

# ***TAX BRIEFING***

Office of the Chief Inspector of Taxes

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## KEY DATES 1998

November 1998

- 1 **Income Tax**  
Preliminary Tax for 1998/99
  - Capital Gains Tax**  
Preliminary tax for 1997/98
  - 14 **PAYE/PRSI**  
Monthly remittance for month ended 5 November 1998.
  - 19 **VAT**  
Remittance for period September/October.
  - 1-28 **Corporation Tax**  
Preliminary Tax and ACT for A.Ps ending between 1-31 May 1998.
  - 1-30 **Corporation Tax**  
Returns for A.P.'s ending between 1-28 February 1998.  
Returns for Third Party Information for APs ending between 1-28 February 1998
- December 1998
- 14 **PAYE/PRSI**  
Monthly remittance for month ended 5 December 1998..
  - 1-28 **Corporation Tax**  
Preliminary Tax and ACT for A.Ps. ending between 1-30 June 1998.
  - 1-31 **Corporation Tax**  
Returns for A.Ps. ending between 1-31 March 1998.  
Returns of Third Party Information for A.Ps ending between 1-31 March 1998.

## KEY DATES '99

January 1999

- 14 **PAYE/PRSI**  
Monthly remittance for month ended 5 January 1999.
- 19 **VAT**  
Remittance for period November/December
- 1-28 **Corporation Tax**  
Returns for Aps ending between 1-30 April 1998  
Returns of Third party Information for Aps ending between 1-30 April 1998
- 31 **Income Tax**  
Return of Income for 1997/98
- Capital Gains Tax**  
Return of Capital Gains 1997/98
- Income Tax**  
Return of Third Party Information 1997/98

# THE EURO and TAX - Revenue Guide

## Revenue Launches Euro Business Guide

On Wednesday 4 November 1998 the Chairman of the Revenue Commissioners Mr. Dermot Quigley presented the first copy of “**Revenue and the Euro - A Business Guide**” to the Minister for Finance Mr. Charlie McCreevey. The guide sets out the flexible range of options which Revenue is offering to businesses in Ireland in relation to switching their tax and customs affairs to euro. The topics covered include:

- The EMU timetable
- Use of the euro in the transitional phase
- How to switch your Revenue affairs to euro
- Invoicing, accounting records and conversion
- Legislative implications.

Also included is an article from the Forfás EMU Business Awareness Campaign and a list of Revenue contact numbers.

## Euro Newsletter

A Euro Newsletter is issuing to all of Revenue’s business customers advising them of the availability of the Euro Guide and setting out the key points contained in it. Our customers are further informed to contact our Euro Changeover Unit at 1890 200256 or their local tax office to obtain a copy of the Guide.

## Euro Election Forms

Election Forms were issued automatically to businesses during November 1998. As the election to switch to euro is irrevocable we recommend that a thorough examination of the business’s operational needs be undertaken prior to making such an election. Unless we receive a completed euro election form we will continue to deal with your client’s affairs in Irish pounds as at present.

# THE REVENUE ON-LINE SERVICE - ROS

## Background

Revenue is one of the largest processors of information in Ireland. While some of the information we receive, such as P35 details, certain third party information etc., is in electronic form, we devote significant resources to converting paper returns into an electronic format. This processing of paper-based returns, which in many cases involves converting information that had been stored electronically by taxpayers or agents in the first instance, is a resource-intensive process that depends on the availability of sufficient staff for key entry and related error correction.

Revenue also devotes large resources to the provision of information over the counter, by phone, fax and letter to practitioners and individual customers. This information can include details of returns outstanding, refunds due, arrears, payment offsets, and other account details.

A significant amount of paper handling and processing activity eats into the resources available for other activities.

From a customer's perspective the costs, delays and frustration involved in constructing the 'paper mountain' have been identified by Revenue as critical issues to be addressed as part of our efforts to reduce compliance costs.

## The Revenue On-Line Service (ROS)

The Programme for Customer Service in our Statement of Strategy 1997-1999 states that its objective is 'to further develop customer service by making it as easy as possible for all of our customers to deal with Revenue'. One of the strategies to achieve this is to 'encourage electronic filing of Returns and Declarations and other electronic information exchange'. A Strategy Manager has been appointed with responsibility for developing our electronic business strategy and introducing electronic filing. This new development, the Revenue On-Line Service (**ROS**), will allow our customers transact their business with us electronically. It envisages all types of business being conducted electronically including payments, return filing, information exchange etc. Notwithstanding Year 2000, euro developments, and other potential demands on its resources, Revenue is committed to providing the resources necessary to ensure that **ROS** becomes a central part of its filing, payment and information services over the next number of years.

Electronic filing of tax returns will be an integral part of **ROS**. Depending on the system or systems decided upon, a taxpayer or agent may send a return through Electronic Data Interchange (EDI), similar to the Automated Entry Processing (AEP) system currently in use in Customs for SADs, or more likely through a process that will involve the use of the Internet and related technology.

In addition, other declarations and returns, e.g. PAYE returns and claims for allowances, may be made through Telefiling, which is filing using a touch-tone phone. The identity of the person making the return will be established by their use of an electronic or digital signature, or perhaps by a PIN, in the case of someone using the phone.

While paper returns, of course, will still be accepted, the objective is to provide a range of choices to customers for filing returns.

Of primary importance to the development of **ROS** will be agents' access to their clients' tax files. We anticipate being able to provide practitioners with the following facilities:

- Access to their taxpayer clients' payments, balances, returns compliance and payments compliance information on Revenue's database
- The ability to change the taxpayer's 'agent representation' details on Revenue's files for existing clients only. Revenue will continue to have responsibility for adding new clients
- The allocation and maintenance of access security within their firm.

We anticipate that over time, these type of facilities will gradually be extended to all customers.

## **Who can avail of ROS?**

The Revenue On-Line Service will be available to everyone at some stage in the future. All that will be required will be a PC and a phone line. In the initial stages of electronic filing, there will be a need to register, monitor and obtain feedback from filers to ensure satisfactory and efficient operation of the system, compatibility of software and reliability of security systems.

Our ultimate aim is to make our customers interaction with us for payments, declarations or information available electronically in their home or place of business.

## **Advantages of Electronic Filing for Customers**

In addition to allowing access to customers' Revenue accounts, the new electronic administration system could provide a number of advantages for practitioners and other customers. Some of the possibilities are:

### **Prompt processing**

An agent will be notified very quickly that the tax return had been received by Revenue and if it had been initially accepted or rejected for processing. The notice of assessment would then issue shortly afterwards in paper format to the customer and electronically to the agent, and this level of service will be maintained even at peak times.

### **Avoiding duplication**

At present if an agent is using tax software to complete a return the agent has to send in a hard copy of the return by post and Revenue has to re-key the data. There is a logic in using the same medium for transmitting the data to Revenue with a consequent saving for practitioners in the cost of transferring electronically stored data to paper returns, paper handling, photocopying and postage.

### **Reduction in compliance costs**

Fewer errors because of more accurate processing of returns and a faster response time to requests for amendments. This will reduce the number of amended assessments being issued with a consequent reduction of costs to customers and practitioners.

### **More effective and efficient use of time**

Customers will be able to file tax returns without generating paper thus saving time and money spent on photocopying, collating and posting paper returns.

### **Automated repayments**

We intend, over time, to include in ROS a facility to automate certain repayments so that they will be credited directly to customers' accounts.

### **Electronic filing of VAT(3), P30 and P35**

This would offer the trader a timely, accurate and efficient mechanism for transmitting a return.

### **Facilitating an enhanced direct debit system**

The use of a variable direct debit facility, in particular for P30 and VAT(3) filers, would allow larger liability customers to use the system without the need to complete new mandates.

### **Facilitating last-minute filing**

As the system would be automated there would be less pressure on practitioners, customers and on tax offices at peak filing times.

### **24 hour, 365 day access to the Tax Office.**

**The opportunity to increase the services which practitioners can offer to their customers.**

## **Advantages of Electronic Filing for Revenue**

Of course, there are also advantages to Revenue in electronic filing. These include:

### **Improved Customer Service**

Revenue would be able to provide a more efficient, timely and cost effective service to our customers.

### **Faster turn around time**

By eliminating mailing, handling, and keying of returns, they could be assessed more quickly and retrieved rapidly.

### **Built-in electronic acknowledgements and uniform communication with all customers.**

### **Improved accuracy and audit trails**

By eliminating the manual keying in of tax data and by implementing a series of computer checks, the system would allow the processing of tax data more accurately. Specific problem fields could be more easily identified.

### **Automatic debiting of a trader's bank account**

This would occur through an enhanced direct debit system which would ensure that payments made are exactly what is due.

### **Reduced processing costs**

There would be cost savings as a result of the reduction in manual processing along with job enhancement for employees and a better distribution of the workload. Staff resources could be redeployed to the areas of audit, compliance and customer service.

### **Other potential savings**

There would be a reduction in costs associated with procurement, printing, storage, replacement, stocktaking and distributing printed forms.

## **Forms, Accounts and other Documentation**

Which forms will **ROS** accept? While ultimately the project envisages the submission of almost all the main returns electronically this will occur on a roll-out basis. The self-assessment returns for Income and Corporation Tax are obvious targets because of the volume and the tight deadlines involved. Already, 70% of P35 details are submitted electronically by disk or tape. The potential exists, therefore, for their inclusion at an early stage.

VAT 3s and P30s will also be included for customers who avail of the variable Direct Debit option. PAYE returns may be consequent on P35 developments and Telefiling of the more straightforward PAYE returns or claims for allowances may be an option

here. As stated earlier, our ultimate objective is to make the filing of any tax return available electronically to customers from their home or place of business.

Crucial to Revenue's concept of electronic filing is that there be absolutely no paper-filing requirement. Irrespective of the method of transmission there will be no need to submit documentation. Legislation to facilitate this and indeed other legal aspects and implications of electronic filing will be drafted. Accounts information required to support submissions will be specified on the return. However, all evidence required to support a return - accounts, balance sheets, certificates, evidence of entitlement to allowances and reliefs etc. will have to be retained either by the customer or by his or her agent. This evidence can be stored electronically or in paper format as the circumstances dictate.

Although ROS maps out the future, existing filing arrangements will remain for our customers who wish to continue to file paper returns. The returns themselves will follow the same format as their electronic counterparts. In other words they will require that the exact same information, such as accounts information, be included on them.

## **Audit**

One of the frequently asked questions in relation to electronic filing is the greater likelihood that a return might be audited if submitted electronically rather than in paper form. This will **not** be the case. Identical information will be sought on all returns, paper or electronic. It is intended that the same screening and interrogation techniques will apply to both. To facilitate this, information from paper returns will be captured electronically in Revenue.

## **Security**

Customers will want to be certain that information relating to their affairs is secure if they access or transmit it electronically. We share this concern. We are also concerned with maintaining the integrity of our records and fulfilling our obligations under data protection legislation. The latest security, encryption and digital signature techniques will be incorporated into ROS. Nothing will be offered to customers unless we are satisfied with our own security and unless we are satisfied that all the concerns of our customers in this area have been addressed. The success of ROS depends on customer acceptance.

## **Legal Issues**

There are two specific legal issues of concern in relation to electronic filing. The first is what is the legal status of an electronically filed return. Legislation will be drafted to follow a European Union model that it is intended will guarantee the standing of an electronically generated document in a court of law and will ensure the recognition of a digital signature. The Department of Public Enterprise will also be addressing this issue in the broader context of electronic commerce.

The second issue is how can practitioners ensure that their clients cannot repudiate returns which they have filed on the clients' behalf. This issue is obviously a concern for Revenue also.

The problem has been addressed by different countries in different ways. In the US, for example, the taxpayer must follow the electronic submission with a hand signed declaration. In the UK the practitioner or filer must first generate a hard copy of the return for signature by the client before the electronic return is submitted.

Either practitioner or client can retain this copy for production as evidence, if required. Since Revenue is adamant that submission of paper documents defeats the



objective of electronic filing, the solution may lie between the UK requirement and suitable amendments to our own legislation.

## Consultation

We are committed to full and open consultation with all our stakeholders on this new venture. As regards practitioners, we have already had preliminary discussions with a number of the professionals' representative bodies and many of the issues of concern to them which are mentioned above were discussed with them. It is hoped to maintain an ongoing dialogue with practitioners representatives to advise them of developments, to consult on these issues and to seek their assistance in addressing areas of concern to their members and in promoting **ROS**.

## Roll out of ROS

When will all this happen ? Planning is at an advanced stage and while there are a number of issues yet to be resolved, detailed proposals for a roll out timetable will be put to the Board of Revenue early in the New Year.

## RELEVANT CONTRACTS TAX - C2 Cards

### C2 Applications - Tax Office Contact Points

#### Introduction

**Tax Briefing** Issue 33 gives details of the Finance Act 1998 changes to Relevant Contracts Tax, which affect the meat industry. This note gives details of the tax offices which deal with applications for C2's from subcontractors. The tax office which deals with the C2 application will also deal with all other aspects of the subcontractor's tax affairs, except repayment of tax to non-resident subcontractors.

#### General position

In general, subcontractors should send their C2 application to their local tax office i.e. the tax office which deals with the subcontractor's affairs generally. However, in the Dublin area, C2 applications should be sent to:

**Dublin Audit 1 District,  
Findlater House,  
Cathal Brugha Street,  
Dublin 1.**

Telephone: 01 - 874 6821

Fax: 01 - 874 9227

#### Non-resident subcontractors

Subcontractors who are not resident in the State and do not have a place of business in the State, should send their C2 application to the following tax offices:

- 1) All subcontractors in the **white meat industry and hauliers in the red and white meat industry:**

**Dundalk Tax Office,  
Earl House,  
Earl Street,  
Dundalk,  
Co. Louth.**

Telephone: 042 - 32251

Fax: 042 - 34609



2) Subcontractors in the **construction, forestry and red meat industry** (except subcontractors mentioned at (1):

***Dublin Audit 1 District,  
Findlater House,  
Cathal Brugha Street,  
Dublin 1.***

Telephone: 01 - 874 6821

Fax: 01 - 874 9227

Non-resident subcontractors who wish to reclaim tax deducted should contact the:

***Revenue Commissioners,  
International Claims Section,  
Government Offices,  
Nenagh,  
Co. Tipperary.***

Telephone: 067 - 33533

Fax: 067 - 32916

## **RCT Guides**

### **New Guides on Relevant Contracts Tax**

Two new guides are being prepared and will be available soon:

#### **IT63**

Relevant Contracts Tax (Construction, Forestry & Meat Processing Industries) -

#### **Guide for Principal Contractors**

#### **IT 64**

Relevant Contracts Tax (Construction, Forestry & Meat Processing Industries) -

#### **Guide for Sub-Contractors**

The guides should be available early in 1999 from ***the Revenue Forms & Leaflets Service*** at

01 878 - 0100 or from local tax offices.

# TRAINING COURSES - I.T. and Foreign Languages

## Introduction

*Section 476 Taxes Consolidation Act 1997* provides for relief from income tax for individuals who incur expenditure on certain training courses concerned with aspects of information technology and foreign languages.

## Qualifying courses and qualifying course providers

To qualify for the relief the course must be a course of study or training, other than a postgraduate course, which:

- Is confined to such aspects of **information technology** or, such **foreign languages** as are approved by the Minister for Enterprise, Trade and Employment with the consent of the Minister for Finance
- Is of less than 2 years duration
- Results in the awarding of a certificate of competence (**and not just a certificate of attendance**).

A foreign language is defined as a language other than an official language of the State. Courses on either the Irish or English language do not qualify.

For the purposes of the relief both the qualifying course and the course provider must be approved by FÁS.

Lists of approved courses and approved course providers are available from any tax office or from the *Revenue Forms & Leaflets Service* at 01-878 0100.

## Tax relief

Relief at the standard rate of income tax (24% for 1998/99) is available where the net tuition fees for an approved course exceed £250. (Relief is not available for any part of the tuition fees which are met directly or indirectly by grant, scholarship or otherwise, e.g. where fees are re-imbursed by an employer.) The relief is subject to an upper limit of £1,000 per course.

**Relief is not available in respect of one individual for more than one course in one year of assessment.** Where the net amount of the fees for an approved course exceeds £1,000, relief will be given in respect of the £1,000 limit but not on the excess.

The relief is granted in the year of assessment in which the certificate of competence is issued. The legislation came into effect on 31 March 1998. Relief may be due for fees paid earlier than 31 March 1998 if the course is an approved course and a certificate of competence has been issued to the participant after 31 March 1998.

## Individuals eligible for relief

Any individual who is the training participant, paid the fees and received the certificate of competency in respect of the training is eligible for the relief.

In the case of a married couple who are jointly assessed to tax relief is available in respect of qualifying fees paid by either spouse.

## Applications for relief

The relief can be claimed either on the individual's end of year tax return or during the tax year when the certificate of competence has been awarded and the fees have been paid.

The claim for relief should be accompanied by:

- The certificate of competence awarded, suitably dated
- or**
- A statement from the approved course provider certifying that the required minimum level of competence was achieved and the date that a certificate of competence in respect of the approved course was awarded.

The claimant should also submit a receipt from the approved course provider containing the following information:

- Name and address of the approved course provider
- Name and address of student
- Title of the approved course and its duration
- Amount of tuition fee paid
- Name and address of individual who paid the fee, if different from above.

Details of any payment made towards the fees, received or to be received, must accompany the claim. These include grants, scholarships, and other payments by third parties e.g. employers, in respect of relevant fees.

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.

# DESIGNATED SCHOOLS - Tax Relief for Gifts

## Introduction

*Section 17 Finance Act 1998* inserted a new section - *Section 485A* in the *Taxes Consolidation Act 1997*. The new section provides for tax relief for relevant gifts made to designated primary or post-primary schools or to an approved body for the benefit of such schools. This article contains a summary of the main provisions.

## Relevant gift

- A relevant gift means a gift of money which is made:
- On or after 6 April 1998
- To a designated school or an approved body
- For the sole purpose of funding the activities of that school or, in the case of a gift to an approved body, for the purposes of funding the activities of one or more designated schools
- Is applied by the school or the body for such purposes
- Is not otherwise deductible in arriving at taxable profits or is not a gift for education in the arts or income to which the deed of covenant provisions refer.

## Designated school

A designated school means a primary or post-primary school which is in receipt of enhanced grants made by the Minister for Education and Science which arise from the fact that a substantial proportion of students in the school are, in the opinion of the Minister, socially or economically disadvantaged. A list of designated schools is available from any tax office or from the **Revenue Forms & Leaflets Service** at 01 - 878 0100.

## Approved Body

An approved body means a body of persons which is established for the purposes of raising funds for the benefit of one or more designated schools, is composed of patrons, trustees, owners or governors of the schools concerned and is approved for the purposes of *Section 485A* by the Minister for Education & Science.

## The Relief

### Individuals

In the case of gifts from individuals, either to a school or an approved body, tax relief is available only on a gift or an aggregate of gifts which, in the year of assessment exceeds £250 subject to an upper limit of £1,000. Where the aggregate of the gifts exceeds £1,000 relief will be given in respect of the £1,000 limit but not on the excess. Tax relief is available at the standard rate of tax - currently 24%.

In the case of a married couple the minimum and maximum limits apply to each spouse. Where a couple are jointly assessed for tax purposes tax relief will be granted in respect of gifts made by either spouse.

### Companies

The relief is available on company donations in excess of £250 subject to an upper limit of £10,000. The upper limit of £10,000 applies to gifts made to a single school. Where the aggregate of gifts to a single school exceeds £10,000, relief will be given on the £10,000 limit but not on the excess.

The company may make gifts to a number of schools subject to an overall maximum in an accounting period of gifts totalling £50,000 or 10% of the company's profits in that period, whichever is the lesser. In the case of a company, the qualifying gifts are treated as a deductible expense in computing the total profits of the company for the accounting period.

Where a gift is made by a company in an accounting period of the company which is less than 12 months, the amounts of £10,000 and £50,000 are reduced proportionately.

#### **Restriction on relief**

If the person or company receives any consideration for it from the school or the approved body, either directly or indirectly, the amount or value of the consideration is deducted from the gift before any tax relief is granted.

#### **Applications for relief**

Claims for relief may be made on the annual tax return and should be accompanied by a receipt from the school or approved body. The receipt must be signed by an authorised official of the designated school or approved body and should contain the following details:

- The name and address of the person or company making the gift
- The amount of the gift
- The date on which the gift was made
- The name of the school or body as appropriate.

In addition the receipt should contain a statement indicating that

- It is a receipt for the purposes of relief under *Section 485A Taxes Consolidation Act 1997*
- The school is a designated school or if the gift is to a body that it is an approved body for the purposes of the section
- The gift is a relevant gift for the purposes of the section.

# RELIEF FOR HOME LOAN INTEREST - Rules & Guidelines

## Introduction

This article sets out the rules, guidelines and procedures regarding interest relief on home loans. Tax relief is allowable on loan interest if the loan has been used for qualifying purposes. The relevant legislation is contained in *Section 244 Taxes Consolidation Act 1997*. The topics covered are as follows:

- Meaning of “qualifying purposes”
- Sole or main residence
- Two residences in regular use
- Residences under construction and purchase of sites
- Joint purchase of a residence in anticipation of marriage
- Job-related accommodation
- Mobile-homes, caravans etc.
- Meaning of purchase, repair development or improvement of a sole or main residence
- Evidence of purposes for which a loan is used
- Loans used partly for qualifying purposes and partly for non-qualifying purposes
- Re-mortgages and second mortgages
- Fines on mortgages
- Treatment of interest on joint accounts
- Joint accounts - mortgage interest paid to local authorities
- First time buyer relief
- Standard rating of interest.
- Bridging loan interest

## Qualifying purposes

“Qualifying purposes” means the purchase, repair, development or improvement of the sole or main residence of:

- The claimant
- A former or separated spouse of the claimant
- A dependent relative of the claimant or his/her spouse in respect of whom the claimant is in receipt of the dependent relative allowance under *Section 466(2)(a) or (b), TCA 1997*. (If the residence is provided by the claimant, it must be provided free of rent or other consideration.)

A loan which is used solely to replace a loan used for qualifying purposes is regarded as used for qualifying purposes even if the new loan differs in type from the old loan (e.g. a mortgage replacing a term loan).

## Sole or main residence

In general, the sole or main residence of any person will be the residence which is the person’s home for the greater part of the time and where friends and correspondents would expect to find him/her. The residence does not have to be owned by the person, for example, a parent’s residence may also be the sole or main residence of any of the children of the parent who commonly reside there. To qualify for relief, the residence must be in use as a sole or main residence. This condition is not interpreted in an

overly strict manner and temporary periods of disuse do not result in a loss of relief provided that the residence is not used for any other purpose and it is the clear intention of the claimant to use the residence as his/her sole or main residence at the end of the period of disuse. Difficulties may arise in the following cases:

- Two different places of residence which are both used on a regular basis
- A residence under construction
- The joint purchase of a residence in anticipation of marriage
- Job-related accommodation
- Mobile homes, caravans and other moveable structures in use as a residence.

These items are covered in detail in the following paragraphs:

## Two residences in regular use

In most cases where a person has two residences, it is possible to determine which is the sole or main residence on the basis of frequency of occupation, e.g. a holiday home used for short periods in the year compared to a residence used throughout the year. However, frequency of occupation alone is not the test and situations can arise where the question is not clear-cut, e.g. a house in one town which is owned and is used at weekends and holidays compared to digs or rented accommodation in another town which is the person's place of employment. In determining which of two residences is a person's sole or main residence, the following guidelines are followed:

- The fact that a greater period is spent in one residence does not necessarily preclude the other from being treated as the main residence. In particular, where the person has to use other accommodation by reason of his/her employment, the residence used at weekends and non-work periods would normally be regarded as the individual's sole or main residence e.g. a commercial traveller or a person temporarily absent from home or a person obliged to find employment in another town.
- A residence which is owned and in respect of which mortgage interest etc. is paid would normally be accepted as the sole or main residence in preference to one which is rented where both are in regular use
- Where a single person has a separate residence, the parental home would not be accepted as the sole or main residence unless the circumstances are exceptional
- Except for the circumstances mentioned below in relation to residences under construction or purchased in anticipation of marriage, a claim that a particular residence is the main one would normally be admitted only if the residence is furnished and suitable for occupation, is in fact occupied (except for periods of temporary disuse) and is not used for any other purpose e.g. let.
- Where both residences are owned and one is used during holidays only, a claim that the holiday home is the main residence would be resisted.

If, on applying the above guidelines, it is not possible to determine which of two residences is a person's sole or main residence because:

- Both residences are owned by the person
- He/she resides in both residences for significant periods on account of his/her office, employment, business interests or other requirements, and neither residence can be regarded as a holiday home

**and**

- The Inspector and the person (or his accountant) have been unable to reach agreement on which residence is the sole or main residence,



then the person may be permitted to select by notice in writing which residence is to be regarded as his/her sole or main residence on the understanding that the selection will have effect for both interest relief and Capital Gains Tax purposes.

### **Residence under construction and purchase of sites**

Where a residence is under construction, various payments may have to be made throughout the course of construction in respect of which money must be borrowed, e.g. on purchase of the site and at various stages of the construction. The taxpayer may seek relief in respect of the interest paid on the loans even though the residence is not in use as a sole or main residence and is not capable of such use. The problem may be further complicated by a claim in respect of bridging finance (see page 23). In dealing with such cases, the following guidelines are followed:

- Inspectors, as far as possible, establish that the residence when completed will become the sole or main residence of the taxpayer and any relief is given on the understanding that it will be withdrawn if the residence does not become the sole or main residence. In cases of hardship where it is clear that the taxpayer intended to use the residence as a sole or main residence but due to circumstances beyond his/her control is unable to do so e.g. loses his/her job or is transferred or is unable to sell the existing residence - the relief granted would not be withdrawn.
- No relief is given in respect of loans to purchase a site unless and until there is planning permission to construct a residence on the site
- In the case of a first-time house purchaser, the residence may be accepted as his/her sole or main residence with effect from the date of purchase of the site or, if later, the date planning permission for the construction of the residence is granted.

Where the taxpayer has an existing residence which he/she intends to dispose of and in respect of which he/she is paying mortgage interest etc., the twelve-month rules in relation to bridging interest will be relevant (see page 23). The taxpayer can only obtain relief for interest paid in respect of the first residence for a period of twelve months from the date he/she acquires the second residence. Depending on borrowings, it may or may not be to his/her advantage to claim that the second residence became his/her sole or main residence when the site was purchased. In such cases, the taxpayer may specify any date between the date of purchase of the site or, if later, the granting of planning permission and the date the second residence commences to be actually used by the taxpayer as being the date on which the second residence is to be treated as a sole or main residence of the taxpayer. Once that date is specified, the twelve-month period is treated as commencing on that date. The taxpayer may pick the date most beneficial to his/her circumstances. In the absence of a specification, relief will not be granted until the second residence is in actual use as the sole or main residence of the taxpayer and the twelve-month period referred to above is treated as commencing at that time.

### **Joint purchase of residence in anticipation of marriage**

It is common practice for couples to purchase a house on joint account in anticipation of their marriage. Until the marriage takes place, the house may be unoccupied or occupied by one of them only. In the former case, the house would not be the sole or main residence of either party and in the latter case, it would be the sole or main residence of the person in occupation only. In such cases, if:

- The house has been purchased in anticipation of marriage and will be used by the couple as their sole or main residence after marriage

- The loan account is in the joint names of the couple and each is jointly and severally liable for the interest charged  
**and**
- The house is unoccupied or is occupied by one of the parties concerned and is not occupied by any other person e.g. there are no friends or workmates occupying rooms in the house and contributing to the repayments or paying rent,  
relief will be allowed to each in accordance with the amount of interest actually paid on the basis that the house is the sole or main residence of both claimants. The claimant or claimants to relief not actually occupying the house are advised that the relief is granted on an administrative basis only and subject to withdrawal if the house does not become the sole or main residence of the claimant or claimants. In practice, however, relief will not be withdrawn in genuine cases if due to unforeseen circumstances the house does not become the sole or main residence of one or both of the claimants, e.g. if differences arise and the marriage does not take place and a settlement is made in relation to the house.

### Job-related accommodation

Where a person occupies job-related accommodation provided by his employer and also has a private residence of his/her own, difficulties may arise in determining which is his/her main residence. In such cases if:

- The provisions of *Section 118(3) TCA 1997*, apply to the accommodation provided by the employer [i.e. non-application of benefit-in-kind provisions where employee is required to live on the premises to perform his/her duties]  
**and**
- The private residence owned by the person is used by that person as a residence and is not used for any other purpose e.g. it is not let for any part of the year,  
it will be accepted that the private residence is the main residence for the purposes of a claim for interest relief.

### Mobile homes, caravans etc.

While mobile homes, caravans etc. are not specifically dealt with in legislation, such a residence can be a sole or main residence for tax purposes. The question is one of fact. In general, a mobile home, caravan etc. which would suit the requirements of a main residence would be one which:

- Is on a permanent site
- Has been immobilised by removal of wheels, by being jacked up, by being mounted on blocks or otherwise supported on fixed supports
- Is of a reasonable size in relation to the requirements of use as a permanent dwelling
- Has electricity and other services supplied to it.

### Purchase, repair, development or improvement of a sole or main residence

Any expenditure on a sole or main residence **other than** expenditure on furniture, removable fittings e.g. light fittings, curtains, drapes and removable floor coverings may be accepted as being qualifying expenditure. Examples of qualifying expenditure are:

- Purchase of another person's part-interest in the residence, e.g. where a residence is owned jointly by two persons and one buys out the other's interest
- Legal and other fees incidental to the purchase or development of the residence

- Cost of extensions, purchase and/or construction of garages, garden sheds, greenhouses and swimming pools
- Cost of construction of driveways and paths, landscaping of gardens
- Cost of conversions, general maintenance and painting and decorating
- Cost of installing central or solar heating (including cost of gas or solid-fuel cookers in use as part of a central heating system), rewiring, new plumbing including bathroom suites etc.
- Cost of insulation, replacing windows and double glazing
- Cost of purchasing and installing burglar and fire alarms and other security devices
- Cost of installing damp courses and general treatment for damp, dry rot, woodworm and similar problems
- Cost of purchase and installation of bedroom and kitchen units which are affixed to and become part of the building
- Stamp Duty on the purchase of a residence
- Contributions to groups water schemes and sewage schemes
- Construction of tennis courts.

### **Evidence of the purposes for which a loan is used**

Except in the case of a loan which is clearly related to the initial purchase of a sole or main residence, documentary evidence may be required to prove that a loan has been used for qualifying purposes.

The evidence may take the form of builders' specifications, receipts, paid cheques etc. It is neither necessary nor, in many cases, practicable to require that evidence be produced for the entire proceeds of the loan. Similarly, the fact that some or all of the work has been carried out by the taxpayer is not a bar to claiming relief in respect of a loan applied in purchasing the materials with which the work is carried out e.g. a pre-fabricated garden shed, "do-it-yourself" presses and double glazing.

### **Loans used partly for qualifying purposes and partly for other purposes**

Strictly, in order to qualify for tax relief a loan must be used entirely for qualifying purposes. If the loan is used partly for some other purpose no relief is due in respect of any portion of the interest paid. However, in practice Revenue will apportion interest in certain circumstances - including situations where the qualifying and non-qualifying amounts have been borrowed at different times - and will give relief for the interest attributable to the portion of a loan used for qualifying purposes.

#### **Example 1**

A 5 year term loan of £10,000 is taken out, £6,000 is used for qualifying purposes and £4,000 for other purposes. Relief is allowed in respect of 6/10ths of the interest each year.

#### **Example 2**

A 5 year term loan of £10,000 was taken out and the entire amount was used for qualifying purposes. In year 3, when the balance of the loan was £6,000, the loan was replaced by a new loan of £8,000 and repayment of the new loan of £8,000 is over four years. £1,000 of the further borrowings is used for qualifying purposes and the other £1,000 is used for other purposes. Relief is allowed in respect of:

$$\frac{\pounds 6,000 + \pounds 1,000}{\pounds 8,000}$$

i.e. 7/8ths of the interest paid each year on the new £8,000 loan.

### Example 3

A 3 year term loan of £3,000 was taken out and the entire amount was used for non-qualifying purposes. In year 1, when the balance of the loan was £2,000, the loan was replaced by a new loan of £10,000 repayable over 5 years. All of the further borrowing, £8,000, is used for qualifying purposes. Relief may be allowed on:

£8,000

£10,000

i.e. 4/5ths of the interest paid each year on the new £10,000 loan.

## Re-mortgages and second mortgages

The fact that a loan involves a re-mortgage or a second mortgage does not make it eligible for any special treatment for tax purposes. It is treated in the same manner as any other loan. Interest paid on a loan secured by a re-mortgage or a second mortgage on a sole or main residence strictly qualifies for relief only if the amount or additional amount borrowed is used for qualifying purposes. However, if the re-mortgage or second mortgage is used partly for qualifying purposes and partly for a purpose other than a qualifying purpose, apportionment of the interest paid may be made.

### Example 1

A taxpayer had an original mortgage of £40,000 on a main residence. On 10 February 1998, the balance on the mortgage stood at £35,000. On that date, the residence was re-mortgaged for £60,000 and £15,000 of the additional £25,000 was used to purchase a car and £10,000 on replacement windows/central heating for the main residence. Relief for interest paid (subject to the usual limits/restrictions and standard rating, as appropriate) on the re-mortgage of £60,000 will be allowed to the extent of:

£35,000 + £10,000

£60,000

i.e. 3/4 throughout the term of the re-mortgage.

### Example 2

A taxpayer had an original mortgage of £60,000 on a main residence. On 10 February 1996, the balance on the mortgage stood at £40,000. On that date, the residence was re-mortgaged for £50,000 and the additional £10,000 was used to purchase a car. No relief is due for interest on the additional £10,000 but relief for interest paid (subject to the usual limits/restrictions and standard rating, as appropriate) on the new mortgage of £50,000 is allowable to the extent of £40,000/£50,000 (i.e. 4/5 ths) throughout the term of the re-mortgage.

The residence was subsequently re-mortgaged again for £70,000 at a time when the balance on the first re-mortgage of £50,000 stood at £35,000.

In order to determine the fraction of the interest on the second re-mortgage of £70,000 which qualifies for relief, the following steps are followed:

#### Step 1

Determine the proportion of the balance of £35,000 on the first re-mortgage which is attributable to the original mortgage.

This is

$$\frac{*\text{£40,000} \times \text{£35,000}}{\text{£50,000}} = \text{£28,000}$$

\*(Balance of original mortgage)

#### Step 2

Determine what fraction of the second re-mortgage the £28,000 represents,

i.e.  $\frac{£28,000}{£70,000} = 2/5\text{ths}$

### Step 3

Allow 2/5ths of the interest paid on the second re-mortgage

## Fines on mortgages

In certain circumstances, a building society may impose a fine of an additional amount of interest on the cancellation of a mortgage or on a re-mortgage. The amount of the fine is treated in the same manner as any other interest paid on the mortgage which gives rise to the fine and relief is allowed accordingly.

## Treatment of Joint Accounts

### General

Relief under *Section 244 TCA 1997*, is confined to interest actually paid by the claimant. In the case of joint accounts, where each of the account holders is jointly and severally liable for the payment of the interest, the normal procedure is to regard any interest paid as having been paid in equal proportion by each account holder. If proof is given that the interest was paid in unequal proportions or was paid in its entirety by one person only, relief, where due, is given to each account holder in respect of the interest actually paid by him/her.

The degree of proof required will depend on the circumstances of each case. In a straightforward case where there is no obvious tax advantage to be gained from an unequal apportionment of the interest, the claim from the taxpayers may be sufficient. Similarly, where it is obvious from the income resources of the claimants that it would be reasonable to expect that the bulk of the interest could only be paid by one party, a claim to that effect would be accepted. However, if:

- One of the account holders is outside the tax net and is alleged to have paid a smaller proportion or none of the interest
- or**
- One of the account holders is liable to tax at the higher rates and it is alleged that he/she paid a higher proportion or all of the interest
- or**
- One of the account holders has reached or exceeded the ceiling for relief under *Section 244 TCA 1997*, and it is alleged that he/she has paid a smaller proportion or none of the interest
- or**
- The interest is allegedly paid in such a manner as no reasonable person would be expected to pay it (e.g. the loan is used to purchase an asset for the equal use of two persons but one person is allegedly paying all or the bulk of the interest), an unequal apportionment of the interest will not be allowed without a thorough investigation of the facts. In particular, a copy of the loan agreement will be requested and a detailed explanation for any inconsistencies will be required.

### Mortgage interest paid to local authorities

In cases where a local authority house is being purchased jointly by an elderly parent and one or more members of the family under a formal Transfer Order *under Section 90, Housing Act 1966*, the local authority issues the interest certificate in the names of all the joint purchasers.

Where any person named on the certificate is in receipt of an Old Age Pension from the Department of Social, Community and Family Affairs and has no other income



and where the Inspector is satisfied that such a person has not, in fact, made any payment in respect of interest, the full amount of the interest may be allowed to the other person named on the certificate if there is only one or in equal proportions to each other person named if there is more than one.

## First Time Buyer Relief

### General

First time buyers are entitled (for a period of five years) to more favourable tax relief than is generally available on the payment of mortgage interest. Tax relief for these individuals is calculated without the percentage restriction or the £100/£200 restriction.

The term “first time buyer” means an individual who has not previously been entitled to relief in respect of interest paid on loans used for the purchase, repair, development or improvement of an individual’s sole or main residence.

The “first time buyer” relief applies to an individual provided that the year of claim is one of the first five years for which relief falls to be given to that individual in respect of interest paid on qualifying loans.

In deciding whether or not the “first time buyer” relief is due for any year, the number of years for which interest relief falls to be granted must first be established - see Examples A and B.

### Joint Loans

Where the parties to a joint loan are not married to each other, the question of whether one or other of the parties is a “first time buyer” is determined by reference to the facts applicable to each individual.

Accordingly, it is possible in the case of joint loans that one of the parties is a “first time buyer” and the other is not - see Example C.

### Married Couples

Where a married couple are charged to tax on the basis of either Joint Assessment or Separate Assessment and either spouse has been granted relief in respect of a qualifying loan, the relief is treated as having been given equally to both spouses for the purposes of deciding whether or not the “first time buyer” relief is due - see Examples D and E.

### Example A

In 1990/91, Martin purchased his first principal private residence financed by a mortgage. In 1991/92, he sold this house and emigrated. In 1995/96, Martin returned to Ireland and purchased another principal private residence financed by a mortgage. Martin qualifies for ‘first time buyer’ relief for:

**1995/96** - as this is the third year of interest relief

**1996/97** - as this is the fourth year of interest relief

**1997/98** - as this is the fifth year of interest relief.

### Example B

In 1990, Mary inherited her parents’ house. In 1993/94, she sold this house and purchased another principal private residence financed by a mortgage. Mary qualifies for the ‘first time buyer’ relief for all years 1993/94 to 1997/98 inclusive as she had not previously been entitled to relief on interest paid on qualifying loans.

### Example C

In 1985, Joan purchased her principal private residence and she has been granted interest relief for all years to date in respect of the interest paid on the loans to purchase the property. In July 1993, Joan sold her principal private residence and acquired, jointly with Frank (who has never previously claimed relief in respect of a

qualifying loan), another principal private residence. In calculating the relief due on the interest paid on the loan to acquire the new house, Joan is not a 'first time buyer' but Frank is. Accordingly, Frank qualifies for the 'first time buyer' relief for the years 1993/94 to 1997/98 inclusive but Joan does not.

#### **Example D**

In 1983, Peter purchased his principal private residence, financed by a mortgage in his sole name. He married Helen in 1985. Since marriage, the couple have elected to be taxed under joint assessment and the relief granted in respect of the interest paid on the home loan was calculated by reference to the general ceilings applicable to a married couple. In 1996/97 Peter sold the house and, jointly with his wife Helen, purchased another principal private residence financed by a loan in their joint names. For the purposes of calculating relief due on interest paid for 1996/97 et seq., Helen does not qualify for "first time buyer" relief for any year.

Similarly if the couple had separated in 1996/97 and Helen had purchased a house in that year, she would not be a "first time buyer". She is treated, for this purpose, as having been granted interest relief for each year for which her husband was granted relief and 'first time buyer' relief would not apply for any year.

#### **Example E**

Tom and Anne married in 1993/94 and purchased their first principal private residence in that year financed by a mortgage. In 1994/95, the couple separated, sold the house and each then purchased a principal private residence. Both Tom and Anne qualify for the 'first time buyer' relief in 1995/96, 1996/97 and 1997/98.

### **Standard Rating of Interest**

Standard rating of home loan interest was phased in with effect from 1994/95 as follows:

<b>Tax Year</b>	<b>Proportion of allowable interest to be standard rated</b>
1994/95	25%
1995/96	50%
1996/97	75%
1997/98 et seq	100%

The part (or full amount for 1997/98 et seq.) of the allowable interest which is standard rated is no longer deductible in computing total income (other than for exemption and marginal relief purposes). Relief for this amount at the standard rate is deducted in computing income tax payable for the year.



## BRIDGING FINANCE - Guidelines

### General

*Section 245 TCA 1997*, provides that where a person:

- Disposes of his/her main residence
- Acquires a new main residence
- Pays interest on a loan or loans obtained for the purpose of financing the cost of acquisition or disposal or both, or to repay in whole or in part a loan obtained for such a purpose,

special provisions apply to the relief under *Section 244 TCA 1997*, in respect **of the first twelve months interest**.

It should be noted that while *Section 245* refers to “bridging loans”, it is not necessary that a loan be a bridging loan (as the term is understood by most people, i.e. temporary finance) to come within the terms of the section although there must be a disposal of one residence and the acquisition of another.

Where a person acquires a new sole or main residence and is making all reasonable efforts to dispose of the “old” one, the “old” residence will also be treated as a sole or main residence for a period of 12 months commencing with the date of the purchase of the new residence.

Whether or not a person is making reasonable efforts to dispose of his old residence is a question of fact. Generally, it would be expected that the house would be in the hands of an auctioneer or that it would be advertised for sale with reasonable frequency. If the house is being held deliberately with a view to appreciation in value, it would not be regarded as a sole or main residence.

Where the house is let, it would not be accepted that it is a sole or main residence of the lessor unless it is established that the letting is for weekly or shorter tenancies and the lessor is genuinely trying to dispose of it.

### Guidelines

Additional relief is allowable under *Section 244 TCA 1997*, by virtue of *Section 245 TCA 1997* and can amount to but may not exceed the appropriate ceiling on relief set out in ***Section 244*** - the usual limits/restrictions and standard rating, as appropriate, apply.

Where the period of twelve months in respect of which the additional relief is due spans two income tax years, the ceiling is apportioned on a time-basis over the two years.

The excess of any interest paid during the period of twelve months on any loans to which *Section 245 TCA 1997*, applies over the relief allowable by virtue of the section is not available for any further relief under *Section 244*.

### Procedures

The procedures to deal with claims for bridging finance under *Section 245 TCA 1997* may be summarised as follows:

- (i) Ascertain the period of twelve months. This commences on the date the first loan on the new house was made and will not usually present any problems except in the case of a house under construction when the provisions set out on page 16 should be followed

- (ii) Ascertain the interest paid (by apportionment, if necessary) in the period of twelve months on the loans in respect of which additional relief is due
- (iii) If the period of twelve months falls into two income tax years, ascertain how much of the interest paid in the period was paid in each year (by apportionment, if necessary)
- (iv) *Apportion the appropriate limit under Section 244 TCA 1997* for each income tax year into which the period of twelve months falls by reference to the part of the period of twelve months falling into each year.
- (v) The amount of the additional relief allowable each year is the amount at (iii) restricted, where appropriate, to the amount at (iv).

(See examples below)

**Example**

A is a married man with the following circumstances:

***Old house sold 31 December 1996***

Interest on old mortgage 6 April 1996 - 31 December 1996 - £3,000

***New house purchased 1 November 1996***

Interest on bridging loan from 1 November 1996 - 31 January 1997 is £2,000

Interest on new mortgage 1 February 1997 - 5 April 1997 is £1,000

Interest on new mortgage year ended 5 April 1998 is £6,000

- (i) The period of twelve months is 1 November 1996 to 31 October 1997.
- (ii) The interest paid in the period of twelve months on the loan to which *Section 245* applies is as follows:

1/11/1996 - 31/1/1997	(3 months)	£2,000
1/2/1997 - 5/4/1997	(2 months)	£1,000
6/4/1997 - 31/10/97	(6,000 x 7/12)	£3,500
		£6,500

- (iii) The interest at (ii) falls into the following years of assessment:

1996/97	£3,000
1997/98	£3,500

- (iv) The limits for each year of assessment under *Section 244 TCA 1997* are as follows:

1996/97	£5,000 x 5/12	£2,083
1997/98	£5,000 x 7/12	£2,917

- (v) The additional relief due under *Section 244 TCA 1997* is:

1996/97	£2,083
1997/98	£2,917

(continued on page 25)

The total interest allowable for each year is as follows:

**1996/97**

(a)	Interest other than <i>Section 245</i> interest	
	Old mortgage	
	(not in excess of limit)	£3,000
(b)	Additional relief for <i>Section 244</i> interest	<u>£2,083</u>
	Total interest allowable	£5,083
		x 80%
	=	£4,066
	Less	<u>£200</u>
	Total interest relief -	£3,866

**1997/98**

(a)	Interest other than <i>Section 245</i> interest	
	New mortgage	
	£6,000 x 5/12 (not in excess of <i>Section 244</i> limit)	£2,500
(b)	Additional relief for <i>Section 245</i> interest	<u>£2,917</u>
	Total interest allowable	£5,417
		x 80%
	=	£4,333
	Less	<u>£200</u>
	Total interest relief	£4,133

**Note**

The balance of interest not allowed 1996/97 and 1997/98 (£917 and £583 respectively) is not available for any further relief. Likewise, if there were a balance of ordinary *Section 244 TCA 1997* interest which could not be allowed because of the limit set out in those Sections, it cannot be allowed under *Section 245* if the limit has not been exceeded there.

**Mixed claims covering the twelve-month period**

In practice, it may happen that a taxpayer may claim relief for the first year without reference to *Section 245 TCA 1997*, because his/her interest does not exceed the limit set out in *Section 244 TCA 1997*, but in the second year he/she must have recourse to *Section 244*. In these circumstances, the above procedures will be followed and any additional relief due for the second year will be allowed.

## INTERNATIONAL ISSUES - Update

### Protocol amending the Double Taxation Convention between Ireland and the United Kingdom of Great Britain and Northern Ireland, 1976

On 4 November 1998 Mr. Edward Barrington, Ambassador of Ireland to Britain and Ms. Joyce Quinn, MP, Minister for Europe at the Foreign and Commonwealth Office signed a Protocol amending the Double Taxation Convention between Ireland and the United Kingdom of Great Britain and Northern Ireland, 1976.

#### Changes to existing Convention

The Protocol makes a number of amendments to the existing Convention which reflect recent changes in the domestic laws of both countries and which remove doubts concerning existing provisions in the Convention.

The key changes may be summarised as follows:

- Abolition of entitlement to repayable tax credits on dividends
- New anti-abuse provisions in respect of interest income
- Provisions allowing for the taxation of capital gains of individuals for three years after they become non-resident
- Confirmation that teachers paid from public funds are covered by the government service article

Technical change in the rule for determining a taxable presence in either country in relation to activities concerned with the exploration and exploitation of natural resources and clarification of the rules concerning construction site activities.

#### Dividends

The most significant change for Irish business is the abolition of repayable tax credits for dividends. This reflects the recent changes in the domestic laws of both countries. In Ireland, the tax credit was halved in December 1997 and from 6 April 1999 will be abolished. In the UK, from 6 April 1999, the tax credit will be reduced from 1/4 to 1/9 of the net dividend.

#### Cross-border workers/teachers

The amendment in the Protocol confirms that teachers paid from public funds are covered by the government service article. This means that the tax paid in Northern Ireland on their salaries and pensions will normally be the final tax liability. Similar relief from Irish tax was introduced for cross-border workers generally in last year's Finance Act (*Section 13 Finance Act 1998*). [See separate article on page 28]

**The Protocol is expected to be ratified by the Dáil and the UK Parliament before the end of the year. Its provisions would then come into effect from the beginning of 1999.**

### Ireland-Mexico Double Taxation Convention

On 22 October 1998 Mr. Martin Cullen, Minister of State at the Department of Finance and His Excellency, Mr. Daniel Dultzin, Ambassador of Mexico signed a Double Taxation Convention between Ireland and Mexico. The Convention is comprehensive in scope and generally follows the OECD Model Convention. It provides that where double taxation of income or capital gains arises, credit will be given by the country of residence in respect of tax borne on the same income or gains in the country of source.

Certain income and gains arising in one Contracting State and paid to a resident of the other are exempt from tax in the source state, including income arising from the

leasing of aircraft or ships in international traffic, which is of particular benefit to the Irish aircraft leasing industry. The Convention provides for reduced rates of withholding tax in the case of dividends (5%/10%), interest (5%/10%) and royalty (10%) payments.

Where the income or gain remains taxable in both countries, the Convention provides that the country of residence of the taxpayer will grant credit against its own tax for tax paid in the other country. Direct investors (i.e. holding 10% or more of the shares in the paying company) in either Contracting State, in receipt of dividends from a company in the other Contracting State will also be granted credit for a proportionate part of the tax paid by that company on the profits out of which the dividends were paid (known as credit for underlying tax).

**If, as expected, the Convention is ratified by both countries before the end of the year, it will enter into effect from the beginning of 1999.**

## General

Printed copies of the Ireland-Mexico Convention and the UK Protocol will be available shortly from the

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

The text of the Convention and Protocol is also on Revenue's Internet site:

**<http://www.revenue.ie>.**

Ireland currently has Double Taxation Conventions in force with thirty-two countries, with 7 others awaiting signature or ratification.

# TRANS-BORDER WORKERS - Finance Act 1998 Provisions

## Introduction

**Tax Briefing** Issue 32 contained a brief summary of the relief contained in *Section 13 Finance Act 1998* for individuals who are resident in the State but who commute to their place of work outside the State. In response to requests from some practitioners, this article expands on the information contained in Issue 32.

## Reduction in income tax for certain income earned outside the State

*Section 13 Finance Act 1998* inserts a new section - *Section 825A* - in the *Taxes Consolidation Act 1997*.

The section is designed to give income tax relief to individuals who are resident in the State but who work outside the State. It applies to individuals who commute daily or weekly to their place of work outside the State and who pay tax in the other country on the income from their employment. By far the largest category to benefit are cross-border workers who commute daily to work in Northern Ireland. Individuals who travel to the UK and elsewhere to work, returning at week-ends, also benefit. The relief applies not only to cross-border workers but also to trans-border workers. The new relief applies from 6 April 1998, and effectively removes the earnings from a qualifying foreign employment from liability to Irish tax where foreign tax has been paid. In simple terms, the effect of the measure is that Irish tax will only arise where the individual has income other than income from a foreign employment.

## The relief - Section 825A (3)

Subject to meeting certain **conditions** an individual may have his or her income tax liability for a particular tax year reduced to the **specified amount** where liability would otherwise exceed that amount.

### Specified Amount

The specified amount is the income tax which would be payable for a tax year, before credit for any foreign tax paid, reduced in the proportion that the total income excluding income from a qualifying employment bears to the total income. This can be expressed by way of the following formula:

$$\text{Total tax liability X} \quad \frac{\text{Income other than Foreign Employment Income}}{\text{Total Income}}$$

under Irish rules

### Note

Where relief is granted under the new *Section 825A*, no credit is given for the foreign tax paid on the income of the qualifying employment.

### Conditions

The conditions are:

- The individual must have earnings from a qualifying employment
- The duties of the qualifying employment must be exercised wholly outside the State in a country with which Ireland has a double taxation agreement. (*In determining whether the duties of a qualifying employment are performed wholly outside the State, any duties performed in the State which are merely incidental to the performance of the duties outside the State, are regarded as performed outside the State.*)



- The income from that employment must be subject to tax in the other country and must not be exempt or relieved from tax in that country
- The foreign tax due on the income must have actually been paid to the relevant authorities and must not be repaid or be eligible to be repaid
- For every week during which the individual works outside the State in a qualifying employment, he or she must be present in the State for at least one day in that week. *(As is the case for the rules of residence, an individual is regarded as being present in the State for a day if he or she is present in the State at midnight.)*

### Qualifying employment

A qualifying employment is defined as an office or employment held outside the State in a country with which Ireland has a double taxation treaty and which is held for a continuous period of at least 13 weeks in a tax year. The definition includes an office of director of a company which would be within the charge to corporation tax if it were resident in the State, and which carries on a trade or profession. *(However see below regarding exclusions for proprietary directors.)* Excluded from the definition are all State employments as are employments with any statutory bodies established in the State.

### Exclusions - Section 825A (2) and 825A (5) TCA 1997

The new relief does not apply where the income from the qualifying employment:

- Is subject to the 'remittance basis' of taxation (*Section 71 (3) TCA 1997*)
- Is subject to the 'split year' treatment (*Section 822 TCA 1997*). *(Split year treatment applies where a taxpayer in the year of arrival in, or departure from, the State is deemed resident for part of the year only and is thus already entitled to favourable tax treatment.)*
- Is income paid by a company to one of its proprietary directors or to the spouse of one of its proprietary directors
- Is subject to a claim for relief under the foreign earnings deduction provisions (*Section 823 TCA 1997*)
- Is subject to a claim for relief in respect of the new seafarer's allowance (*Section 472B TCA 1997*).

**The following important points should be noted:**

### Foreign Income is still assessable

The effect of the section is to reduce the amount of tax payable in respect of the individual's total income to the specified amount. **It is important to note that the income from the foreign employment remains assessable and that the legal obligation to return such income on the annual return of income remains.** Income from a foreign employment is assessable under Case III Schedule D and, accordingly, the provisions of self assessment, including the payment of sufficient Preliminary Tax to avoid interest charges, apply.

### Tax bills may still arise

A married couple, one of whom has income from a qualifying employment and the other of whom has income assessable in the State under PAYE, may decide to allocate the full married personal allowance and double rate bands against the income of the spouse with Irish income. In this case the amount of tax deducted under the PAYE system on the Irish income may fall substantially short of the couples' ultimate



liability (the specified amount) even taking account of the new relief. In such cases a substantial tax liability may arise.

The following examples illustrate generally how the relief works and Example 2B, in particular, illustrates the effects of allocating the full married allowance and rate bands against the income of the spouse subject to tax under the Irish PAYE system. Where the only other source of income is income subject to PAYE, such tax liabilities can be avoided by allocating only the single allowance and single rate bands against the income of the spouse with the Irish income.

### EXAMPLE 1

**Single person resident in the State in 1998/99, employed in Northern Ireland earning £20,000 sterling with Irish rental income of £5,000.**

#### 1. Pre-Section 13 liability

N.I. employment income	(Stg £20,000)	*IR£23,530
Irish rental income		<u>£5,000</u>
Total Income		£28,530
Tax allowances 1998/99		
Single personal allowance	£3,150	
PAYE allowance	£800	<u>£3,950</u>
Taxable income		£24,580
Tax due	£10,000 @ 24%	£2,400
	£14,580 @ 46%	<u>£6,706</u>
		£9,106

Credit for UK tax paid (Stg £3,506) IR£4,125

Liability to Irish tax £4,981

\*Conversion rate Stg£ = IR£0.85p used for illustrative purposes

#### 2. Operation of Section 13

The specified amount is

Irish tax liability X  $\frac{\text{Income other than N.I. Employment Income}}{\text{Total Income}}$

i.e.  $\frac{£9,106 \times £5,000}{£28,530} = £1,595$

#### 3. Effect of Section 13

The taxpayer's Irish tax liability is reduced from £4,981 to the specified amount of £1,595 yielding a saving of £3,386.

*Note*

- If the taxpayer had no rental income, the specified amount would be zero.
- To avoid interest charges a Preliminary Tax payment, if based on the 90% rule, of £1,435.50 is required

## EXAMPLE 2

**Married couple resident in the State in 1998/99 with both spouses earning. Spouse A is employed in the State and earns £30,000. Spouse B is employed in Northern Ireland and earns £20,000 sterling.**

### 1. *Pre-Section 13 liability*

Income	Spouse A	£30,000
Spouse B (Stg£20,000)	IR£23,530	
Total Income	£53,530	
Married personal allowance	£6,300	
PAYE allowances	£1,600	<u>£ 7,900</u>
		£45,630
Tax	£20,000 @ 24%	£4,800
	£25,630 @ 46%	<u>£11,789</u>
		£16,589
Credit for		
Mortgage interest <sup>1</sup>	£600	
Health insurance <sup>2</sup>	£168	<u>£768</u>
Tax due		£15,821
Credit for UK tax paid (Stg£3,506)		<u>£4,125</u>
Liability to Irish tax		£11,696

### 2. *Operation of Section 13*

The specified amount is

$$\text{Irish tax liability X} \quad \frac{\text{Income other than N.I. Employment Income}}{\text{Total Income}}$$

$$\text{i.e.} \quad \frac{£15,821 \times £30,000}{£53,530} = £8,866$$

### 3. *Effect of Section 13*

The couple's Irish tax liability is reduced from £11,696 to the specified amount of £8,866 yielding a saving of £2,830.

### 4. *Section 13 may not rule out a tax bill*

In cases where a couple decides to use the full married allowance and double rate bands in the calculation of the tax of the spouse with the Irish income, the specified amount will exceed the amount of Irish tax deducted through the PAYE system, for instance, from the spouse with the Irish income, during the year. In such cases Irish liability will only be discharged on the payment of a further substantial amount of tax to bring the total tax for the year up to the specified amount. Example 2B illustrates the position.

<sup>1</sup> Assume interest of £3,375 x 80% - £200 = £2,500 @ 24% = £600

<sup>2</sup> Assume health insurance of £700 @ 24% = £168

## EXAMPLE 2A

Assume Spouse A uses the single personal allowance and rate bands for the purposes of paying PAYE on the Irish income of £30,000.

Income Spouse		£30,000
Personal allowance	£3,150	
PAYE allowance	<u>£800</u>	<u>£3,950</u>
		£26,050
Tax	£10,000 @ 24%	£2,400
	£16,050 @ 46%	<u>£7,383</u>
		£9,783

Credit for -

Mortgage interest and health insurance	<u>£768</u>
Tax paid under PAYE	£9,015

In this case the tax of £9,015 paid under the PAYE system exceeds the specified amount of £8,866 giving the taxpayer an entitlement to a refund of £149. In these circumstances a payment of Preliminary Tax would not be necessary for 1998/99

## EXAMPLE 2B

Assume Spouse A uses the married personal allowance and rate bands for the purpose of paying PAYE on the Irish income of £30,000.

Income Spouse A		£30,000
Personal allowance	£6,300	
PAYE allowance	<u>£800</u>	<u>£7,100</u>
		£22,900
Tax	£20,000 @ 24%	£4,800
	£2,900 @ 46%	<u>£1,334</u>
		£6,134

Credit for -

Mortgage interest and health insurance	<u>£768</u>
Tax paid under PAYE	£5,366

In this case the tax of £5,366 paid under the PAYE system falls substantially short of the specified amount of £8,866 leaving a net liability of £3,500 to be made up. In these circumstances a payment of Preliminary Tax of £3,150 (assuming the 90% rule applies) is necessary.

# COMPLIANCE - Returns Compliance Programme 1999

## Introduction

Previous issues of *Tax Briefing* have outlined details of the annual Returns Compliance programmes and the action of the Companies Office in 1998/1999 in striking-off companies that have not filed returns. This article sets out briefly some of the proposals for Returns Compliance programmes in 1999 and will be dealt with under two separate headings:

- Income Tax
- Corporation Tax.

### Note

*[If your client has ceased, died, moved address, gone into liquidation, changed employment etc. please contact the tax office immediately to avoid further unnecessary contacts from Revenue.]*

## Corporation Tax

The final due date for all company returns for accounting periods ending in 1997 expired on 30 September 1998. These returns will be the main focus of the 1999 programme. In January 1999 we will be writing to all Company Secretaries that still have not filed the company returns for accounting periods ending in 1997.

Due to technical difficulties it will not be possible to issue a copy of these letters or a list of cases to agents at that time. However, agents will, on request, be able to get a list of their cases from Districts in March when the final lists of defaulters are extracted.

In March 1999 the remaining '1997' non-filers will be targeted by tax officials by telephone, visit and interview. At this stage in the programme the '1997' non-filers will be linked to the lists of persistent non-filers who have returns outstanding for a number of years. In 1999, particular attention will be given to those companies who have repeatedly defaulted. The persistent non-filing programme for companies only commenced fully in 1998 and it is intended to build on the success of this programme in 1999. Cases will continue to be pursued by:

- Criminal prosecution under *Section 1078 Taxes Consolidation Act 1997*
- Referral to audit
- Direct referral of unpaid taxes to the enforcement agencies i.e. sheriff and solicitor
- The issue of attachment notices.

In this regard, Inspectors of Taxes are now authorised to send cases directly to the sheriffs and solicitors and issue attachment notices.

In parallel to this programme Revenue will also be reviewing the lists of Companies that have been struck off by the Companies Office.

## Income Tax

It is that time of the year again! Both practitioners and we are looking at and planning for the prospect of large numbers of 1997/98 income tax returns being completed and processed ..... the 31 January deadline is upon us all again.

### Note

*[As the 31 January 1999 falls on a Sunday, returns received by close of business on Monday 1 February 1999 will be regarded as received on time.]*

Last year we saw a positive improvement in the rate of timely compliance for Income Tax from 75% to 77%. Thank you for your assistance in improving this rate. It is quite clear from improved filing figures achieved later in 1998, however, that this figure could be significantly improved upon in 1999. This can be done with the benefit of early planning and the promotion of the concept of timely filing by explaining the benefits of timely filing to our mutual customers.

From our perspective, we will be running a publicity campaign in the media in January 1999 to encourage and promote timely filing. Our Customer Service staff will, as always, be available to assist you with any queries you have in relation to your clients tax affairs. We ask you please to contact the tax offices well in advance of the 31 January deadline to discuss problems and clarify issues. Please do not leave it to the last minute.

### What are the benefits of timely filing or to put it another way, what are the consequences of late or non-filing?

- **Surcharge:** Where a return of income is delivered within two months after the return filing date (i.e. by end March 1999), a surcharge of **5%** of the tax liability is imposed subject to a maximum surcharge of **£10,000**. This is increased to **10%** of the tax liability if the return is delivered two months or more than two months after the return filing date. The maximum surcharge at this stage is **£50,000**.
- **Screening for Audit:** All late filers are screened for possible audit each year.
- **Payment/Interest:** Timely filing means that the return is processed and the customer is aware of the amount due in advance of the payment due date for the balance of the tax i.e. 30 April 1999. This enables customers to schedule their finances and to avoid interest, at a rate of 1% per month (12% per annum) if a sufficient amount of preliminary tax has been paid previously.
- **Contact with the Tax Office:** Failure to file a return will result in direct contact between the Tax Office and your client. Every non-filing individual will be written to in March 1999. This will be followed up by telephone calls, visits etc. to your clients premises by tax officials.
- **Ultimate consequences:** Failure to file may ultimately result in criminal prosecution under *Section 1078 Taxes Consolidation Act 1997* with a fine of £1,000 and /or a term of imprisonment.
- **Other consequences:** These include possible audit of the books and records, enforcement of the liability by the sheriff or solicitor or the issue of an attachment notice by the Inspector of Taxes. As stated above, Inspectors of Taxes are now authorised to proceed with the various enforcement measures directly.

We will give you more details of the plans for the Income Tax programme and the 'old' persistent non-filers in the next issue of ***Tax Briefing***. However, in the meantime there is one piece of news that should be of interest to you. As in prior years all 1997/98 non-filers will receive a letter in March from their tax office requesting their outstanding returns. ***It is our intention this year to issue practitioners with copies of these letters simultaneously.*** This facility has not been available for the last two years due to technical difficulties and we are pleased to inform you that these have now been resolved for the Income Tax letters. You will receive a copy letter for each of your clients.

## DIRECT DEBIT - Revised Schemes

### Revised Scheme announced for VAT and PAYE/PRSI

#### Introduction

Revenue has announced changes to the Direct Debit scheme for VAT and PAYE/PRSI. The new scheme, which allows one direct debit instruction for both VAT and PAYE/PRSI also offers greater flexibility for those traders in seasonal businesses.

#### Summary

The following is a summary of the terms:

- A single direct debit instruction can be made to cover both VAT and Employer's PAYE/PRSI liabilities. Leaflet CG7 contains the Direct Debit application form and explanatory notes.
- Traders in seasonal businesses can now join the scheme, which can be adapted to suit their needs, i.e. deductions can now be set to match the liability as it is expected to arise. Leaflet CG8 contains the Direct Debit application form and explanatory notes
- Traders on Direct Debit are automatically included in the Annual Accounting Scheme, i.e. only one return is required for the year
- Monthly deductions, which are set by the trader in consultation with Revenue, must be sufficient to cover the annual liability
- Where trading conditions change during the course of the year, the Direct Debit deductions can be amended to reflect this change
- Revenue will only change the monthly deduction on written instruction from the trader
- Where, exceptionally, a balancing payment is due at the end of the year, it must be submitted with the annual return
- Deductions are made from the nominated bank account on the third last working day of the month.

For further information and application forms (CG7 for standard business, CG8 for seasonal business) please contact:

*Collector General's Office,  
Apollo House,  
Tara Street,  
Dublin 2.*

Telephone: 01 - 671 8011 or any tax office.

## Direct Debit for Preliminary Tax (Income Tax)

The *Finance Act 1998* announced a major change to the deduction period for direct debit payments for Preliminary Tax. The change, which will come into effect in 1999, will change the deduction period for Direct Debit payments for Preliminary Tax due by 1 November from **January - December** to **April - March**. This change will mean that a taxpayer on Direct Debit for Preliminary Tax, due by November 1999, will have the first deduction made in April 1999 and the final deduction made in March 2000.

Applications to commence in April 1999, will be accepted up to and including 19 March 1999.

For those already on Direct Debit for Preliminary Tax, no deductions will be made for the months January - March 1999. Deductions in respect of Preliminary Tax for 1999/2000 will recommence in April 1999. A separate notification will issue to these taxpayers in the near future.

For further information and application forms, please contact:

*Collector -General's Office,*

*Apollo House,*

*Tara Street,*

*Dublin 2.*

Telephone 01 - 671 8011 or any tax office.

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.



## COLLECTOR-GENERAL'S - Update

### Collector-General's Office now On-Line

The Collector-General's Office can now be contacted on-line at the following E mail address:

**CG-General@revenue.irlgov.ie**

### Submission of returns and payments to Collector-General's Office

Returns and payments to the Collector-General should normally be made in the pre-addressed envelope provided with the return. There may be instances [e.g. in relation to preliminary tax] where agents/practitioners would prefer to hand deliver a return/payment. In such cases, agents or practitioners may make payments or deliver returns on behalf of clients to the *Collector-General's Office, Apollo House, Tara Street, Dublin 2* even if the return address shown on the documentation issued is the *Collector-General's Office, Sarsfield House, Limerick*.

### Timely submission of VAT repayment claims

The Collector-General would ask practitioners to remind their clients that it is in their own interest to submit VAT repayment claims by the due date i.e. the 19th of the month following the return period. The sooner the claim is submitted, the sooner the repayment can be made.

Under the fast track electronic repayment system the Collector-General is now repaying claims into traders' Bank/Building Society accounts within 10 working days of receipt of claims. Any traders who have still not forwarded the relevant Bank/Building Society account details should do so immediately as, without those details, the Collector-General is unable to process repayments.

For further information or assistance please contact:

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

Telephone: 061 - 310310

For Dublin Callers: 01 - 677 4211

LoCall No: 1890 203070

Fax: 061 - 401013

### Post Dated Cheques

In Issue 28 of *Tax Briefing* and again in Issue 32, tax practitioners were reminded that, without prior approval of the Collector-General, payment of tax by means of post dated cheques is not acceptable. An interest campaign has now commenced in relation to such cases.

## INTERNET SITE

Revenue's Web Site <http://www.revenue.ie>

We have now published details of Precedents which we currently draw upon in making decisions. The index of precedents can be found at:

**<http://www.revenue.ie/foi/precednt/topics.htm>**

A Double Taxation Convention was signed on 22 October 1998 between Ireland and Mexico for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains. A copy of the Convention can be found at: **<http://www.revenue.ie/country.htm>**

We have also published the "Notes for Guidance" on the *Taxes Consolidation Act 1997* on our web site. 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 Notes for Guidance can be found at: **<http://www.revenue.ie/cta/introcta.htm>**

The new booklet "Revenue and the Euro - A Business Guide" and Euro election forms will be published on the site in the near future. Those interested in downloading the booklet and election forms should check the "Whats New" section of our site

## Corporation Tax - ACT & Surcharge

### Set off of ACT against Close Company Surcharge

This subject was referred to previously in *Tax Briefing* Issue 24 in which the Revenue view of the matter was set out. However, following the receipt of detailed submissions from tax practitioners and representative bodies and the follow up discussions, Revenue are now prepared to accept that **advance corporation tax may be set off against a close company surcharge**, subject to the normal rules.

## REVENUE NEWS - Update

### Tax Briefing Survey

Thanks to all practitioners who took the time to reply to the survey sheet which issued with *Tax Briefing* Issue 33. The results of the survey are currently being compiled and will be published in the next issue. We will try as far as possible to implement the suggestions made and in doing so ensure that the magazine continues to meet the needs of readers.

### New Leaflets/Guides

**IT60** - Home Loan Interest Relief (September 1998) - This new leaflet also incorporates a claim form for interest relief.

**IT61** - A Revenue Guide to Professional Services Withholding Tax for Accountable Persons and Specified Persons (October 1998)

**IT62** - A Guide to Profit Sharing Schemes (October 1998)

Code of Practice for Revenue Auditors (November 1998)

Copies of **IT61**, **IT62** and the Code of Practice for Revenue Auditors are enclosed with this issue of *Tax Briefing*.

Further supplies are available from the *Revenue Forms & Leaflets Service* at 01 - 878 0100 or from any tax office.

### Taxes Consolidation Act 1997 - Publication of CD-Rom

The Department of Finance and the Revenue Commissioners have jointly published a CD-Rom containing:

- The text of the *Taxes Consolidation Act 1997*
- Comprehensive section by section Notes for Guidance prepared by the Revenue Commissioners on the provisions of the *Taxes Consolidation Act 1997*
- The destination table published with the Act showing the location in the Act of all pre-consolidation legislation
- The summary published with the *Taxes Consolidation Bill 1997*, which briefly outlined the provisions of the Bill.

The CD-Rom contains comprehensive hypertext links between and within documents, together with a sophisticated search facility.

The CD-Rom costs £99 and is available:

- (1) By Mail Order\* from:  
*Government Publications*  
*Postal Trade Section,*  
*4-5 Harcourt Road,*  
*Dublin 2*  
Telephone: 01 - 661 3111  
Ext. 4040/4045  
**or**
- (2) Over the counter from:  
*Government Publications Sale Office,*  
*Sun Alliance House,*  
*Molesworth Street,*  
*Dublin 2.*

**or**  
through any major bookseller  
\* Plus postage .45p (payment may be made by cheque or credit card).

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 Board and Senior Management of the Revenue Commissioners

The following is an updated list of the Board and Senior Management of the Office of the Revenue Commissioners following some new appointments and changes in assignments:

**Dermot Quigley**

Chairman

**Frank Daly**

Commissioner

**Josephine Feehily**

Commissioner

**Chris Clayton,**

Deputy Secretary, Chief Inspector of Taxes - Office of the Chief Inspector of Taxes

**Bobby Harrington,**

Assistant Secretary Compliance, Audit & Investigation

**Norman Gillanders,**

Assistant Secretary, Customer Service & Technical Services

**Frank Mullen,**

Assistant Secretary, Direct Taxes International & Administration Division

**Michael O'Grady**

Assistant Secretary, Direct Taxes Policy Legislation & Statistics Division

**Liam Irwin**

Assistant Secretary, Collector-General Office of the Collector-General

**Tom Duffy**

Assistant Secretary, Customs & Residence Division

**Sean Connolly**

Assistant Secretary, Information & Communications Technology Division

**Eamonn Fitzpatrick**

Assistant Secretary, Customs & Excise Enforcement Division

**Paddy Dowling**

Assistant Secretary, Customs & Excise Collections Division

**Frances Cooke**

Assistant Secretary, Revenue Solicitor's Office

**Maureen Moore**

Assistant Secretary, Capital Taxes Division

**Sean Moriarty**

Assistant Secretary, Human Resources Division

**Seamus Feely**

Assistant Secretary, Accountant General, Corporate Management Division

**Séan Ó Séaghdha**

Assistant Secretary - Acting Indirect Taxes Policy & Legislation Division