motor cars who are established in other Member States but who lease to customers in Ireland	27 March 1998
112	Sec. 12A	Increases flat rate addition from 3.3% to 3.6%	1 March 1998
113	Sec 13(3)(c)	Removes the prohibition on lessors of lorries and vans, established outside Ireland, from reclaiming under Section 13(3). [Prohibition re lessors of cars retained]	27 March 1998
114	Sec. 20(4)	Reduces the time limit within which a claim for a refund of VAT can be made	27 March 1998
114	Sec. 20(4)	New provisions with regard to dealing with undue enrichment	27 March 1998
115	Sec. 30(4)(a)	Time limits within which Revenue must make an estimation or assessment	27 March 1998
116	Second Sch. (xi)	Zero rating of certain navigation services provided by the Irish Aviation Authority	1 March 1998
	(xva)	Redefines zero rating on books and booklets and the exclusions	1 May 1998

		therefrom.	
117	Sixth Sch. (xi)	Extended to live poultry and live ostriches insemination services, livestock semen.	1 May 1998 1 July 1998
	xii	Extends rate to all magazines, periodicals etc	1 May 1998

Stamp Duty - Broker Dealer relief

Section 123

The *Finance Act 1996* granted a relief from stamp duty on the purchase of shares by Irish & UK Stock Exchange member firms (brokers/dealers) provided the member firm transfers on those shares within one month of the date the shares were transferred to that member firm in the first place, i.e. the settlement date. This section gives the member firms the option of calculating the one month period from the *intended* settlement date rather than from the *actual* settlement date. This provision was introduced to facilitate those member firms' computer systems which will only track from the intended settlement date.

If a member chooses to opt for the intended settlement date two important conditions apply in order to qualify for the relief:

- The member firm must opt before it contracts to buy shares, that the one month period will run from the intended settlement date
- The intended settlement date must fall within 30 days of the date of the contract.

This provision applies to all transfers to a member firm made on or after **27 March 1998** on foot of contracts to buy entered into by the member firm on or after the same date.

Interest on unpaid and overpaid Stamp Duty

Section 124

The rate of interest on overdue stamp duty is reduced from 1.25% per month or part of a month to 1% per month or part of a month

- The rate of interest on refunds of companies capital duty is being reduced from 9% per annum to 6% per annum
- The rate of interest on refunds of stamp duty in respect of non exempt new houses is reduced from 1% per month or part of a month to 0.5% per month or part of a month.

the reduced rates apply to interest accruing on or after **27 March 1998**.

Capital Acquisitions Tax

House inherited by certain relatives

Section 126

This section amends *Section 117 Finance Act 1991* as follows:

1. Where a brother or sister:
 - Inherits a house or part of a house from a deceased sibling
 - Is aged 55 years or over
 - Has resided in the house with the deceased for at least five years ending on the date of death of the deceased
 - Does not own any other house

The value of the house inherited is reduced for inheritance tax purposes by 80% or £150,000, whichever is the lesser.

2. Where:

- A Class 2 relative* inherits a house or part of a house
- Has lived in the house with the deceased for at least 10 years ending on the date of death of the disponent does not own any other house
- The value of the house inherited is reduced for inheritance tax purposes by 80% or £150,000 whichever is the lesser.

* Class 2 relative includes - nephew, niece, grandchild, great grandchild - of any age, and brothers and sisters - ***aged under 55 years***.

The provisions of this section apply to inheritances taken on or after **3 December 1997**.

Discount on early payment of Probate Tax

The rate of interest charged on overdue Probate tax is reduced from 1.25% per month or part of a month to 1% per month or part of a month.

The discount for Probate Tax which is paid within 9 months of the date of death is reduced from 1.25% per month or part of a month to 1% per month or part of a month.

The reduced rate of interest charged applies to interest accruing on or after 27 March 1998. The reduced discount applies to discounts which fall to be made on or after 27 March 1998.

Business Relief

Section 128 ensures that:

- Where shares in a company qualify for Business Relief, any part of the value of those shares attributable to a foreign business carried on by the company or one of its subsidiaries, is not excluded from the relief because that business is carried on abroad.
- The replacement assets rules will apply in a case where one trading subsidiary in a group has been replaced with another from outside the group within the minimum ownership period

These provisions apply to gifts/inheritances taken on or after **11 April 1994** - date of introduction of Business Relief.

Appeals

Section 129 provides that taxpayers must first lodge a self assessed return and pay any tax due in accordance with that return before being allowed to appeal against any gift/inheritance tax assessment made by Revenue. Applies to gifts/ inheritances taken on or after **12 February 1998**.

Miscellaneous

Interest on unpaid or overpaid taxes

Section 133 provides for a reduction to 1% per month (from 1.25%) in the rate of interest chargeable on unpaid taxes (Income Tax, Corporation Tax, Capital Gains Tax, Residential Property Tax, Value Added Tax, Capital Acquisitions Tax, Wealth Tax). The rate of interest payable on refunds of such taxes is being reduced to 0.5%

(from 0.6%) per month. The changes in rates will apply from the beginning of the month following the enactment of the Finance Act, i.e. from **April 1998**.

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.

FINANCE (No. 2) ACT 1998

Summary

Rental Income from Residential Property - Deductibility of Loan Interest

Rental income - An overview

Under the tax law relating to rental income, a person may claim a deduction from gross rent in respect of such items as:

- Ground rent
- Rates
- The actual cost of maintenance, repairs, insurance, and management fees
- Wear and tear on furniture and fittings
- **The interest on borrowings used in the purchase, improvement or repair of the premises**

in arriving at the taxable rent.

As regards **the interest on borrowings** mentioned above, no distinction was made up to now between rented residential premises and other rented premises.

However, under the *Finance (No. 2) Act 1998*, the interest on borrowing used to purchase, improve or repair premises **will not** in certain circumstances be allowed as a deduction in arriving at the taxable rent.

New Restriction for Residential Premises

Subject to certain **transitional arrangements**, *Section 1* of the Act provides that interest on borrowed money **used on or after 23 April 1998**, in the purchase, improvement or repair of a **residential premises** cannot be offset against rental income in arriving at the taxable rent (or allowable loss) in respect of that premises. The restriction covers individuals, companies, trusts and partnerships.

A **residential premises** is defined as a building or part of a building which is used or suitable for use as a dwelling. It covers both houses and apartments and includes any garden, yard or outoffice which is usually enjoyed with the building.

Notwithstanding what the premises was when acquired or how it was previously utilised, the restriction applies for any tax year or accounting period during which the premises is, **at any time** during that tax year or accounting period, a rented residential premises.

Foreign Residential Premises

The restriction will apply to foreign residential premises in the same manner as it applies to premises in the State, except that the 'cut-off' date for its application is **7 May 1998** rather than 23 April 1998.

Private Residence - Changing to a Rented Premises

The restriction also applies where at any time on or after 23 April 1998, a person vacates his or her principal private residence and turns it into rented accommodation. In this instance, the restriction will apply from the date of change of use, **irrespective of when the borrowed money was used**.

Site and Construction Costs

Except for the situation outlined in the transitional arrangements mentioned below, the restriction applies also to interest paid on borrowed money used on or after 23 April 1998 in the:

- Purchase of a site
and/or

- Development of a site (including a site owned by the developer on the 23 April 1998) by constructing on the site a premises which is, at any time during the tax year, a rented residential premises.

[**Note:** The interest on borrowed money used before 23 April 1998 (or on or before 31 December 1998 if contracts were signed before 23 April 1998), to purchase a site would be allowable].

Exceptions

The new restriction will not apply to residential premises in qualifying resorts under the **Seaside Resort Scheme**. Such premises include:

- Accommodation for letting to tourists and in respect of which capital allowances may be claimed
- Other accommodation for renting to tourists in respect of which “*Section 23 type*” relief is available.

Rented residential accommodation [both “*Section 23 type*” and “non-*Section 23 type*” premises] in areas to which the new **Rural Renewal Scheme** apply are also excluded from the scope of the interest restriction. These areas cover parts of Cavan, Roscommon and Sligo as well as the entire counties of Leitrim and Longford.

Indirect Investment: Companies or Partnerships

Under current tax legislation, a person can, in certain circumstances, obtain tax relief in respect of interest on borrowed money which has been used to provide share or loan capital to a company or partnership. For example, if X borrows money from a bank, and onlends that money to X Ltd. in order to fund the purchase by X Ltd. of a rental property, then X can get full relief for that interest in computing his or her personal income tax.

Section 2 of the Act is designed to forestall attempts by persons to use this procedure to circumvent the new restriction on relief for interest.

The effect of *Section 2* is that the relief due in respect of the interest on borrowed money invested in, or lent to, a company or partnership on or after 7 May 1998 is restricted for a tax year or accounting period to the extent that that money is used, directly or indirectly, by the company or partnership to purchase premises which, at any time during that year or period, is a rented residential property.

The transitional arrangements referred to below do **not** apply in the case of indirect investment.

Transitional Arrangements

Section 1 of the Act contains a number of transitional provisions designed to maintain the status quo for certain pipeline cases. These situations are dealt with separately below.

[NOTE: As regards the transitional arrangements, see also the paragraph on page 30 in relation to a person’s principal private residence which is subsequently used as a rented residential premises]

Transitional: Purchase of Premises

If a person has entered into a contract to purchase a residential premises, and such contract is evidenced in writing before 23 April 1998, then the new restriction will not apply to the interest on the borrowed money used **on or before 31 December 1998** for that purchase.

Transitional: Improvement or Repair of Premises

The new restriction will not apply to interest on borrowed money whenever used in the improvement or repair of residential premises if:

- The premises was a rented residential premises on 23 April 1998, or at any time during the 12 months up to that date and
- The person being assessed on the rent from such premises owned it on 23 April 1998 [or had entered into a contract which was evidenced in writing before 23 April 1998 to purchase it and the purchase money was paid over by the 31 December 1998].

The 31 December 1998 deadline applicable in the case of the purchase of premises does not apply in the case of loans used in the improvement or repair of residential premises.

Transitional: Site and Construction

The restriction will not apply to interest on borrowed money used by a person on or before

31 December 1998 on the construction (or part construction) of a dwelling house on land either:

- Owned by that person on 23 April 1998 or
- Acquired by that person under a contract evidenced in writing before 23 April 1998 and paid for on or before 31 December 1998,

where either:

- That person has a contract evidenced in writing before 23 April 1998 for the construction of that dwelling house or
- If no such construction contract exists, that person can prove to Revenue that the foundation for that dwelling house was laid in its entirety before 23 April 1998.

Transitional: Holiday Lettings (Non-Resort Areas)

Also excluded from the scope of the interest restriction are some holiday cottages and other self-catering accommodation outside of qualifying resort and rural renewal areas. The premises in question are those in respect of which an application for planning permission was received by a local authority before 23 April 1998 and where the planning permission when received includes a condition that the premises cannot be let for more than two consecutive months to any one person and such condition is still in force in the tax year in which rents are receivable.

As regards the condition that the premises cannot be let to the same person for two consecutive months, it is accepted that local authorities may use different wording in imposing what is essentially the same condition in planning permission. Revenue will not be taking a literal interpretation of the 'two-month' rule and will allow exemption in any case where the premises is clearly confined, as part of the planning permission, to short term lettings.

Deductibility of Loan Interest Questions & Answers

The following questions and answers attempt to address some of the more common situations likely to arise.

[NOTE: The following answers are subject to the paragraph on page 30 in relation to a person's principal private residence which is subsequently used as a rented residential premises]

Contracts signed before the cut-off dates

Q. *Contracts were signed on 1 March 1998 to purchase premises which will be rented residential premises. However, the premises will not be ready until October 1998 when the balance of purchase money will be paid. Will the interest on my borrowings to purchase this premises qualify as a rental deduction?*

A. **Yes** - as there is a contract evidenced in writing before 23 April 1998, and the money is used on or before 31 December 1998.

Draft contract signed before 23 April 1998, by one party only

Q. *Prior to 23 April 1998, the draft contract [i.e. the actual contract document] signed by me was returned to the seller's solicitor. However, the seller did not sign this document until after the 23 April 1998. Do I have a contract evidenced in writing before the 23 April 1998 for the purposes of the transitional arrangements?*

A. Where there is clear evidence that the actual contract document was both signed by the buyer and sent to the seller (or the seller's solicitor or agent) before 23 April 1998, provided the borrowed money is used on or before 31 December 1998, in that purchase, Revenue are prepared to allow such buyers claim the interest paid on those borrowings as a rental deduction [i.e. that the transitional arrangement outlined above may apply in such cases].

Contract subject to conditions

Q. *The contract I signed in March 1998 for the purchase of a premises is subject to a condition that I obtain loan approval. Will such condition affect my qualification for the transitional arrangements?*

A. Contracts evidenced in writing before 23 April 1998, which contain conditions such as 'subject to loan approval' or 'subject to planning permission' will not affect your qualification for the transitional arrangement. [Note - The other part of the transitional arrangement is that the borrowed money is used on or before 31 December 1998 in the purchase of the premises].

Booking deposit

Q. *In March 1998, I paid a £2,000 non-refundable deposit in respect of a residential premises. Does the receipt for the 'non-refundable' deposit constitute a 'contract evidenced in writing' for the purposes of the 'transitional arrangements'?*

A. Whether or not a contract exists or is evidenced in writing is a question of fact having regard to the facts and circumstances of each case. In general, however, the payment of a booking deposit and the existence of a receipt for such a payment **on their own** would not constitute a contract evidenced in writing.

Sites / Construction

Q. *I acquired (funded by savings) a site in 1997 on which I am currently constructing a dwelling. As at 23 April 1998, the foundations were laid and my bank is advancing money in stages to complete the construction. Will the interest on this money qualify as a rental deduction?*

A. Only the interest on that part of the borrowed money which is used on or before 31 December 1998 on the construction (or part construction) of the dwelling will qualify as a rental deduction.

Q. *I acquired a site in 1996 financed by borrowed money. I intend to borrow in the future to finance the construction of a dwelling on the site. What interest on the borrowings will qualify as a rental deduction?*

A. The interest on the money borrowed to purchase the site will qualify as a rental deduction. If you have a contract evidenced in writing before the 23 April 1998 in respect of the proposed construction, interest on the borrowings used on or before the

31 December 1998, in the construction (or part construction) will qualify as a rental deduction.

Conversion of principal private residence into rented residential premises

Q. *I intend to let the house which is currently my main residence and purchase another house as my main residence. If I let my current residence, can I claim the mortgage interest as a rental deduction?*

A. No.

Q. *I intend to emigrate for a number of years. If I let my current residence, can I claim the mortgage interest as a rental deduction?*

A. No.

Letting part of a premises

Q. *I intend purchasing a house to be used as my main residence. To help with the mortgage repayments, I intend letting part of the house. What deductions may be claimed in respect of the mortgage interest against my personal income tax and against the rental income.*

A. In this situation, part of the mortgage interest may be claimed as a normal interest credit against your personal income tax. However, the balance of the interest may not be claimed as a rental deduction.

The mortgage interest applicable to the let part of the house may be determined on a just and reasonable basis. For example, the apportionment of the interest may be by reference to the number of rooms let.

Existing residential premises

Q. *I bought a house in 1990 which has been let since then. I currently claim a deduction for the interest payable on the purchase money against the gross rental income. Can I continue to claim such deduction?*

A. Yes.

Q. *I intend purchasing a premises which has been a rented residential premise for a number of years. As the premises has already been let, can I claim the interest on the borrowed money used to purchase this premises as a rental deduction?*

A. No.

Q. *I inherited a house in 1997 which I intend to improve financed by way of borrowings. Will the interest on the borrowed money used to carry out such improvements qualify as a rental deduction?*

A. The interest will qualify as a rental deduction only if the premises was a rented residential premises either on 23 April or at any time in the 12 months up to that date.

Commercial property/Conversion of commercial property

Q. *I intend to buy a commercial property (e.g. a shop) for letting. Does the new restriction on interest payable affect commercial lettings?*

A. No.

Q. *I acquired a warehouse in August 1997 which I intend to convert in the future into residential units and retain myself for letting. What interest on the borrowed money used in the purchase and conversion will qualify as a rental deduction if the premises is let for residential use?*

A. The interest on the money used to purchase the warehouse will qualify as a rental deduction as the premises was purchased prior to 23 April 1998.

However, as the premises was not rented residential premises on 23 April 1998 or at any time in the 12 months up to that date, the interest on the borrowed money used in the conversion will not be allowed as a rental deduction.

Note - If the warehouse was purchased on or after 23 April 1998 [or not covered by the transitional arrangement relating to purchase], the interest on the borrowed money used in the purchase would not be allowable as a rental deduction.

Mixed use premises

Q. *I intend purchasing a premises for letting. When let, the premises will be part commercial and part residential. Will the interest on my borrowing to purchase this property qualify as a rental deduction?*

A. Only the interest on that part of the money attributable to the commercial part will qualify as rental deduction. In ascertaining what part of the money is attributable to the commercial part of the building, a just and reasonable apportionment may be made.

Date on which description of premises relevant

Q. *Can I circumvent the new legislation by buying premises which is not residential premises at the date of purchase and later converting it into residential premises?*

A. No. What is important is, not what the property is at the date of purchase, but what the property is during the tax year in which you wish to claim the interest deduction. Each tax year is looked at separately to see if, at any time during that tax year, the property is a residential premises.

Certain Disposals of Development Land - Rates of Capital Gains Tax

Capital Gains Tax - General

Since the Budget on 3 December 1997 the general rate of Capital Gains Tax (CGT) is 20%. The main exception is development land, gains on the disposal of which continue to be taxed at 40%. However, where the total value of all disposals (small disposals) of development land by an individual in a year of assessment does not exceed £15,000 then the 20% rate applies.

What is development land?

Development land means land the value of which exceeds its current use value, i.e. its value if it was unlawful to carry out any development in relation to the land at any time.

Details of Changes

Apart from the exceptions mentioned below, gains on disposals in the period 23 April 1998 to 5 April 2002 of development land which on the date of disposal has planning permission for residential development will be liable at 20%. In addition, disposals of land in that period to a housing authority for the purposes of the Housing Acts qualify for the 20% rate whether or not the land has planning permission. Otherwise, the rate of tax is 40%. Small disposals continue to be liable at 20%.

Exceptions

A gain on a disposal of development land in the period to 5 April 2002 between connected parties will be liable at 40% ("connected" includes family members and companies under their control).

If the contract for sale of the land in the period to 5 April 2002 is conditional on planning permission for any development other than residential development being obtained, the rate on the gain arising is 40%.

What about after 5 April 2002?

From 6 April 2002 onwards the rate of tax on gains on disposals of all land zoned for residential purposes will be **60%**, whether or not planning permission exists. Small disposals will continue to be liable at the 20% rate.

What land is affected by the 60% rate?

Land which is zoned for residential development. Gains on disposals of all other development land will be taxed at 40%.

Must the land be serviced to qualify for the 20% rate?

The legislation does not require that the land be serviced. The condition is that planning permission for residential development has been granted. In the case of disposals to housing authorities, the planning permission requirement does not apply.

Will the sale of land, the contract for which is conditional on planning permission being obtained, qualify for the 20% rate?

Yes. The sale of land where the contract is conditional on planning permission for residential development being obtained can qualify for the 20% rate. For capital gains tax purposes, a disposal occurs in relation to such a contract on the date the condition is satisfied (i.e. when the planning permission is given) and not on the date the contract is signed. Either the vendor or the purchaser can obtain the planning permission.

Is outline planning permission sufficient?

Yes. No distinction is drawn between outline and what is called full planning permission.

What is residential development?

Residential development essentially means housing but includes developments which are ancillary to the housing development and which are necessary for proper planning and development of the area. This would include local shops, schools, library, church, estate roads, etc.

What evidence of planning permission is necessary?

The notification or a copy of the notification from the planning authority granting planning permission is sufficient.

Is the 20% rate given effect by way of rebate?

No. The tax rate to be applied to the gain is 20% for self-assessing purposes.

Further information

For further information on Finance (No.2) Act 1998, contact your local tax office or the *Revenue Central Telephone Information Office* at 01 - 878 0000.

The Finance (No. 2) Act, 1998, is published by the Stationery Office. It may be purchased direct from the:

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

Telephone: 01 - 661 3111 or by mail order from:

*Government Publications Postal Trade Section,
4-5 Harcourt Road,
Dublin 2.*

Telephone: 01 - 661 3111 or through any bookseller. Cost £3.60, postage 0.70p.

STAMP DUTY

Conveyances and Leases of Residential Property

Finance (No. 2) Act 1998 reduced the stamp duty on certain conveyances and leases of residential property executed on or after 23 April 1998, where the consideration does not exceed £500,000. In addition, the Act confined the existing stamp duty

reliefs for new houses and apartments to persons who intend to occupy the house or apartment as their only or principal place of residence.

Enclosed with this issue of ***Tax Briefing*** is a leaflet outlining the stamp duty changes effected by the Act and related administrative matters.

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.

For further information please telephone or fax:

Dublin Office:

Telephone: 01 - 679 2777

Exts. 4992/4093/4310

Fax: 01 - 679 4115

or

Cork Office:

Telephone: 021 - 968783

Exts. 3105/3109/3141

Fax: 021 - 318088

Widow's Pension

Taxation of Widow's Social Welfare Contributory Pension

Supreme Court O'Siochain v Neenan

Judgement has been issued in the case of Sean O'Siochain, Inspector of Taxes v Bridget Neenan. Mrs Neenan is a widow who is in receipt of a Widow's Social Welfare Contributory Pension. As she has a number of "qualifying children", the pension is increased by an amount in respect of each "qualifying child".

The point at issue was whether the increase in the rate of Widow's Social Welfare Contributory Pension in respect of "qualifying children" was, for income tax purposes, the income of the widow or of the children.

Revenue argued that the amounts involved were increases in the weekly rate of pension paid to the widow and that the beneficial entitlement of the increased pension rested with the widow.

The taxpayer's view was that the increased amounts paid to the widow were not assessable on her as they were the beneficial property of the children and were correctly assessable on the children.

The Court, overturning earlier decisions by the Appeal Commissioner and the High Court, held that the full Widow's Social Welfare Contributory Pension, including the increase in respect of "qualifying children" was the beneficial entitlement of the widow and correctly assessable on her.

The net effect of the Supreme Court decision is confirmation of the existing practice of taxing the full Social Welfare Contributory Pension including the child dependent increases.

VALUE-ADDED TAX

AI Services & Post-Letting Expenses

Treatment of A.I. services and sales of livestock semen

Tax Briefing Issue 30 gave details of proposed Finance Bill changes in this sector and these are now incorporated into *Section 108 Finance Act 1998*. In addition to a reduction in the rate of VAT from 21% to 12.5% for livestock semen and animal insemination services the section provides that farmers (including A.I. stations) selling livestock semen, in excess of £40,000 value per annum, are taxable persons and are obliged to register and account for VAT. The section also provides **that sales between A.I. stations which are regarded as flat-rate farmers for VAT purposes**

and sales from A.I. stations to their VAT registered subsidiaries will be excluded in calculating turnover for the purpose of VAT registration.

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.

The position now as regards registration thresholds is as follows:

- A farmer whose annual turnover from the supply of livestock semen (other than supplies excluded above) exceeds £40,000 is a taxable person
- A farmer whose annual turnover from the supply of agricultural services (other than insemination services, stockminding or stock-rearing) and from either or both of supplies of retail horticultural products and livestock semen exceeds £20,000 is a taxable person.
- A farmer whose annual turnover from supplies of both livestock semen and retail horticultural products exceeds £40,000 is a taxable person.

These changes take effect from **1 July 1998**.

Supreme Court Decision in the case of Erin Executor & Trustee Co.

Background

In a judgement in the above case delivered on 16 December 1997 the Supreme Court held that a landlord was entitled to deduct VAT on post-letting expenses incurred in relation to a property which had been the subject of a taxable supply for VAT purposes. A possible consequence of the judgement was that further supplies of the property were also liable to VAT. It had been Revenue's opinion prior to the judgement that when a landlord made a taxable supply of property he/she was not entitled to input credit on post-letting expenses and further supplies of the property were not liable to VAT.

Following an intensive examination of the judgement we now set out the position as regards the claiming of VAT on post-letting expenses and the charging of VAT on subsequent supplies of property for transactions arising prior to 27 March 1998 and transactions arising after that date.

Position prior to 27 March 1998

In accordance with the Supreme Court judgement VAT on post-letting expenses incurred by the landlord following a taxable supply of an interest in the property may now be deducted. Landlords who acquired property with sitting tenants by way of a purchase of the freehold interest would also be entitled to claim VAT on qualifying post-letting expenses. Deductible expenses would include costs relating to rent reviews and collection, maintenance of the property and general overheads such as accountancy and office expenses. The expenses must be related to a taxable disposal of property. It is important to draw a distinction between the supply of the landlords interest in the property e.g. the sale of the freehold with sitting tenants which is not a supply for VAT purposes, and a subsequent supply of the property e.g. the grant of further long lease when the first lease is finished. As stated above the grant of such a further long lease became taxable as a result of the Supreme Court decision.

As regards further supplies of a property Revenue have decided that they will not treat supplies of such property before 27 March 1998 as taxable provided a landlord does not seek to claim VAT on expenses incurred in connection with such supplies.

(However see below with regard to the position applying after 27 March 1998).

New VAT leaflet on Property

A detailed Information Leaflet No. 3 VAT on Property [Claims for repayment arising out of the judgement in the case of Erin Executor and Trustee Company Limited, for periods prior to 27 March 1998] which explains the position with examples is available from local tax offices or from the **Revenue Forms & Leaflets Service** at 01 - 8780100.

Position after 27 March 1998

The *Finance Act 1998* made a number of changes to *Section 4 of the VAT Act 1972* to reflect and qualify the effects of the judgement. **These changes have effect from 27 March 1998.**

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.

Further supplies of the property

The new **Section 4(9)** provides for the exemption of further supplies of the property. In practice there are two types of supplies involved:

- The sale of the freehold with sitting tenants during the course of the lease
- The further supply of the property by way of a further long lease or supply of the freehold when the first lease is completed.

Both of these supplies will continue to be exempt from VAT. A further supply of a property following the completion of the first lease should not be confused with the supply of a property following the surrender to the landlord of the property during the term of the first lease. The VAT treatment of these transactions was amended in the **Finance Act 1997** and is explained in the booklet called **VAT on Property - Finance Act 1997 Changes - A Revenue Guide**. This guide is available from the **Revenue Forms & Leaflets Service** at 01 - 8780100 or from local tax offices.

Post-letting expenses

The new **Section 4(10)(a) of the VAT Act 1972** provides for the deductibility of VAT on post-letting expenses. It ensures that where the creation of an interest in immovable goods was subject to tax the landlord is entitled to deduct VAT on post-letting expenses as defined (see below). It is also provided that where a landlord did not create the original taxable interest (where the interest was acquired by the purchase of the freehold from the original landlord) he or she will be deemed to be a taxable person for the purposes of claiming VAT on post-letting expenses.

Definition of post-letting expenses

The new **Section 4 (10) (b) of the VAT Act 1972** defines post-letting expenses in relation to a taxable lease. Basically there are two categories of expenses.

The first type of post-letting expenses are those which the landlord incurs in carrying out services which he or she is obliged to carry out under the terms and conditions of the lease. To qualify for deduction the value of these obligations must have been reflected in the value of the lease for VAT purposes. This means, in effect, that they must be reflected in the value of the rent payable.

The second type are specified post-letting expenses which the landlord incurs in:

- Collecting the rent payable by the tenant
- Carrying out a rent review
- The exercise of an option to extend the term of the lease or the exercise of a break clause to terminate the lease.

A detailed Information Leaflet No.4 VAT on Property [VAT treatment of post-letting expenses incurred on or after 27 March 1998] will be available shortly.

Registration

Some landlords will already be registered for VAT because they supply other goods or services for consideration. However, if a landlord feels that he/she qualifies for input deductions on post-letting expenses and needs to register for VAT he/she should contact the local tax office. Where a landlord had a VAT number originally but it was cancelled the number should be quoted and application made to have it re-activated.

New VAT leaflets

Revenue have issued Information Leaflets on the following topics which are available from the **Revenue Forms & Leaflets Service** at 01 - 878 0100 or from local tax offices or VAT Administration Branch, Dublin Castle:

- Value Added Tax and Footwear
- Printing and Printed Matter

Value-Added Tax and footwear

This leaflet clarifies the rates of VAT on footwear.

It should be noted that for children's footwear to be zero rated **it must be designed specifically for the use of children and be of a size no larger than the average size applicable to children under 11 years** of age. For administration purposes **footwear designed specifically for children** up to and including size 5¹/₂ (38 continental or other equivalent) qualifies for the zero rate.

There are certain footwear styles which are not designed specifically as either adults' or children's footwear but which are manufactured in the full range of sizes from the smallest children's size to large adults' sizes. In relation to these particular styles, Revenue are prepared, concessionally, to accept that sizes up to and including 5¹/₂ will qualify for the zero rate.

See the Information Leaflet for more details.

Printing and printed matter

The rate of VAT applicable to some printed items has been changed with effect from 1 May 1998.

All newspapers and periodicals are now liable at 12.5%. Periodicals of sectoral interest (sport, fashion, computers etc.) were previously liable at 21% up to 30 April 1998. The 12.5% has also been extended to include brochures, leaflets, programmes, catalogues and similar matter but does not include printed matter wholly or substantially devoted to advertising.

All printing which does not come within the zero and 12.5% rates, including diaries, organisers and planners, is liable at 21%. More detailed information is included in the leaflet.

STAFF SUGGESTION SCHEMES

Tax Treatment

We have received a number of enquiries from practitioners about the tax treatment of Staff Suggestion Schemes. The following is the text of a Statement of Practice on the subject which will issue shortly.

Introduction

Staff suggestion schemes are operated by some employers both in the public and private sectors to encourage employees to suggest ways, outside the scope of their normal work activities, in which efficiency and productivity can be improved.

Successful suggestions may be recognised by an award from the employer.

In strictness, such awards are taxable under Schedule E. It has, however, been long-standing practice not to tax these payments provided certain conditions were satisfied. This Statement of Practice sets out the conditions which are to apply to awards made on or after **30 June 1998** under Staff Suggestion Schemes.

Conditions

Income tax will not be charged under Schedule E and PAYE need not be operated in respect of an award made by an employer to an employee under a Staff Suggestion Scheme where the following conditions are satisfied:

1. There is a formally constituted scheme under which suggestions are made and evaluated and the scheme is open to all employees on equal terms.
2. The suggestion for which the award is made is outside the scope of the employee's normal duties.

[The test is whether, taking account of his or her experience, the employee could not reasonably have been expected to have put forward such a suggestion as part of the duties of his or her post.

Where for example, the:

- *Suggestions are from or involve the supervisory, managerial or any analogous or higher grade and the suggestion relates to an area over which they have or had managerial responsibility and control,*
or
 - *Work is done or meetings held in relation to suggestions, during company/employer time the making of the suggestions would be regarded as forming part of the employee's duties and any consequential awards would not be within the scope of the Statement of Practice.]*
3. Awards other than "encouragement awards" are only made following a decision to implement the suggestion and are made directly to the employee or employees concerned.
 4. The decision to make an award other than an "encouragement award" is based on the degree of improvement in efficiency and/or effectiveness likely to be achieved measured by reference to:
 - The prospective net financial benefits and the period over which they would accrue
and
 - The importance of the subject matter having regard to the nature of the employer's business.
 5. Awards may be made to individual employees or small groups of employees. However groups must not contain more than 10 employees.
Where a suggestion is put forward by more than one employee the award made is divided between them on a reasonable basis.
 6. The following limits apply:
 - If the award is made in respect of a suggestion made by an **individual**, the amount of the award in respect of each individual suggestion does not exceed the lower of:
 - 10% of the expected net financial benefit during the first full year of implementation**or**
 - 10% of the gross salary (for the year in which the decision to implement the suggestion is made) of the individual to whom the award is made.
 - If the award is made in respect of a suggestion made by a group the amount of the award made to the group must not exceed the lower of
 - 10% of the expected net financial benefit during the first year of implementation**or**

- £10,000

and

- the amount of the group award paid to individual members within a group must not exceed 10% of the gross salary (for the year in which the decision to implement the suggestion is made) of the group member to whom the award is made.

- Total awards made under the above categories are subject to an overriding limit of **£5,000 per employee per annum.**

Where the award exceeds the particular limits above, the excess must be subjected to PAYE.

7. An **“encouragement award”** is an award not exceeding £100 in any year of assessment (where the conditions at (1) and (2) are satisfied) for a suggestion by an individual employee (one not involving a group) which, though it will not be implemented, has some intrinsic merit and/or reflects meritorious effort on the part of the employee in making the suggestion.
8. An award under a Staff Suggestion Scheme must be paid in one lump sum when the decision to implement the suggestion has been made i.e. the award must take the form of a once off lump sum paid. Regular payments to an individual or group of individuals would not be considered as awards for the purposes of these arrangements.
9. Prior to the making of any gross payment under a Staff Suggestion Scheme the tax office (dealing with the PAYE tax affairs of the employer) must be:
 - Advised of the existence of the Staff Suggestion Scheme
 - Given confirmation that:
 - all the conditions as set out in this Statement of Practice are satisfied
 - the payments under the Staff Suggestion Scheme do not represent remuneration which would otherwise have been made to the recipient
 - proper records are maintained for the purposes of establishing that the requirements of this Statement of Practice are complied with
 - an annual return for each tax year will be made not later than 30 April of the following tax year, giving details of all awards made in the tax year.

Note

This Statement of Practice does not apply to any liability to Income Tax or Capital Gains Tax on income or gains arising from the exploitation or disposal of rights in an invention devised by the employee e.g. patent rights, know-how etc.

These arrangements come into effect on 30 June 1998 and supercede any previous arrangements in respect of such schemes.

Notwithstanding anything contained in the preceding paragraphs and any prior approvals given in respect of Staff Suggestion Schemes, Revenue reserve the right to take any steps they deem appropriate if they consider that these arrangements are being exploited for tax avoidance purposes.

TAX REGISTRATION

New tax registration forms

Forms TR 1 and TR 2

Forms TR 1, (registration form for sole traders, trusts or partnerships), and TR 2, (registration form for companies), have recently been revised. Practitioners should, therefore, destroy any stocks of the old (green) TR forms they hold and ensure all tax registration applications are made on the new forms. The new forms should be completed in full and each question should be answered, as requested and as appropriate.

Of particular significance in the new forms is the additional request, not just for principal bank account details as before, but for the details of the bank or building society account to which VAT refunds can be made.

After 1 July next, VAT repayments by the Office of the Collector-General will be by transfer to customers' bank accounts. It is important for traders registering for the first time to give their account details on the appropriate TR form at the time of registration. If the full details are not given at this time, the registration process may be prolonged and unnecessary correspondence generated.

Form STR

As advised in *Tax Briefing* Issue 31, a new registration form, STR, (Small Trader's Registration) has been introduced on a trial basis to provide a more customer-friendly form for the small sole trader who wishes to register under any or all taxheads. Form STR is aimed at an individual setting up in business who anticipates a turnover of less than £100,000 per annum. This form also requests details of the account to which VAT refunds can be made.

As with all new forms, feedback is essential to ensure that we provide an efficient customer service together with adequate safeguards to our other operations. All suggestions for improvement to and simplification of Form STR, and, indeed, the revised Forms TR 1 and TR 2, are welcome.

Supplies of all the new forms are available from the **Revenue Forms and Leaflets Service** at

01 - 878 0100 or from local tax offices.

INCOME TAX

Employment Inducement Payments

Introduction

There may be a perception that payments made to individuals as an inducement to take up employment may be exempt from income tax. It is Revenue's view that this is not the case. The basis of assessment, the persons chargeable and the extent of the charge are contained in *Section 112 Taxes Consolidation Act 1997*.

For the purposes of the PAYE system, income tax must be deducted at the time of payment, i.e. generally when the offer is made and accepted.

Tax Cases

The position has been looked at in a number of **UK tax cases** over the years. Two such cases are set out on pages 44 and 45.

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.

Glanre Engineering Ltd v Goodhand (Inspector of Taxes) 1983 STC 1

Summary

An offer of employment included a lump sum payment of £10,000 “as an inducement” to the individual to leave his old firm and take up employment with Glanre Engineering Ltd. The Inspector determined that the payment was an emolument and that determination was appealed by the company. They contended that the payment was not something in the nature of a reward for services past, present or future, but something to compensate the individual for his loss attendant on the occurrence and as a necessary and ancillary aspect of his leaving the firm in order to put himself in a position to take up employment with the taxpayer company.

Decision

It was held that the payment was chargeable to tax under Schedule E as an emolument arising from the taxpayer’s employment.

Comment

In his judgement, Warner J, made the following comment:

“I cannot hold that, in the present case, the only reasonable conclusion to be drawn from the evidence before the Special Commissioners was, as contended by counsel for the taxpayer company, that the payment of £10,000 to Mr Wells was severable from the other benefits to which he became entitled under the agreement between himself and the company, and was other than an added inducement to him to change his job and enter the full time employment of the company. If it was the latter, it was, so it seems to me, an emolument from that employment within the meaning of Schedule E.”

Shilton v Wilmshurst (Inspector of Taxes) 1991 STC 88

Summary

An individual was employed by Nottingham Forest Football Club. They agreed to transfer him to Southampton Football Club, subject to his consent. The manager of Nottingham Forest had indicated to him that should he agree terms of employment with Southampton, Nottingham Forest might be willing to make a payment to him for consenting to the transfer. He agreed terms and so consented. Nottingham Forest then paid him £75,000 for so consenting. The Inspector assessed him to tax under Schedule E on the £75,000.

Decision

Held that emoluments were not confined to “emoluments from the employer”, but embraced all “emoluments from employment”. “It applied to emoluments paid as an inducement to enter into a contract of employment and to perform services in the future.

Emoluments “from employment” meant “from being or becoming an employee”.”

Comment

A separate payment of £80,000 was made by Southampton to the taxpayer, as an inducement to enter into a contract of employment under which he would perform services for them for the following four years. It had already been accepted that this payment was an emolument “from becoming an employee”.

Lord Templeman in his judgement said

“The £75,000 paid by Nottingham Forest was also an inducement to the taxpayer to enter into a contract of employment under which he would perform services for Southampton for the next 4 years. This motive does not alter the fact that the £75,000 paid by Nottingham Forest was an emolument ‘from employment’ because it was an emolument ‘from becoming an employee’ indistinguishable from the £80,000 paid by

Southampton for the like purpose. In the present case Nottingham Forest paid £75,000 as an emolument in return for the taxpayer agreeing to act as or become an employee of Southampton and for no other reason. The taxpayer accepted the emolument of £75,000 in return for agreeing to act as or become an employee of Southampton just as he accepted £80,000 from Southampton for the same reason. The taxation consequences to the taxpayer should be and are the same.”

Income arising from employment

Arguments have been made, following the decision in the **Hochstrasser v Mayes** case [38 TC 673], that inducement payments are not payments arising from an office or employment. However, that decision was re-visited in the leading case of **Hamblett v Godfrey** [1987 STC 60] which held that **emoluments were not restricted to payments made by an employer in return for the performance of the duties of an office or employment.**

Delivering his decision in **Hamblett v Godfrey**, Purchas LJ stated
“The real issue in this appeal is not, in fact, whether the £1,000 is an emolument or not. It is accepted that it is an emolument, but the question is whether it is an emolument arising from the employment. The payment is rightly to be assessed under Schedule E.”

Neill LJ stated

“the payment to the taxpayer was made in return for her being and continuing to be an employee at GCHQ, or to use the words of Viscount Simonds, ‘the payment accrued to the taxpayer by virtue of her employment’ I have been driven to the conclusion that the source of the payment was the employment. It was paid because of the employment and because of the changes in the conditions of the employment and for no other reason. It was referable to the employment and to nothing else. Accordingly, in my judgement, the £1,000 was a taxable emolument.”

Revenue view

Accordingly it is Revenue’s view that any payment made to an individual as an inducement to take up employment is liable to income tax and PAYE/PRSI must be operated and deducted in the normal way.

REVENUE NEWS Update

VHI Tape Exchange

Revenue and VHI signed a “*Memorandum of Understanding*” on 28 April 1998 regarding the annual electronic transfer by VHI to Revenue of details of medical insurance premiums paid by members. The first transfer is scheduled to take place in January 1999. Revenue will then be able to automatically update VHI premiums on computer record prior to the issue of tax-free allowance certificates for 1999/2000 and notices of assessment for 2000/2001.

The agreement was signed by **Mr. J. Quigley**, Director of Operations for the VHI, and

Mr. R.J. Harrington, Assistant Secretary, for Revenue.

The VHI have launched a publicity campaign to advise customers of this new service and to capture RSI numbers. Customers who wish to avail of the service should

contact the VHI by Freepost or telephone **1850 44 44 44**. The success of the project depends on the numbers of customers who provide their RSI number and practitioners are asked to urge their clients to avail of this facility which will help reduce compliance costs.

It is hoped to reach a similar agreement with BUPA shortly.

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.

Form CT1 - Capital Gains

We have been asked to clarify Panel 9 in the new Form CT1, (version 1/98). It asks for a figure for the net gain @ 40% and one for the net gain @ 20%. There may be some ambiguity in this question. What is required is the **actual** net gain which would be chargeable at the 40% or the 20% rate, depending on whether the gain was made before or after 3 December 1997. In other words, if the gain is £10,000 with allowable losses of £8,000, the figure to be entered is the £2,000 gain, **not** the tax due on the gain.

CGT Clearance Certificates - Forms CG50A

The issue of CGT Clearance Certificates was covered in *Tax Briefing* Issue 29. Practitioners were advised that applications should be submitted at least 3 working days in advance of the closing date. It appears that a substantial number of applications are still being received within a lesser period. Practitioners are again reminded that we cannot guarantee the issue of the clearance certificate unless the application is received 3 working days in advance of the closing date. Practitioners are reminded that with effect from 27 March 1998 disposals of up to and including £150,000 are excluded from the CG50 process.

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.