

TAX BRIEFING

Office of the Chief Inspector of Taxes

Issue 33 - September 1998

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KEY DATES '98

September

14 PAYE/PRSI

Monthly remittance for month ended 5 September 1998.

19 VAT

Remittance for period July/August.

1-28 Corporation Tax

Preliminary Tax and ACT for A.Ps. ending between 1-31 March 1998.

1-30 Corporation Tax

Returns for A.Ps. ending between 1-31 December 1997.

1-30 Corporation Tax

Returns of Third Party Information for A.Ps. ending between 1-31 December 1997.

October

14 PAYE/PRSI

Monthly remittance for month ended 5 October 1998.

1-28 Corporation Tax

Preliminary Tax and ACT for A.Ps. ending between 1-30 April 1998.

1-31 Corporation Tax

Returns for A.Ps. ending between 1-31 January 1998.

1-31 Corporation Tax

Returns of Third Party Information for A.Ps. ending between 1-31 January 1998.

Note: Income Tax Preliminary Tax payments are due on 1 November next

Revenue Debt and Sheriff Action - News

New Arrangements

Debt Collection

Revenue's approach to debt collection is based on early identification of payment compliance problems and intervention by Revenue staff to get the customer's affairs back on track with the minimum of delay. Increasingly, an individual case working approach is being used, rather than full reliance on computer generated demands. This has involved a significant investment in technology and staff training combined with improvements in customer service levels to reduce the compliance burden on customers. Notwithstanding these efforts a small minority of customers continue to resist all reasonable efforts by Revenue to get them to put their affairs in order. In such circumstances, Revenue will actively and effectively pursue the outstanding debt and as part of that process may refer the debt to the sheriffs to enforce collection. New arrangements with the sheriffs will apply from **1 November** next. These arrangements will ensure that those who deliberately evade paying tax will be pursued more effectively. The new fees which have been introduced for the sheriffs will mean that defaulting on tax payments will incur higher costs. The changes will not have any impact on compliant customers.

Issue of Warrants

Sheriff action starts with the issue of a Certificate (commonly known as a "warrant") by Revenue to the sheriff to enforce collection. From 1 November, each warrant will be issued after an examination by Revenue of a customer's outstanding liabilities. In future, therefore, warrants will where practicable include all overdue liabilities and any appropriate interest rather than being confined to single periods for which overdue liabilities have not been paid. Consequently, sheriff enforcement will become less frequent but will be for larger liabilities.

New Fees

The current fee structure for sheriffs dates back to 1926. The Minister for Justice has made an Order, entitled *Sheriffs' Fees and Expenses Order, 1998* to bring the scale of fees up to date in line with increases in the Consumer Price Index. Some of the fees had not been increased since 1926.

The new fees which come into effect for warrants issued after 1 November 1998 comprise:

- Lodgment fee of £12
- Poundage [percentage] of 5% of the first £3,500 and 2.5% of the balance
- Traveling expenses of £20 for the execution of an order
- £25 fee for execution, and
- Any necessary expenses involved in seizure and sale of goods.

Under the new arrangements, sheriffs will also pay over all money to Revenue each month, together with any interest earned during the month.

Matters arising from issue of the warrant

Non-compliant customers whose liabilities have been referred to the sheriff in the past have occasionally felt the need to approach Revenue where, for example, they were unable to pay the sheriff in full. Under the new arrangements the sheriff has authority to deal with most such situations, including deferred payment arrangements where appropriate

Customers whose liabilities have been referred to the sheriff for collection will henceforth be expected to deal directly with the sheriff on such matters arising from issue of the warrant.

RCT - Finance Act '98 Amendments

1. Extension of definition of "Meat Processing Operations"

Section 37 Finance Act 1998 amends Section 530 Taxes Consolidation Act 1997 by extending the definition of "meat processing operations". The amendment:

- Extends the definition of meat processing operations to include:
 - Operations in the white meat (poultry) industry
 - Haulage operations in the meat industry
 - Loading and unloading operations in the meat industry
 - The cleaning down of establishments in which certain meat processing operations are carried on.
- Clarifies the meaning of "carcasses" to ensure that meat is to be regarded as the carcass or part of the carcass.

[For RCT purposes, references to "carcasses" means the carcasses of slaughtered cattle, sheep, pigs, domestic fowl, turkeys, guinea-fowl, ducks or geese.]

The persons in the white meat industry who will be required as principal contractors to operate the scheme are:

- Persons carrying on a business of meat processing operations in an establishment approved and inspected in accordance with the European Communities (Fresh Poultry) Regulations, 1996
- Persons connected with a company carrying on such a business
- **Persons who are themselves sub-contractors under a relevant contract***
- A local authority
- A Minister of Government
- Any board established by or under statute.

* Relevant contract in this context means a contract to perform meat processing operations (see par 7), to be answerable for the carrying out of such operations or to furnish the contractor's own labour or the labour of others carrying out such operations.

2. Poultry trade

Section 37 extends the RCT scheme to meat processing operations within the white meat (poultry) trade. The operations covered are:

- The slaughter of poultry
- The catching of poultry
- The division, sorting, packaging, rewrapping or branding of or the application of any similar process to the carcasses (or any part thereof) of poultry
- The grading, sexing and transport of day-old chicks.

For RCT purposes, poultry means domestic fowl, turkeys, guinea-fowl, ducks and geese.

3. Haulage

The section also extends the RCT scheme to the haulage:

- Of carcasses or any part of such carcasses from establishments where certain meat processing operations are carried on.**
- For hire of cattle, sheep, pigs, domestic fowl, turkeys, guinea-fowl, ducks or geese or of the materials, machinery or plant for use in meat processing operations. (The haulage for hire under a contract with a farmer will not be within the scheme, because the farmer is not a principal contractor - see par. 1)

4. Loading and unloading

The section also extends the RCT scheme to the loading or unloading of carcasses or any part of such carcasses at establishments where certain meat processing operations are carried on. **

5. Cleaning down

RCT will also apply to payments in respect of the cleaning down of establishments where certain meat processing operations are carried.**

** The meat processing operations referred to are those set out in sub-paragraphs (a), (c) and (d) of paragraph 7 below.

6. Carcasses

Prior to the introduction of *Section 37*, references to carcasses were to “carcasses or any part of the carcasses”. These references have been amended to “carcasses or any part of the carcasses (**including meat**)”. There was a doubt as to whether the term “carcass” included cuts of meat. The amendment clarifies the position by specifically providing that meat is part of a carcass.

7. New definition

The extended definition of meat processing operations is set out below and the changes are highlighted in italics.

- The slaughter of cattle, sheep, pigs, *domestic fowl, turkeys, guinea-fowl, ducks or geese*
- The catching of domestic fowl, turkeys, guinea-fowl, ducks or geese*
- The division (including cutting or boning), sorting, packaging (including vacuum packaging), *wrapping* or branding of, or the application of any other similar process to, the carcasses or any part of the carcasses (*including meat*) of slaughtered cattle, sheep, pigs, domestic fowl, turkeys, *guinea-fowl, ducks or geese*
- The application of methods of preservation (including cold storage) to the carcasses or any part of the carcasses (*including meat*) of slaughtered cattle, sheep, pigs, *domestic fowl, turkeys, guinea-fowl, ducks or geese*
- The loading or unloading of the carcasses or any part of the carcasses (*including meat*) of slaughtered cattle, sheep, pigs, *domestic fowl, turkeys, guinea-fowl, ducks or geese* at any establishment where any of the operations referred to in paragraphs (a),(c), and (d) are carried on
- The haulage of the carcasses or any part of the carcasses (including meat) of slaughtered cattle, sheep, pigs, domestic fowl, turkeys, guinea-fowl, ducks or geese from any establishment where any of the operations referred to in paragraphs (a),(c), and (d) are carried on*
- The cleaning down of any establishment where any of the operations referred to in paragraphs (a),(c), and (d) are carried on*

- (h) *The grading, sexing and transport of day-old chicks of domestic fowl, turkeys, guinea-fowl, ducks or geese*
- (i) *The haulage for hire of cattle, sheep, pigs, domestic fowl, turkeys, guinea-fowl, ducks or geese or of any of the materials, machinery or plant for use, whether used or not, in any of the operations referred to in paragraphs (a) to (h).*

8. Effective date

The changes apply to payments made on or after **6 October 1998**.

Important Note

Persons who, following the introduction of *Section 37*, are principal contractors need to prepare themselves to operate the RCT system with effect from **6 October 1998**. Practitioners should advise clients who will or are likely to fall into this category to contact their local tax office where they will be registered and issued with Revenue's explanatory notes for principal contractors.

Sub-contractors who come within the new provisions also need to register with their local tax office, where this has not already been done. Explanatory notes for sub-contractors are available from Revenue offices on request. The existing requirements regarding the issue of C2's will apply to such sub-contractors.

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 EURO and TAX - VAT & Employers' PAYE

General information about euro services

As stated previously in our series of articles on the euro, Revenue's approach to the provision of services from 1 January 1999 is to allow maximum flexibility 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.

In *Tax Briefing* - Issue 32, we set out details of how the euro service will operate for corporation tax. In this edition, we provide details of the changeover procedures for **VAT** and for **employers** wishing to switch their payroll operations to euro.

It is important to note that once a customer elects to switch to euro for one or more taxes, all forms including all bank giro's issued by Revenue for such taxes will be in euro. Accordingly, customers should not submit an election form to Revenue until they are in a position to complete forms in euro and have the means of paying their tax liabilities in euro.

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.

The election for euro services will be made by completing an election form and returning the form to Revenue.

Election forms will be available by November 1998.

PAYE

With effect from 6 April 1999, employers will have the option of operating their payroll systems in Irish Pounds or euro. For employers who choose to continue to operate in Irish Pounds, procedures will be unchanged. Where we do not receive a completed election form, we will continue to deal with employers in Irish Pounds. The procedures for employers who wish to switch their payroll operations to euro are set out in the following paragraphs.

How to elect for euro

The earliest date from which election by employers for euro services for PAYE/PRSI can take effect is 6 April 1999. Election for euro services will, therefore, take effect either from:

- The start of a tax year (i.e. 6 April 1999, 6 April 2000 or 6 April 2001)
or
- The start of a tax month (i.e. the 6th day of the month) other than 6 February or 6 March. (Election cannot take effect in February or March as production of the P35 end-of-year stationery will already be underway at this time).

We will assume that an employer wishes his/her election to take effect from the start of the next tax year unless he/she indicates on the election form that the election is to take effect from the start of the next tax month.

Important Note regarding the lead time for making the election

Employers wishing to elect for euro services for PAYE/PRSI from the start of a tax month other than 6 April must return the election form to Revenue at least two weeks prior to that date. Employers wishing to elect for euro services for PAYE/PRSI from the start of a tax year must return the election form to Revenue by the previous 31

December. (This is to allow for the bulk issue of tax-free allowance certificates etc. which commences in February each year.)

Effect of election on employers

Employers who elect to switch payroll operations to euro from the start of a tax year will receive euro versions of the following documentation:

- Forms P30
- Form P35
- Tax Deduction Cards (TDC's) or computer tapes/diskettes, as appropriate

It should be noted that once the election for euro takes effect, euro versions of forms P30 and P35 will issue in respect of post election periods.

Employers who elect to switch payroll operations to euro from the start of a tax month other than

6 April will receive:

- Euro version forms P30 for that tax month and subsequent tax months
- Euro version form P35 in respect of that and subsequent tax years
- Where the employer is a Tax Deduction Card (TDC) user, euro version TDC's for each employee. These must be used for the remainder of the tax year. For the first "euro week", amounts must be converted from Irish Pounds to euro at the fixed conversion rate for inclusion in the relevant column of the Euro version TDC.

Certificates of tax-free allowances issued to employers (forms P2C) will show the annual, weekly and monthly allowances in euro **and** in Irish Pounds

Where employees cease employment after the switch to euro takes effect, the employer must complete a euro version form P45 in respect of such employees

Euro version forms P60 must be completed annually for all employees

Payment of PAYE/PRSI liabilities should be in euro

Forms received prior to the election for euro PAYE/PRSI services which have not been completed and returned to Revenue prior to the election must be completed and returned in Irish Pounds.

Effect on employees of an employer's election for euro

Since euro notes and coins will not be in circulation until 1 January 2002, payment of employees in euro can only be carried out in cashless form (e.g. by cheque or directly by credit transfer into the employees bank account). Cash withdrawals from such banks accounts during the transition phase will be in Irish Pounds. In practical terms, the operating currency for persons other than some businesses will be Irish Pounds. Accordingly, Revenue will deal with all employees in Irish Pounds during the transition phase. Irish Pound versions of annual returns (Form 12) will be issued and should be completed exclusively in Irish Pounds. Certain conversions from euro to Irish Pounds at the fixed conversion rate may need to be done for the purposes of completing Form 12.

For example, employees may be in receipt of a certificate of interest from a bank or building society which is denominated in euro. The amounts shown on the certificate should be converted to Irish Pounds for the purposes of inclusion in the section on "Interest" on the Form 12. Similarly, employees whose employer has opted to switch payroll taxes to euro should convert certain details to Irish Pounds for the purposes of completing Form 12 (e.g. details of pay and tax per euro version Form P60 received from employer).

Documentation issued by Revenue to employees will be in Irish Pounds although the equivalent euro value of certain Irish Pound amounts will be shown for information purposes. For example, the annual, monthly and weekly tax-free allowance amounts

on the notice of determination of tax-free allowance will be shown in both denominations. Annual balancing statements will be in Irish Pounds.

VAT

With effect from 1 January 1999, VAT registered persons will have the option of dealing with Revenue for VAT purposes in Irish Pounds or euro. For those who choose to continue to operate in Irish Pounds, **procedures** will be unchanged. Where we do not receive a completed election form, we will continue to deal with VAT registered persons in Irish Pounds. The procedures for those who wish to switch to euro for VAT are set out in the following paragraphs.

How to elect for euro

VAT registered persons can elect to switch their VAT affairs to euro from the VAT period January/February 1999 onwards. The election to switch will take effect from the taxable period in which the completed election form is received by Revenue provided the form is received by Revenue during the first month of that taxable period.

Effect of election for euro

VAT registered persons who elect to switch their VAT affairs to euro will henceforth be issued with euro version VAT forms, demands etc. To facilitate payment in euro, the VAT 3 form, for example, will have an attaching euro version payslip (VAT 3-G). Where VAT estimates or VAT assessments are required, they will be issued in euro. VAT repayments will be in euro.

The annual VAT3G-A must be completed in euro.

Final Note to Practitioners

The time from which a business switches to euro for tax purposes will be influenced by many factors. For example, the denomination used by suppliers and customers as well as the capabilities of information systems will be influencing factors. The election to switch to euro for tax purposes is irrevocable and from the time election takes effect, future Revenue dealings with the business will be conducted in euro. Accordingly, we request that practitioners advise their clients that the election for euro should be made only when the business is ready for the switch.

Further information can be obtained by contacting our EMU Unit at:

Telephone: 01 - 679 2777

Ext. 4148/4817

Fax: 01 - 679 3352

E-mail:

emuunit.dubcastle1@revenue.irlgov.ie

HEALTH EXPENSES - Guidelines & Procedures on Claims

Qualifying Expenses

Introduction

This article sets out the guidelines and procedures in relation to health expenses claims under *Section 469 TCA 1997*. It outlines various categories of expenses and addresses many of the issues and queries that arise from time to time. The items included are:

- Services of a practitioner
- Diagnostic procedures
- Physiotherapy or similar treatment
- Orthoptic or similar treatment
- Hospitals
- Drugs and medicines
- Appliances
- Home Nursing and Special Nursing
- Kidney Patients
- Child Oncology Patients
- Coeliac Patients
- In Vitro Fertilisation
- Travelling and Accommodation
- Dental Treatment

General information on claims

Claim forms

Form Med 1 (Health Expenses Relief claim form) has been re-designed and contains revised procedures regarding submission of receipts. Receipts need not be submitted to the tax office with the form Med 1. They should be retained for a period of six years and need only be submitted if the claim is chosen for detailed examination and the receipts are specifically requested by the tax office.

If the claim includes dental expenses **Form Med 2** should be submitted with the form Med 1.

Processing of health expenses claims

Subject to a “credibility” check, claims for health expenses are accepted and processed on the basis of the figures shown on the form Med 1. However, where it seems from the “credibility” check that the claim is not in accordance with the taxpayer’s circumstances (e.g. a claim for medical insurance relief has been made but there is no deduction for a refund by the insurers in respect of insurable items) the claim will not be processed and the taxpayer will be consulted to clarify the claim. A taxpayer who knowingly makes a false statement for the purpose of obtaining a repayment of tax will be liable to heavy penalties.

Confidential service

If a health expenses claim comes up for examination under an audit programme the taxpayer has the option of having the claim examined by a different tax office. This option only arises where the taxpayer does not want his/her own tax office to know the nature of the medical condition.

Advance allowance of relief in cases of hardship

The statutory requirement that relief is to be given by way of repayment only may be modified in practice in cases of hardship to allow tax relief during the tax year. All such cases will, of course, be subject to lodgment of claim form Med 1 in the normal way, and to review after the end of the tax year.

Treatment of damages

Section 469(3)(c) TCA 1997 provides that expenses are not regarded as having been defrayed by the individual insofar as they are recouped in any way, by the individual or by any dependant of the individual from a public or local authority or under a contract of insurance or by way of compensation or otherwise.

Where a person receives damages for personal injury, the amount awarded may cover a variety of items including medical expenses. The medical expenses involved may comprise:

- A specific award for **known** expenses
- A lump sum award to cover **potential** expenses.

Generally, a specific award will be vouched amounts incurred before the award is made. A lump sum will not be related to specific expenses but will be given in anticipation of the claimant having to incur medical expenses in the future on account of his/her injury.

In dealing with claims for medical expenses no relief is given in so far as the expenses are covered by a specific award. Usually a lump sum award will be invested and the expenses paid out of the income generated by the investment. Medical expenses other than those covered by a specific award are treated as being paid primarily out of the claimant's income (from whatever source) and accordingly a medical expenses claim in respect of expenses incurred after the date of the award, and which are not covered by a specific award, would not be restricted on account of a lump sum award.

Items of Expense

Services of a practitioner

The meaning of "practitioner" for the purposes of health expenses relief is set out in *Section 469(1)*. In most cases the question of whether or not a practitioner may be regarded as a qualifying practitioner would not give rise to difficulty. Cases of difficulty should be referred to the tax office.

Diagnostic procedures carried out on the advice of a practitioner

Physiotherapy or similar treatment prescribed by a practitioner

Orthoptic or similar treatment prescribed by a practitioner

Claims for relief in respect of such procedures or treatments, which are carried out by persons who are not to be regarded as "qualifying practitioners" should be accompanied by a medical certificate which outlines the patient's illness or complaint and confirms that the patient was referred by his/her doctor to the person providing the treatment. Where the expenditure incurred comes within the above headings, relief may be allowed in respect of the procedures or treatments carried out but not for drugs, medicines, lotions or potions etc., prescribed by the person providing the treatment. Examples of allowable treatment under the heading physiotherapy include treatment by chiropractors, osteopaths and bone-setters. Accupuncture treatment is not allowable.

Hospitals

Only payments in respect of maintenance and treatment in establishments which may be regarded as “hospitals” within the meaning of *Section 469 TCA 1997* qualify for relief. A list of approved hospitals is available from any tax office or from the *Revenue Forms & Leaflets Service* at 01 - 878 0100. It is also available on Revenue’s Internet site - (www.revenue.ie/download/apphos.doc).

If there is any doubt that an institution is a “hospital” then the tax office can be consulted.

Drugs and medicines supplied on the prescription of a practitioner

Only drugs and medicines supplied by a pharmacist, on prescription from a medical practitioner qualify for relief. (However, see paragraph on coeliac patients)

Appliances

Where there is any doubt as to whether or not an appliance is a medical, surgical, dental or nursing appliance, a certificate from a medical practitioner should be submitted which:

- States the nature of the patient’s illness
- Confirms that the appliance is being used on the advice of the medical practitioner
- Outlines how the appliance will help to prevent, diagnose, alleviate or treat the ailment, injury, infirmity, defect or disability from which the patient is suffering.

The claim will be considered in the light of the information submitted and relief given where the Inspector is satisfied that the appliance may be regarded as a medical, surgical, dental or nursing appliance. Examples of decisions already taken in regard to certain appliances are set out on Page 16.

Home nursing

In cases of serious illness where qualified nurses are engaged on the advice of a medical practitioner to provide constant nursing care in the patient’s home, relief under *Section 469 TCA 1997* may be allowed where the following conditions are satisfied:

- A medical certificate is provided which:
 - Shows the nature of the patient’s illness
 - States that constant nursing care by fully-qualified nurses in the patient’s home is required
 - Covers the full period for which home nursing is being claimed.
- The nurses providing the nursing care are fully qualified and their full names, addresses and qualifications have been supplied
- Receipts are provided in respect of all payments to the nurses and, **where necessary**, a breakdown of the payments is provided. This is to ensure that relief is given only in respect of the amounts paid which directly relate to the rendering of nursing care.

Special nursing

Where the claimant is a patient in a hospital or nursing home, relief under *Section 469 TCA 1997* may also be allowed in respect of payments made to qualified nurses to provide additional nursing care over and above that ordinarily provided by the institution if:

- The last two conditions outlined above for “Home Nursing” are satisfied
- A medical certificate is submitted which:
 - Shows the nature of the patient’s illness
 - States that constant nursing care over and above that ordinarily provided in the institution is required, indicating the necessity for such additional care

- Covers the full period for which the nursing care is being claimed.

Kidney patients

Relief under *Section 469 TCA 1997* is granted under specific headings in respect of certain expenses incurred by kidney patients as follows:

- Hospital dialysis (where the patient attends hospital for treatment)
- Home dialysis (where the patient uses a dialysis machine at home)
- Chronic Ambulatory Peritoneal Dialysis - "CAPD" (where the patient has treatment at home without the use of a dialysis machine).

Hospital dialysis patients

Expenses incurred in travelling to and from hospital for treatment are allowed on the basis of the Civil Service Point-to-Point Rate (reduced mileage rate) for a 10/12 H.P. car. The claimant should specify the number of trips undertaken and the mileage involved. (See Page 15 for rates).

Home dialysis patients

Relief may be allowed under the following headings and at the rates shown on Page 15:

- *Electricity*
- *Laundry and Protective Clothing*
- *Telephone*
- *Travelling*

Qualifying mileage at the appropriate rate per mile for each year subject to a maximum of 25 trips per annum. The claimant should specify the number of trips and the mileage involved.

CAPD patients

Relief may be allowed under the following headings and at the rates shown on Page 16:

- *Electricity*
- *Telephone*
- *Travelling*

Qualifying mileage at the appropriate rate per mile subject to a maximum of 25 trips per annum. The claimant should specify the number of trips and the mileage involved.

When a claim from a kidney patient is being considered, it is necessary to establish the appropriate category. It is, of course, possible for a patient to move from one category to another. Where a change takes place during the course of a year, relief for each category is apportioned as appropriate.

Oncology units

The Oncology Units in childrens' hospitals are concerned with the care and treatment of children with cancer or other diseases of the blood/marrow [e.g. severe anaemia].

Child oncology patients

The following expenditure - in respect of child oncology patients only qualifies for relief:

- *Travel*

The cost incurred in travelling [unlimited journeys] to and from hospital oncology units in respect of:

- The patient and accompanying parents/guardians, and
- Parents/guardians of the patients where such trips are shown to be essential to the treatment of the child.

If a private car is used, 22.09 pence per mile may be allowed for years up to and including 1996/97 and 25 pence per mile for 1997/98 onwards.

- **Telephone**

Where the child is being treated at home, the telephone costs incurred for purposes directly connected with the treatment of the child.

- **Overnight Accommodation**

Payments made by the parents/guardians to the hospital in which the child is being treated where the cost of such accommodation is necessarily incurred in connection with the treatment of the child.

- **Hygiene products and special clothing**

The cost incurred in respect of these items [subject to a total maximum of £300 per annum]

Note

Claims in respect of the cost of minding brothers/sisters of the patient while the parents/guardians attend the hospital are not allowable.

Coeliac patients

Relief in respect of the cost of gluten-free food for coeliacs is an allowable expense for the purposes of a health expenses claim.

As the condition is generally ongoing, a letter [instead of prescriptions] from a doctor stating that the taxpayer is a coeliac sufferer is acceptable.

If receipts are requested such receipts are not confined to those from a chemist - receipts from supermarkets, etc., in respect of such qualifying expenses are also acceptable.

Travelling and accommodation

Relief in respect of transport expenses is restricted to expenses of transport by ambulance. However, see notes earlier on health expenses for kidney patients and child oncology patients.

Travelling and accommodation expenses **within the State** are not normally allowed.

Where, however, regular continuing treatment or consultation is required and the patient has to travel long distances the expenses may be admitted. It is not the intention that minor local travelling expenses or occasional travelling, e.g. to undergo an operation (unless by ambulance) be admitted.

Where qualifying health care is obtainable only **outside the State** reasonable expenses of travelling and accommodation for the patient may be allowed. In such cases the expenses of one person accompanying the patient may also be allowed where the condition of the patient requires it.

Where the patient is a child the expenses of one parent may generally be allowed and, exceptionally, of both parents where it is clear that both have to be in attendance.

In-Vitro Fertilisation

For the purposes of *Section 469 TCA 1997* "In-Vitro Fertilisation" is regarded as treatment in respect of infertility and relief is allowed in respect of the cost of same.

However, if the treatment results in a pregnancy, the cost of routine maternity care received by the woman **in the course of the pregnancy** would not be allowed.

Dental Treatment

The legislation specifically excludes relief for expenditure incurred on the extraction, scaling and filling of teeth and the provision and repairing of artificial teeth or dentures. These items are excluded from relief even if there is an underlying medical

condition giving rise to the dental treatment, or if the treatment in a particular case is considered to be of a non-routine nature.

Treatment for which relief is claimed will be considered in the light of the above exclusion i.e. relief for the cost of **any** work carried out may not be allowed where the **treatment** is the extraction, scaling or filling of teeth. etc. If, however, the treatment is (for example) of an orthodontic nature, involving the extraction of a tooth as part of that treatment, relief would be allowed for the cost of the orthodontic treatment **excluding the cost of the extraction**. An exception to this rule is the cost, of the surgical extraction of impacted wisdom teeth undertaken in hospital, which is allowable.

The surgical removal of impacted teeth carried out in a hospital is not regarded as “routine dental treatment” within the meaning of *Section 469 TCA 1997*. Relief is therefore allowed for the cost of such surgical removals. It is not allowed where the work is carried out by a dentist in a dental surgery.

Note

An impacted tooth is one which is so firmly lodged in its socket that it cannot emerge through the gum in the normal way. The impaction may be caused by an overlying bone, or because the tooth has grown in such a way that it has become wedged in against another tooth.

Claims for non-routine dental treatment

Claims relief on Form MED 1 for non-routine dental treatment must be accompanied by a certificate on Form MED 2 (Dental). The possession of this certificate does not guarantee the availability of tax relief for the costs of all or any of the treatment shown. A list of treatments for which relief may be allowed is included on Page 17.

Kidney Patients

Hospital dialysis patients (where the patient attends hospital for treatment)

Relief in respect of expenditure incurred travelling to and from hospital (unlimited journeys) may be allowed at the following rates:

1990/91 to 1996/97 22.09p per mile

1997/98 25p per mile

Home dialysis patients (where the patient uses a dialysis machine at home)

Relief may be allowed in respect of expenditure up to the following amounts:

	94/95	95/96	96/97	97/98
Electricity	£800	£800	£820	£830
Laundry/ Protective Clothing	£900	£925	£935	£950
Telephone	£70	£70	£70	£70
Travelling [pence per mile]	24.9	24.9	24.9	25.0
[subject to a max. 25 trips per annum.]				

Chronic Ambulatory Peritoneal Dialysis (CAPD) patients (where the patient has treatment at home without the use of a dialysis machine)

Relief may be allowed in respect of expenditure incurred up to the following amounts:

	94/95	95/96	96/97	97/98
Electricity	£630	£630	£650	£660
Telephone	£70	£70	£70	£70
Travelling [pence per mile]	22.09	22.09	22.09	25.0
[subject to a max. 25 trips per annum.]				

Note: It is possible for a patient to move from one category to another. Where this happens, relief for each category may be apportioned as appropriate.

Appliances for which tax relief is allowable

Glucometer Machine

The cost of the provision of a glucometer machine on the advice of a medical practitioner for a diabetic.

Hearing Aid

The cost of the provision of a hearing aid on the advice of a medical practitioner.

Orthopaedic Bed/Chair

Where the patient is suffering from a specific illness or disability the cost of the provision of an orthopaedic bed or chair, on the advice of a medical practitioner, is allowed.

Wheelchair/Wheelchair Lift

Expenses incurred in the provision of a wheelchair or wheelchair lift for a disabled person, on the advice of a medical practitioner, are allowable, but no relief is due for alteration to the building to facilitate a lift.

Exercise Bicycle

Where medical evidence indicates that same is necessary the cost may be allowed.

Computer

Where medical evidence is produced that same is necessary to alleviate communication problems of a severely handicapped person, the cost may be allowed.

False Eye

The cost of a false eye is regarded as an expense incurred on the purchase of a medical appliance.

Appliances for which tax relief is not allowable

Car (for disabled person)

The provision of a specially adapted car for a disabled person is not allowable.

Construction Work

The cost of structural alterations or improvements to a private residence to facilitate an incapacitated person is not allowable.

Telephone

The installation of a telephone, the rental of same or the cost of calls, (except in the case of certain categories of kidney patients), is not allowable.

Dental Treatments for which tax relief is allowable

Crowns

These are restorations fabricated outside the mouth and are permanently cemented to existing tooth tissue.

Veneers/Rembrant Type Etched Fillings

These are a form of crown.

Tip Replacing

This is regarded as a crown where a large part of the tooth needs to be replaced and the replacement is made outside the mouth.

Gold Posts

These are inserts in the nerve canal of a tooth, to hold a crown.

Gold Inlays

These are a smaller version of a gold crown. (Only allowable if fabricated outside of the mouth).

Endodontics - Root Canal Treatment

This involves the filling of the nerve canal and not the filling of teeth.

Periodontal Treatment

- Root Planing is a treatment of periodontal (gum) disease
- Curretage and Debridement is part of root planing.
- Gum Flaps is a gum treatment.
- Chrome Cobalt Splint if used in connection with periodontal treatment. (If it contains teeth, relief is not allowable).

Orthodontic Treatment

This involves the provision of braces and similar treatments.

Surgical Extraction of Impacted Wisdom Teeth

When undertaken in a hospital relief is allowable. Certification from the hospital will be required to obtain tax relief.

Bridgework

Dental Treatment consisting of an enamel-retained bridge or a tooth-supported bridge is allowable.

Note

Tax relief is not available for the cost of scaling, extraction and filling of teeth or the provision of artificial teeth or dentures.

US Social Security Pensions - Taxable here

Introduction

Tax Briefing - Issue 28, outlined the scope of the new Double Taxation Convention between Ireland and the United States. It made reference to the provisions of Article 18(1)(b) which exempts United States' social security pensions paid to residents of Ireland from United States tax.

Exemption from US Tax

This exemption applies whether the Irish resident is a United States citizen or not. Although there are similar exemptions in some older United States treaties the exemption obtained for Irish recipients is a first in a modern United States treaty. Previously United States social security pensions paid to non-resident aliens were subject to a 25.5% withholding tax in the United States. This gave rise to many representations for change because the withholding tax in many cases resulted in a higher effective rate of tax than would normally have applied if the pension was taxable only in Ireland.

The exemption from United States tax was conceded by the US side on the basis that these pensions would be subject to tax in Ireland - in effect that there would be a transfer of taxing rights from the United States to Ireland. *Section 200 Taxes Consolidation Act 1997* has been amended to remove any doubt concerning the liability to tax in Ireland of the pensions in question.

Position from 6 April 1998

Accordingly, for chargeable periods beginning **on or after 6 April 1998** an Irish resident recipient of a United States social security pension will be a chargeable on such pension for income tax purposes. The ordinary rules of self-assessment will apply to such income.

MANUFACTURING RELIEF

Blast Freezing & Cold Storage Facilities

In a recent case which concerned the application of *Section 443 TCA 1997* to a company which provided blast freezing and cold storage facilities to the food industry Revenue have agreed that such a company may qualify for manufacturing relief by virtue of *Section 443 subsection 4 (a) TCA 1997*, i.e.:

(4)(a) "meat processed within the State in an establishment approved and inspected in accordance with the European Communities (Fresh Meat) Regulations, 1987", where the company is able to validate that the establishment where the process is carried out is approved as required by the subsection. Because *subsection 6 of Section 443* [which would otherwise exclude "applying methods of preservation, pasteurisation or maturation to any foodstuffs"] is subject to *subsection 4*, it does not exclude the processes from manufacturing relief. The supply to the intervention agency of such services in respect of meat belonging to the agency is not excluded either under *Section 443 subsection 7 (c)*.

LLOYDS - Conversion Rates

Tax Briefing - Issue 19 was devoted exclusively to the “Taxation of Lloyd’s Income and Gains in Ireland”. Paragraph 3.9 of that issue stated that the conversion of sterling to IR£’s in the case of Lloyds Names should be calculated by reference to the sterling commercial selling rate on the last market day of the calendar year in which the account is closed. For example, the conversion rate to be used for the Lloyds 1994 Account, closed 31 December 1996, and **assessable 1997/98** is the sterling commercial selling rate on 31 December 1996 i.e. **STG£1 = IR£0.9926**

Tax Briefing - Issue 31 gives details of the sterling commercial selling rates on the last market day of the calendar years 1993 to 1997 inclusive. For convenience, the table of rates is reproduced here to include the year in which the account was closed and the tax year in which the profits on the account are assessable.

Account Year	Year Closed	Year Assessable	Conversion Rate Stg£ = IR£
1991	31 December 1993	1994/95	IR£1.0317
1992	31 December 1994	1995/96	IR£0.9995
1993	31 December 1995	1996/97	IR£0.9687
1994	31 December 1996	1997/98	IR£0.9926
1995	31 December 1997	1998/99	IR£1.1416

FINANCE (No. 2) ACT 1998 - Clarification

Replacement Borrowings

Introduction

A detailed article on *Finance (No. 2) Act 1998* was contained in *Tax Briefing* - Issue 32. We have received a number of queries from practitioners on whether interest will continue to be available in relation to rented residential premises:

- Where the terms on existing qualifying loans are varied
- Where an existing qualifying loan is replaced.

An existing qualifying loan is a loan applied before 23 April 1998 in the purchase, improvement or repair of the rented residential premises, or so applied on or before 31 December 1998 in pursuance of a contract which was evidenced in writing prior to 23 April 1998.

Existing borrowings

Generally, interest on an existing qualifying loan will continue to qualify for relief where there is a variation of the terms of such a loan e.g. repayment period extended. It will be a question of fact in each case as to whether the existing qualifying loan still exists or whether a new replacement loan has been taken out.

Generally, where

- there is a variation in the basis on which payments are allocated between interest and capital
or
 - the period of the original loan is extended
- the existing qualifying loan will be treated as continuing.

Replacement loan on rented residential property

Where a loan employed in the purchase, improvement or repair of a rented premises is replaced by another loan, interest paid on the replacement loan is not, in strictness, deductible under the terms of the pre-1998 legislation i.e. *Section 97(2)(e) Taxes Consolidation Act 1997*. Accordingly, *Finance (No. 2) Act 1998* does not affect the treatment for tax purposes of interest on replacement loans.

Revenue, however, recognise that some taxpayers wish to take out replacement loans to enable them to avail of a more beneficial interest rate or a more suitable method of repayment.

In practice, claims for a deduction in respect of interest on loans which replace existing loans are dealt with on a case by case basis. Subject to this, the general position is that interest on a loan which directly replaces an existing qualifying loan on a rented property will be allowed where:

- The replacement loan does no more than replace the outstanding balance on the existing loan
and
- The term of the replacement loan is no longer than the balance of the term of the existing loan.

A change in the type of loan from annuity to endowment or vice versa, which meets the above criteria, will be allowed.

Separate loans, rather than amalgamated loans, should be taken out where:

- Existing borrowings are refinanced and further amounts are borrowed (for whatever purpose)

or

- A number of loans are refinanced at the same time.

The existing concessional practice of apportioning loans between qualifying and non-qualifying purposes is being discontinued, as regards loans taken out after 30 September 1998.

Enquiries

Practitioners with queries in individual cases should contact the tax office dealing with their clients.

CAPITAL GAINS TAX Development Land Disposals

Holiday Cottages

Tax Briefing - Issue 32 dealt with the provisions of *Section 3 Finance (No. 2) Act 1998*, (now *Section 649A Taxes Consolidation Act 1997*). This Section provided for a 20% rate of CGT on certain disposals of development land in the period 23 April 1998 to 5 April 2000.

One of the occasions when the 20% rate may apply is on a disposal of development land which at the date of disposal has planning permission for residential development. A number of queries have been received as to whether a development of holiday cottages comes within the meaning of 'residential development' in that Section.

This note is to confirm that such a development would be regarded as a residential development for the purposes of *Section 649A(2)(b)(ii)(11) TCA 1997*. Planning permission granted for a holiday cottage development would, therefore, be regarded as planning permission granted for residential development.

URBAN RENEWAL - Residential Properties Update

Conversion/Refurbishment of Residential Properties

Investors and Owner-Occupiers

Introduction

This article shows how to calculate qualifying expenditure for lessors or for owner-occupiers who purchase a residential property, which has been converted or refurbished, from a developer.

It also deals with what happens where:

- An owner-occupied property is purchased or sold during a tax year
- An owner-occupied property ceases to be owner-occupied or recommences to be so used
- An owner-occupier shares the property.

Developer in this article means a builder or other person who sells the property in question in the course of a trade. All references to a property are to one where conversion or refurbishment expenditure qualifies for relief under one of the various property incentive schemes.

Rented Residential Property

Where a converted or refurbished property is bought the general position is that the purchaser qualifies for relief on the lower of:

- The amount of the expenditure which the seller spent on the conversion or refurbishment in the qualifying period
- and**
- The actual cost of the property itself to the purchaser.

Where the seller only incurred part of the conversion/refurbishment expenditure in the qualifying period, the actual cost of the property to the purchaser is treated as being reduced proportionally.

Property purchased from developer

If expenditure is incurred on construction by a developer, qualifying expenditure for the purchaser includes a proportion of the developer's profit on the construction (e.g. *Section 334(7)(b) and Section 346(7)(b) TCA 1997*).

Revenue accepts that where expenditure is incurred on conversion or refurbishment by a developer, qualifying expenditure for the purchaser includes a proportion of the developer's profit.

Example A

Developer buys a derelict property for £30,000 which includes the site cost. He spends £45,000 on refurbishment (£35,000 within the qualifying period) and sells the property in the course of his trade. The property is bought by Ms. B for £100,000 and is first let under a qualifying lease by her. Qualifying expenditure for Ms. B is calculated as follows:

Qualifying expenditure is

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

where

A Actual cost of the property itself

B Refurbishment expenditure in the qualifying period

C Total refurbishment expenditure

D Cost of the existing property (including site cost)

$$£100,000 \times \frac{£35,000}{£45,000 + £30,000} = £46,667$$

Owner-Occupiers

Property purchased from developer

An article on this subject was carried in *Tax Briefing* - Issue 29.

As in the case of rented residential accommodation, an appropriate proportion of a developer's profit may be treated as qualifying expenditure. The same formula as applies for Rented Residential Property above may be used.

Entitlement to owner-occupier relief for year of purchase/sale

A full year's owner-occupier relief may be claimed for the year of purchase or sale of a qualifying dwelling, provided the property is the only or main residence of the 'owner-occupier' at some time during that year.

Where an owner-occupier sells a qualifying property and purchases another qualifying property within the same tax year, relief in respect of each property may be claimed for that year provided that each property is the individual's main residence at some time in the tax year.

Cessation of use as a residence or re-commencement of such use

Where an owner-occupier ceases to use a property as his/her only or main residence but does not sell the property, the owner-occupier relief will be allowed for the year of change, provided that the property was used by the individual as his/her only or main residence in the tax year involved.

Likewise the owner-occupier relief will be granted for a tax year in which the individual recommences to use the property as his/her only or main residence (e.g. after a period of non-use or letting).

Owner-occupation and sharing arrangements

Owner-occupiers frequently share their property with family or friends. In such situations the owner-occupier relief continues to apply, provided that the property is used by the individual as his/her only or main residence in the tax year involved. Any income from the sharing arrangement should, of course, be included in the owner-occupier's tax return.

EMPLOYED or SELF-EMPLOYED? - Guidelines

Introduction

The following article sets out guidelines on deciding whether an individual is to be treated as employed or self-employed for tax and social insurance purposes. The guidelines have been prepared jointly by Revenue and the Department of Social Community & Family Affairs (DSCFA).

Employed or Self-employed?

The terms “employed” and “self-employed” are not defined in law. The decision as to which category an individual falls into must be arrived at by looking at what the individual actually does, the way he/she does it and the terms and conditions under which he/she is engaged, be they by written or verbal agreement or implied. It is not simply a matter of calling a job “employment” or “self-employment”.

Consequences of status

Status as an employee or self-employed person will affect:

- The way in which tax and PRSI is payable to the Collector-General
- Entitlement to social welfare benefits, such as unemployment and disability benefits
- Other rights and duties, for example, under the Employment Protection Acts such as right to holidays, maternity leave and so on
- Liability to the public for the work done.

Guidelines

In most cases it will be clear whether an individual is employed or self-employed. However, it may not always be so obvious and in some cases it may be difficult to determine where the dividing line falls.

The Courts have laid down a number of guidelines over the years. These guidelines are mentioned below and should help in reaching a conclusion. It is important that the job as a whole is looked at including working conditions, when considering the guidelines. The same guidelines generally apply for tax and PRSI and employment protection purposes.

Guidelines on whether an individual is an employee

While all of the following factors may not apply, an individual would normally be an employee if he/she:

- Is under the control of another person who directs as to how, when and where the work is to be carried out
- Supplies labour only
- Receives a fixed hourly/weekly/monthly wage
- Cannot sub-contract the work
- Does not supply materials for the job
- Does not supply equipment other than the small tools of the trade
- Is not exposed to personal financial risk in carrying out the work
- Works set hours or a given number of hours per week or month
- Works for one person or for one business
- Is entitled to sick pay/holiday pay/ pension etc.

- Receives expense payments to cover subsistence and/or travel expenses
- Is entitled to extra pay or time off for overtime.

Some points to remember

- An individual could have considerable freedom and independence in carrying out work and still remain an employee
- An employee with specialist knowledge may not be directed as to how the work is carried out
- An individual who is paid by commission, by share, or by piece work, may still be regarded as an employee
- Some employees work for more than one employer at the same time
- Some employees do not work on the employer's premises
- There are special PRSI rules for the employment of family members.

Guidelines on whether an individual is self-employed

While all of the following factors may not apply to the job, an individual would normally be self-employed if he/she:

- ~ Owns his/her own business
- ~ Is exposed to financial risk, by having to bear the cost of making good faulty or substandard work carried out under the contract
- ~ Has control over what is done, how it is done, when and where it is done and whether he/she does it personally
- ~ Is free to hire other people, on his/her terms, to do the work that is has been agreed to undertake
- ~ Can provide the same service to more than one person/business at the same time
- ~ Provides the materials for the job
- ~ Provides equipment and machinery necessary for the job, other than the small tools of the trade
- ~ Has a fixed place of business where materials equipment etc. can be stored
- ~ Costs and agree a price for the job
- ~ Provides his/her own insurance cover e.g. public liability etc.
- ~ Controls the hours of work in fulfilling the job obligations.

Some points to remember

- Generally an individual should satisfy each of the self-employed guidelines above, otherwise he/she will normally be an employee
- The fact that an individual has registered for self-assessment or VAT it does not automatically mean that he/she is self-employed
- An office holder, such as a company director, will be taxed under the PAYE system. However, the terms and conditions will have to be examined by the Scope Section of DSCFA to decide on the appropriate PRSI Class.
- It should be noted that a person who is a self-employed contractor in one job is not necessarily self-employed in the next job. It is also possible to be employed and self-employed at the same time in different jobs.

General

If there is still doubt as to whether a person is employed or self-employed the local tax office or Scope Section of DSCFA should be contacted for assistance.

Having established all of the relevant facts, either Revenue or the DSCFA will give a written decision as to status. A decision by one Department will generally be accepted by the other, provided all relevant facts were given at the time and the circumstances

remain the same. However, because of the varied nature of circumstances that arise and the different statutory provisions, such a consensus may not be possible in every case.

Appeals

Appeals against decisions made by either the Inspector of Taxes or the Scope Deciding Officer may be made, as appropriate, to either:

The Appeal Commissioners who are an independent body and hear tax appeals. Tax appeals can be initiated on foot of an assessment which issues after the tax year to which it refers. Decisions made by the Appeal Commissioners can be appealed to the courts

The Social Welfare Appeals Office who are also an independent body and deal with appeals on Social Welfare issues. Their decisions can be appealed to the High Court on a point of law.

Further information

The following information leaflets are available:

Revenue Commissioners

IT 10 Guide to the Self-Assessment System for the Self-Employed

IT 11 Employee's Guide to PAYE

IT 23 Main Features of Income Tax Self-Assessment

IT 48 Starting in Business

Copies of these leaflets are available from any tax office or from the **Revenue Forms & Leaflets Service** at 01 - 878 0100

Department of Social, Community and Family Affairs

SW 3 Employer's Guide to the PRSI Contribution System

SW 63 Guide to PRSI for non-PAYE Employees

SW 74 Guide to PRSI for the Self-Employed

Copies of these leaflets are available from the **PRSI Information Section, DSCFA**, at 01 - 704 3274

New Joint Leaflet

Employed or Self-Employed - A Guide for Tax and Social Insurance, available from either contact point mentioned above.

CAT - Business Relief

Treatment of Debts where there are Excepted Assets

Section 134 Finance Act 1994, provides that relevant business property must be valued for the purposes of the relief as if certain assets were ignored, i.e. agricultural property, excepted assets and assets belonging to a new business acquired by a company within 5 years prior to the transfer (or two years where appropriate). Broadly speaking, excepted assets are assets not used for the purposes of the business concerned. The section is silent as regards the treatment of debts attributable to the assets which are ignored for the purposes of the relief.

Because of the diversity of circumstances in each case, it is not practicable to lay down detailed rules as to the calculation of the part of the value transferred to be excluded in respect of the excepted assets.

The basic approach, however, is to exclude from relief that part of the open market value of the shares or securities which might, on the basis of the method of valuation adopted, fairly be attributable to the excepted assets.

Essentially, the answer lies in the difference between the value of the shares calculated with the excepted asset included in the company and excluded from it. Accordingly, Revenue practice is to treat the value of an excepted asset for business relief purposes to be its net value where the debts are charged on that asset. Where the debts are not charged on an excepted asset, it is not considered that the asset should be reduced by a proportion of the uncharged debts. The rationale for this is that the shares in a company are being valued as if the excepted asset did not exist in the first place and, therefore, all the other assets would have to bear all the debts. On this basis, it would not be correct to allow the debts against the excepted asset.

COLLECTOR-GENERAL - Preliminary Tax

Income Tax - Preliminary Tax payments due 1 November 1998

In line with the procedures implemented last year for callers submitting income tax preliminary tax payments to the Collector-General's Office, Apollo House, Dublin, there will be a restriction on the number of receipts issued at the counter to any one caller. This will minimise any delay for callers submitting such payments and will enable Revenue to provide a speedy and efficient service.

Practitioners who intend to lodge a number of income tax preliminary tax payments at the same time on behalf of their clients in the public office of the Collector-General's Office, Apollo House, Dublin are reminded that the most efficient way of facilitating confirmation of receipt of payment by Revenue is to record details of each payment with the name and registration number of the client on a list to be supplied when the payments are being made. This list will then be stamped confirming receipt of the payment. A formal receipt for each payment made will follow by post within one week.

It should be noted that 1 November this year falls on a Sunday, so timely payments are due by Friday, 30 October.

DISCRETIONARY TRUSTS - Surcharge

Surcharge on Undistributed Income

Section 805 Taxes Consolidation Act 1997 provides for a surcharge at the rate of 20% on the undistributed income of discretionary trusts.

The surcharge applies to income arising in a year of assessment insofar as it exceeds the income applied in defraying the expenses in that year **which are properly chargeable to income**, or would be so chargeable but for any express provisions of the trust.

Discretionary Trust Tax (DTT) has been allowed concessionally in the past as an expense which is properly chargeable to income for the purpose of calculating a surcharge on undistributed income. The reasoning behind the concession is that the charges are mainly annual and close in nature to income type expenditure. This concession will continue for the foreseeable future.

Because DTT is a Capital Tax the point has been made that Capital Gains Tax (CGT) should also be allowed as an expense for the purpose of calculating a surcharge on undistributed income of a discretionary trust.

CGT is a tax on a chargeable capital gain on the disposal of an asset and periodic in nature. It is not an expense which is properly chargeable to income. **Revenue are not prepared to extend the concession of allowing DTT as an expense for the purpose of calculating a surcharge on undistributed income of a discretionary trust to CGT.**

VALUE ADDED TAX - General

(Waiver of Exemption) (Amendment) Regulations, 1998

Introduction

The short term letting of immovable goods i.e. property lettings of less than ten years, is an exempt activity for VAT purposes and consequently no VAT is chargeable on the rents arising from such lettings. Because the activity is exempt the landlord is not entitled to deduct VAT on any expenses (including construction costs) relating to the short term letting. *Section 7 VAT Act 1972* allows a landlord to waive his/her exemption in respect of short term lettings and become a taxable person. This enables the landlord to deduct tax on expenses but he/she must account for VAT @ 21% on **all** short term rents. In accordance with *Regulation 4 of the VAT Regulations 1979*, a waiver of exemption can only be allowed from the commencement of the current taxable period.

Technical self-supplies

As a consequence of the VAT on Property changes introduced in the *Finance Act 1997*, the above Regulations [(Waiver of Exemption) (Amendment) Regulations, 1998)] have been introduced to allow the backdating of a waiver in certain circumstances (commonly known as “technical self-supplies”).

A “technical self supply” occurs when a taxable person, without waiving his/her exemption at the time, makes a short term letting of developed property to another taxable person, who is entitled to full deductibility. This frequently occurs when a trader temporarily has excess office/factory space which he/she lets for a period prior to occupying it for his/her own business.

The purpose of the Regulations is to give legal effect to the changes outlined in paragraphs 51 to 57 of the guide “**VAT on Property, Finance Act 1997 Changes**”.

This guide is available from the *Revenue Forms & Leaflets Service* at 01 - 878 0100 or from local tax offices. The Regulations are deemed to have come into effect on **26 March 1997**.

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.

Changes to Regulation 4

The main changes to *Regulation 4 of the VAT Regulations 1979* are as follows:

- The waiver can only be backdated where the tenant would have been entitled, under Section 12, to fully deduct any VAT which would have been chargeable on the rents
- A taxable person can apply to backdate such waiver where he/she has made an exempt letting of property and the property had been acquired or developed by him/her for the purposes of his/her taxable supplies
- The application must be made in writing giving details of the parties involved, their VAT registration numbers, details of the letting and the date from which the waiver is required
- Although the backdating refers to a specific letting, the waiver is deemed to apply to all the taxable person's short term lettings from a date specified in the notification issued by Revenue approving the application. The earliest date from which the waiver can apply to all the trader's exempt lettings is the start of the VAT period in which the application is made.
- Any tax due resulting from the backdating is deemed to have been paid by the landlord and deducted by the tenant
- A waiver in relation to a "technical self supply" cannot be backdated prior to 26 March 1997
- In connection with the general cancellation of a waiver, the definition of VAT refunded to the taxpayer has been amended to include VAT not charged due to Section 3(5)(b)(iii), Section 4A and Section 13A.

Copies of the Regulations are available from

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

Price 60p (postage 36p extra)

Deduction on Motor Cars and Petrol

On the 18th June the European Court of Justice ruled that the French Republic was **not** acting ultra vires the Sixth Directive (77/388/EEC) and, in particular Article 17(2) thereof, by maintaining in force local legislation denying taxable persons the right to deduct VAT on means of transport acquired by them. In taking the case to Court, the European Commission argued that the French Republic had failed to fulfil its obligations under the Sixth Directive. The European Court of Justice found that there were many provisions in the Sixth Directive which enabled Member States to maintain in force, legislation which denies taxable persons the right to deduct VAT on expenditure, such as means of transport. Accordingly it found that the French Republic had not failed in its obligations under the Sixth Directive.

During 1996 and 1997 a number of Irish taxpayers and agents submitted protective claims in relation to the blockage of input credit on motor vehicles and petrol pending the hearing of this legal challenge. In response Revenue stated that, in their opinion, the relevant Irish legislation (*Section 12(3)(a)(iii) of the VAT Act 1972, as amended*) is fully in accordance with the EC Sixth VAT Directive and with Community law generally (see **Tax Briefing** - Issue 16).

The decision by the European Court of Justice supports this position.

It is intended to reply individually to those taxpayers and agents who submitted protective claims. However, we would be obliged if practitioners would, where possible, also advise their clients of the position.

STALLIONS - “In the State”

Dual hemisphere or shuttle stallions

Section 231(a) Taxes Consolidation Act 1997 provides that the profits from the sale of services of mares within the State, arising to the owner or part owner of a stallion which is ordinarily kept on land in the State, are not to be taken into account for the purposes of the Tax Acts.

Ordinarily kept

Many thoroughbred stallions are sent to Australia or New Zealand to increase their earnings by availing of the breeding season in the southern hemisphere.

Typically, these stallions are flown out early August and are brought back at the end of December.

The question that arises is whether these stallions would be regarded as ordinarily kept on land in the State.

Decision

It is accepted that, on the facts as outlined above such stallions are ordinarily kept on land in the State and consequently the profits arising from the sale of services of mares within the State by those stallions are not to be taken into account for the purposes of the Tax Acts.

Service of mares within the State

It should be noted that only the profits arising from the servicing of mares within the State are exempt.

Service of mares outside the State

Profits arising from the servicing of mares outside the State are exempt only if the following conditions apply:

- The stallion is ordinarily kept on land outside the State
- The profits arise to the part owner of a stallion
- The part owner of the stallion carries on in the State a trade which includes bloodstock breeding
- The share in the stallion was acquired and is held primarily for the purposes of the servicing mares owned or partly owned by the shareholder.

REVENUE NEWS - Update

TAX BRIEFING Survey

Enclosed with this issue of **Tax Briefing** is a survey sheet, the purpose of which is to obtain your views and comments on the magazine. We would appreciate it if you would take the time to complete the survey and let us know your views. The survey sheet will also be available on our internet site (**www.revenue.ie**).

Internet Site

Revenue's rules and procedures reference manuals required under Section 16 of the Freedom of Information Act are now available on the web site **www.revenue.ie**. Practitioners are welcome to contact us by email at **custserv@revenue.irlgov.ie** with any comments they might have.

PAYE/PRSI - Annual Accounting by Employers

The threshold for participation in the Annual Accounting scheme for PAYE/PRSI has been increased to £5,000. Information on the scheme is available from:

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

Telephone: 061 - 310310

Dublin Callers: 01 - 677 4211

REVENUE GROUP JOURNAL

It has come to the attention of the Revenue Commissioners that some people who have been approached to take advertising space in a magazine titled "The Revenue Group Journal" may be under the mistaken impression that the magazine is an official publication of the Commissioners.

The Commissioners wish to make it clear that this magazine is a publication of a Trade Union - the Revenue Branch of the Public Service Executive Union. The Revenue Commissioners are not associated, in any way, with the magazine, its selling of advertising or with its editorial policy.

NOTES FOR GUIDANCE - *Taxes Consolidation Act 1997*

Revenue have published "Notes for Guidance" on the *Taxes Consolidation Act 1997*. The notes, which are contained in one volume, provide a comprehensive commentary prepared by Revenue on the 1,104 sections and 32 schedules of the *Taxes Consolidation Act 1997*, as enacted.

The guidance notes supersede all earlier Revenue guidance notes on the legislation incorporated into the *Taxes Consolidation Act 1997*.

The book which follows the basic structure of the *Taxes Consolidation Act 1997*, contains the following features:

- The placing of an **overview** before the commentary on each Part/Chapter which places the Part/Chapter concerned in context within the overall income, corporation and capital gains tax codes
- The inclusion in each section of a summary of the main provisions and effects of the section (this **summary** is dispensed with where a section is short or straightforward)
- The introduction of **internal headings** into sections which deal with a number of matters or which contain a large number of provisions
- The inclusion of **non-statutory cross references or signposts** to other provisions which may be relevant to, or affected by, a particular provision
- Over **240 examples, tables and charts**
- A **comprehensive index**.

The book should be of particular benefit to tax practitioners, administrators and students of taxation.

Copies of the publication, which cost £40 each, are available: by mail order from *Government Publications Trade Section*, 4-5 Harcourt Road, Dublin 2.

Telephone 01-661 3111
Ext. 4040/4045

Fax 01-475 2760, or

over the counter from

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

or through any major bookseller.

The Notes for Guidance will shortly be available through the Revenue Internet site (**www.revenue.ie**).

Revenue together with the Department of Finance will shortly be publishing a **CD-ROM** containing both the text of the *Taxes Consolidation Act 1997*, and the Revenue Notes for Guidance.

Commentaries on the provisions of Finance Acts (for example, the two 1998 Finance Acts) which amend the *Taxes Consolidation Act 1997*, will be published separately.