

TAX BRIEFING

STAMP DUTY

Consolidation Bill 1999



Stamp Duties Consolidation Bill 1999

Consolidation

The *Stamp Duties Consolidation Bill 1999* was published on 3 November 1999. It is expected that the Bill will be enacted before the end of December 1999.

This is the first time that an attempt has been made to consolidate stamp duty legislation. The Consolidation Bill contains all those provisions which were previously contained in the *Stamp Act 1891* and subsequent Finance Acts.

Preparation of Consolidation Bill

The approach adopted in preparing the Consolidation Bill was similar to the approach adopted for the *Taxes Consolidation Act 1997*. For example, the elements of public/private partnership which worked so well for the 1997 Act were retained in that drafts of the Bill were made available at different stages to the Law Society of Ireland, The Institute of Taxation in Ireland and the Consultative Committee of Accountancy Bodies - Ireland. In addition, the draft Bill was examined by two external referees last year.

The use of archaic language and of the old-fashioned device of using

“provisos” to qualify the meaning or scope of a section have also been eliminated in the Bill.

Pre-Consolidation Measures

A substantial number of pre-consolidation measures, designed to facilitate the more orderly consolidation of stamp duty law, were included in the Finance Acts, 1996, 1998 and 1999. These measures consisted in the main of the repeal of provisions which were no longer required.

We hope that the end product adequately reflects the views we received and will result in tangible improvements for practitioners advising in the area of stamp duty law and for Revenue staff who have to administer the law.

Structure of Consolidation Bill

While the Consolidation Bill does not change existing stamp duty law in any way it does put a new structure on that law. The Consolidation Bill is divided into 12 Parts as follows:

- ▼ **Part 1** consists of definitions and rules of construction. Definitions of terms which are used throughout the Bill are now contained in this Part. (Definitions which only apply to a particular section are contained at the beginning of that section.)
- ▼ **Part 2** contains the charging section (*section 2*) and other general provisions relating to the payment and recovery of stamp duties on instruments. The heads of charge are still set out in alphabetical order in *Schedule 1*
- ▼ **Part 3** sets out how property is to be valued for the purposes of stamp duties
- ▼ **Part 4** contains provisions relating to the assessment of stamp duty and appeals against such assessments

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KEY DATES

December

14 PAYE/PRSI
P30 monthly return and payment for month ended 5 December

14 DWT
Return and payment of DWT for month ended 30 November

1-28 Corporation Tax
Preliminary Tax for APs ending between 1-30 June

1-31 Corporation Tax
Returns for APs ending between 1-31 March

1-31 Corporation Tax
Returns of Third Party Information for APs ending between 1-31 March

January

14 PAYE/PRSI
P30 monthly return and payment for month ended 5 January

14 DWT
Return and payment of DWT for month ended 31 December

19 VAT
VAT 3 return and payment for period November/December

1-28 Corporation Tax
Preliminary Tax for APs ending between 1-31 July

1-31 Corporation Tax
Returns for APs ending between 1-30 April

1-31 Corporation Tax
Returns of Third Party Information for APs ending between 1-30 April

31 Income Tax
Return of Income

31 Capital Gains Tax
Return of Capital Gains

31 Income Tax
Return of Third Party Information

February

14 PAYE/PRSI
P30 monthly return and payment for month ended 5 February

14 DWT
Return and payment of DWT for month ended 31 January

1-28 Corporation Tax
Preliminary Tax for APs ending between 1-31 August

1-29 Corporation Tax
Returns for APs ending between 1-30 May

1-29 Corporation Tax
Returns of Third Party Information for APs ending between 1-30 May

EDITORIAL

On behalf of the **Tax Briefing** team I would like to take this opportunity to wish all our readers and contributors a very Happy Christmas and Best Wishes for the Millennium Year 2000.

At this time it is appropriate to extend sincere thanks to the various Technical Services and Policy Units within Revenue who contributed articles in 1999. These welcome submissions, which ranged from timely information to analysis, added greatly to the quality and scope of each issue.

Thanks are also due to the many practitioners who expressed their support and outlined their views on the content of the materials published. These welcome

suggestions greatly assisted in ensuring that the articles were kept both topical and relevant. We look forward to receiving this ongoing support and your suggestions on topics of practical interest which you would like included in future issues.

The foregoing contributions and support will ensure the continued success of **Tax Briefing**.

Due to changes in assignments, the role of Editor of Tax Briefing falls to me with effect from the current issue. Our best wishes go to our former Editor, John Leamy, who has been assigned full time to the Revenue On-Line Service (ROS) project. We take this opportunity to say 'Thanks' and 'Best Wishes' to John for the future.

As the new Editor I look forward, with confidence, to working with all concerned in continuing to provide a quality tax information publication. As we enter a new Millennium **Tax Briefing** will continue to play an important role in addressing the policy and administrative developments of our taxation system.

Finally, I would like to say a special word of thanks to the Customer Service Unit team for their dedication and skills in meeting the publishing and design requirements for each issue.

Nollaig agus athbhliain faoi shéan is faoi mhaise daoibh go léir.

Denis Holligan,
Editor.

STAMP DUTY

Continued from page 1

- ▼ **Part 5** consists of a number of sections which explain and/or supplement *Schedule 1*. This Part is arranged in the same order as the heads of charge to which they refer are arranged in *Schedule 1*
- ▼ **Part 6** imposes stamp duty on securities the title to which is transferred electronically via the CREST system
- ▼ **Part 7** contains exemptions and reliefs from the charge to stamp duty on instruments
- ▼ **Part 8** imposes companies capital duty
- ▼ **Part 9** imposes a number of levies i.e. on cash (or ATM) cards, on credit cards and charge cards, on non-life insurance premiums and on "section 84" loans
- ▼ **Part 10** sets out how payment of stamp duties is to be enforced
- ▼ **Part 11** contains those provisions previously contained in the *Stamp Duties Management Act 1891*
- ▼ **Part 12** contains provisions relating to the commencement of the *Stamp Duties Consolidation Act 1999*, repeals and the short title of the Act.

A Destination Table has been printed with the Consolidation Bill to enable readers to track the old legislation into the new. In addition, the

statutory derivation of each section of the Bill is shown in the margin alongside the section in question.

When enacted the *Stamp Duties Consolidation Act 1999*, will apply to:

- ▼ All instruments listed in *Schedule 1* (including operator-instructions generated within the CREST system) which are executed on or after the date of passing of the Act
- ▼ All transactions liable to companies capital duty which take place after the date of passing of the Act and
- ▼ The various levies where the relevant statements fall to be delivered on or after the date of passing of the Act.

Instruments - Wording of Certificates

As the "old" legislative references will change there will be consequential changes to the wording of the various certificates which have to be inserted into relevant instruments. A leaflet is being prepared setting out the wording of all the new certificates. This leaflet will be available as soon as the Bill has gone through all stages in the Dáil and Seanad. The wording of the new certificates should be

inserted in all instruments executed on or after the date of passing of the Act.

Guidance Notes

As soon as possible after the Bill is enacted we hope to publish Guidance Notes. The Guidance Notes, which will be on sale in the *Government Publications Sales Office, Molesworth Street, Dublin 2*, and will also be made available in electronic form on our website [at www.revenue.ie], will set out in plain language what each section in the *Stamp Duties Consolidation Act 1999* is about. In addition, the Guidance Notes refer, where appropriate, to relevant stamp duty forms, leaflets and statements of practice.

Stamp Duty Forms

Until such time as revised versions of our forms quoting the relevant sections of the *Stamp Duties Consolidation Act 1999* are made available existing forms may continue to be used.

Further Information

A notice will be placed in the national newspapers to inform you of the date of enactment.



BUDGET 2000

The following is a summary of the main highlights of the Budget as announced on 1 December 1999. The details are subject to the normal legislative process and to the enactment of the necessary legislation in the *Finance Act 2000*.

CAPITAL ACQUISITIONS TAX

Family Home Relief

For gifts or inheritances of the family home taken on or after 1 December 1999, CAT will no longer apply provided:

- ▼ It is the principal private residence of the donor and/or the recipient
- ▼ The recipient has been living in the house for the 3 years prior to the transfer
- ▼ The recipient does not have an interest in any other house, and
- ▼ The recipient does not dispose of the house for 6 years after the transfer.

Thresholds and Rates

For gifts and inheritances taken on or after 1 December 1999:

- ▼ The class thresholds have been increased to: Class I - £300,000; Class II - £30,000; Class III - £15,000
- ▼ A single 20% rate of tax replaces the multiple rate structure (the one quarter reduction in the rate for gifts as compared to inheritances will not apply).

Replacement of Domicile Rule by Resident/Ordinarily Resident Rules

Gifts or inheritances of non-Irish situated property, taken on or after 1 December 1999, will be liable to tax where **either** the donor or beneficiary is resident or ordinarily resident in the State. Special provisions will apply for non-Irish domiciled persons and for gifts or inheritances taken under a trust or settlement existing on 1 December 1999. The taxation of property situated in the State is unchanged.

PROBATE TAX

Exemption Threshold

The exemption threshold for Probate Tax has been increased from £11,250 to £40,000 in respect of deaths occurring on or after 1 December 1999.

STAMP DUTY

Young Trained Farmers

The relief on transfers of land to young trained farmers, which was due to expire on 31 December 1999 has been extended to 31 December 2002.

Highlights

Leases on Dwellinghouses and Apartments

The annual rent threshold below which a lease of a dwellinghouse or apartment for any indefinite term or any term not exceeding 35 years is exempted from stamp duty has been increased from £6,000 to £15,000 from 1 December 1999.

INCOME TAX

Personal Allowances

In his Budget Statement on 1 December 1999 the Minister for Finance announced the extension of the standard rating of personal allowances to cater for the introduction of a full tax credit system from 6 April 2001. A full list of the personal allowances which will be standard rated from 6 April 2000 is given in the Chart below. Standard rating means that tax relief will be given at the standard rate of tax, 22%.

Personal Allowance	1999/2000		2000/2001
	Amount at		
	Standard Rate 24%	Individual's Highest Tax Rate 24% or 46%	Amount at Standard Rate 22%
Single Person	£4,200	-	£4,700
Married Person	£8,400	-	£9,400
Widowed Person			
- without dependent children	£4,200	£500	£5,700
- with dependent children	£4,200	£500	£4,700
One-Parent Family			
Widowed Person	£1,050	£2,650	£4,700
Other Person	£1,050	£3,150	£4,700
Widowed Parent Allowance			
Bereaved in 1999/2000		-	£10,000
1998/99		£5,000	£8,000
1997/98		£4,000	£6,000
1996/97		£3,000	£4,000
1995/96		£2,000	£2,000
1994/95		£1,000	-
PAYE Allowance	£1,000	-	£1,000
Age Allowance			
Single/Widowed	-	£400	£800
Married	-	£800	£1,600
Blind Allowance			
One Spouse Blind	-	£1,500	£3,000
Both Spouses Blind	-	£3,000	£6,000
Incapacitated Child	-	Max. £800	Max. £1,600
Dependent Relative	-	Max. £110	Max. £220



Tax Rates, Bands & Tables

The tax rates are being reduced by 2% - from 24% to **22%** and from 46% to **44%**.

As part of a move towards individualisation of the standard rate bands:

- ▼ The standard rate band will be widened from £14,000 to £17,000 for a single or widowed person without dependent children
- ▼ A new standard rate band of £20,150 will be introduced for a single or widowed person with dependent children
- ▼ The standard rate band for a married couple with one income will remain unchanged at £28,000
- ▼ The standard rate band for a married couple, both with income, will be £28,000 subject to an increase of up to £6,000. The increase will be the lower of £6,000 or the amount of the income of the spouse with the lower income - this increase is not transferable between spouses.

Tax Tables, Table Allowances & Tax Bands for 2000/2001 are:

Tax Table	Table Allowance	Bands of Taxable Income
A	Single/Widowed without dependent Children	
	Nil	£17,000 @ 22% Balance @ 44%
	Single/Widowed with dependent children	
	Nil	£20,150 @ 22% Balance @ 44%
B	Single/Widowed without dependent children	
	£8,500	All @ 44%
	Single/Widowed with dependent children	
	£10,075	All @ 44%
Married		
R	Nil	£28,000 (with increase of max. £6,000 - see above) @ 22% Balance @ 44%
S	£14,000 (with increase of max. £3,000* - see below)	All @ 44%
Marginal Relief Cases		
Z	Nil	All @ 44%

*The increase of up to £3,000 for Table S is not transferable between spouses.

Exemption Limits

Single/Widowed	1999/2000	2000/2001
General Limit (under 65 years of age)	£4,100	£4,100
65 years of age & over	£6,500	£7,500
Married		
General Limit (under 65 years of age)	£8,200	£8,200
65 years of age & over	£13,000	£15,000

Marginal Relief will continue to apply where income does not greatly exceed the relevant exemption limit.

The above exemption limits are increased by £450 for each of the first two dependent children and £650 for the third and subsequent children.

Rent Relief for Rented Accommodation

Rent relief will be increased as follows and will be available at the standard rate, 22%

Rent Allowance	Single	Widowed	Married
Under 55 Max.	£750	£1,125	£1,500
Over 55 Max.	£2,000	£3,000	£4,000

Mortgage Interest Relief

Home Loan Interest paid is allowable at the standard rate of 22% and is subject to the following maximum amounts:

First Time Buyer (First 5 years)

Single	£2,500
Married/Widowed	£5,000*

Others

Single	£2,000
Married/Widowed	£4,000*

The existing 80% and £100/£200 (single/married, respectively) restrictions have been abolished.

*Widowed Person's limit is now the same as that of a Married Couple.

Taxation of Unemployment Benefit

Systematic short-time workers will continue to be exempt from tax on Unemployment Benefit in 2000/2001.

Benefit-in-Kind - Preferential Loans

The "specified" rate for the purposes of calculating the benefit-in-kind on preferential home loans is being reduced from 6 April 2000. The specified rates will be:

Home Loans	4% (previously 6%)
Other Loans	10% (unchanged)

(Continued on page 6)



BUDGET HIGHLIGHTS

Continued from page 5

Childcare - Capital Allowances

Accelerated Capital Allowances are available on expenditure incurred on or after 1 December 1999 on the construction, refurbishment or conversion of a creche or nursery i.e. 100% of expenditure may be written off in Year 1. This is subject to clearance by the EU.

Cars - Capital Allowances

The cost threshold for capital allowances for new cars and running expenses for all cars has been increased from £16,000 to £16,500. This new limit will apply to expenditure incurred on or after 1 December 1999.

Farmyard Pollution Control

The scheme of accelerated capital allowances for expenditure on pollution control facilities on farms is being extended to 5 April 2003. From 6 April 2000 the expenditure limit is increased from £30,000 to £40,000.

Multi-Storey Car Parks

The qualifying period for expenditure incurred on qualifying multi-storey car parks situated outside the county boroughs of Dublin and Cork has been extended to 31 December 2002 where 15% of the total project cost is incurred by 30 September 2000.

Withholding Taxes

The rate of withholding tax on professional services and dividend income is being reduced from 24% to 22% with effect from 6 April 2000.

Deposit Interest Retention Tax

The standard rate of DIRT is being reduced from 24% to 22% with effect from 6 April 2000.

Film Relief

The period for investing in qualifying films is extended to 5 April 2005.

Investment Products

The rate of tax charged on income and gains of Life Assurance linked investment products, unit trusts and other collective investment products is being reduced from 24% to 22% from 6 April 2000.

New taxation rules will apply from 1 January 2001 to such products. At present the tax is calculated annually by reference to the income and gains of the product. From 1 January 2001 tax will be automatically deducted by the insurance company at maturity or exit from the investment. The investment return rate of charge will be the standard rate of tax plus 3%. New funds can opt for the new system after 1 April 2000.

SALE OF RESIDENTIAL LAND

A special 20% Income Tax/Corporation Tax rate on profits from sale of residential land applies for individuals from 1 December 1999 and for certain companies from 1 January 2000.

CORPORATION TAX

Rates effective from 1 January 2000

- 24% (previously 28%) for trading income
- 25% for non-trading income
- 12.5% for small and medium-sized enterprises where the trading income does not exceed £50,000 (provision for marginal relief where income does not exceed £75,000).

The rate for Manufacturing, IFSC and Shannon companies remains at 10%.

CAPITAL GAINS TAX

- 20% rate on disposals of development land, from 1 December 1999
- Retirement relief threshold for sale of a business is increased from £250,000 to £375,000 from 1 December 1999

VALUE ADDED TAX

The VAT "flat rate addition" payable to unregistered farmers will be increased from 4% to 4.2% with effect from 1 March 2000. The associated VAT rate for livestock etc. will also increase to 4.2% from the same date.

EXCISE DUTIES

Cigarettes: Price increase of 50p per packet of 20

Cigars: Price increase of 67p per 25 grams (approx.)

Fine Cut Tobacco: Price increase of 56p per 25 grams (approx.)

Other Smoking Tobacco: Price increase of 46p per 25 grams (approx.)

Kerosene: Price decrease of 1.38p per litre.

(All price increases/decreases are VAT inclusive)

PRSI & LEVIES

Class A

(Normal rate at which contributions are made)

Income (£)	Employer	Employee
Up to 26,500	12%	6.5%
26,501 - 36,600	12%	2%
Over 36,600	-	2%



Employees will continue to be exempt from PRSI on the first £100 per week (The weekly exemption of £20 for employees on a modified PRSI rate also remains unchanged).

Employees earning less than £226 per week will be exempt from the Health Contribution of 2%. The reduced rate of employer PRSI (8.5%) applies to employees earning up to £280 per week.

The employer contribution includes a 0.7% Training Fund Levy.

Class S (Self-Employed)

Income (£)	Rate
Up to 26,500	7%
Over 26,500	2%

Exempt from PRSI on the first £1,040 of annual income

Exempt from the Health Contribution of 2% where annual income is less than £11,750

Minimum annual PRSI contribution is £215

Internet

Budget 2000 details are also available on the Revenue Internet site at <http://www.revenue.ie>

Capital Allowances/Resort Areas

Construction or Refurbishment of certain Commercial Premises

Section 353 Taxes Consolidation Act 1997

For the purposes of this section, tourist accommodation facilities are required to be registered by Bord Fáilte Éireann under *Part III of the Tourist Traffic Act 1939*, or specified in a list published under *Section 9 of the Tourist Traffic Act 1957*.

Persons wishing to claim capital allowances under this section should note that they are obliged by the legislation to maintain the registration or listing with Bord Fáilte for all years. ***It is not sufficient that the premises be registered or specified in a list only for the initial year in which the capital allowance is claimed.*** It should also be noted that the requirement to maintain the registration or listing with Bord Fáilte applies whether relief is claimed in a year or not.

Section 353(5)(a) TCA 1997 provides for the imposition of a balancing charge in the event of a premises ceasing to be registered or specified in a list within the period of 11 years after the qualifying premises is first used.

SPECIAL TRUSTS

Permanently Incapacitated Individuals

Special trusts for permanently incapacitated individuals

Introduction

Section 189A TCA 1997 (inserted by *Section 12 FA 1999*) provides **certain exemptions from income tax** for:

- The trustees of trusts which are established with funds raised by public subscriptions for the benefit of permanently and totally incapacitated individuals
- and
- The incapacitated individuals in respect of payments made by the trustees of such a public subscription trust to or for their benefit.

The section is applicable for 1997/1998 and subsequent years of assessment.

This article sets out the main features of the exemption.

Conditions of Exemption

Qualifying Trust

To qualify for relief a trust established by deed has to satisfy the following:

- ▼ The trust must be created exclusively for the benefit of one or more than one named incapacitated individual (see below) for the duration of the life of that individual or the lives of those individuals, as the case may be.
- ▼ The trustees hold trust funds which:
 - are to be applied for the benefit of the named incapacitated individual or individuals,
 - and
 - in the event of the death of the incapacitated individual or individuals, the undistributed part of the trust funds are to

be applied for charitable purposes or are to be appointed in favour of the trustees of other charitable bodies.

- ▼ None of the trustees are connected with the incapacitated individual or individuals.

Incapacitated Individual

An incapacitated individual means an individual who is permanently and totally incapacitated, by reason of mental or physical infirmity, from being able to maintain himself or herself.

Trust funds

The funds in a qualifying trust can consist of the following:

- ▼ Public subscriptions raised on behalf of the incapacitated individual or individuals for whose benefit the trust was created



SPECIAL TRUSTS

Continued from page 7

If a couple are assessed under the provisions of *Section 1017 TCA 1997* (aggregation basis), the "sole or main" test should be applied only to the income of the incapacitated spouse, and not to the aggregated income of both spouses in determining if exemption is due.

The exempt income is not to be taken into account in computing total income for tax purposes.

Requirement to make a return

Notwithstanding the exemptions provided, returns of total income must be made. This means that the exempt income must be shown on the returns made by the trustees and the incapacitated individuals.

Deposit Interest Retention Tax

- ▼ All moneys and other property derived directly or indirectly from such public subscriptions. This would include secondary investments (e.g. deposit interest) and secondary investment income (e.g. rental income).

Public subscriptions

Public subscriptions mean subscriptions raised following a public appeal and either of the following conditions are met:

- ▼ The total subscriptions raised are £300,000 or less
- or
- ▼ The subscriptions, at any time on or after the return date for the period in which the exemption is first claimed, do not contain a subscription made by any one person which exceeds 30 per cent of the total subscriptions raised.

There is thus no upper limit put on the quantum of funds that can be raised by public subscription. However, if the subscriptions exceed £300,000 no single person may contribute more than 30 per cent of the total amount of the subscriptions.

Income covered by the exemption

The exemption covers:

- Dividends and income arising to the trustees which otherwise would be chargeable to tax under Schedule C or under Case III, Case IV (in circumstances where tax has been deducted at source under *Section 59 TCA 1997* and under *Section 745 TCA 1997* where tax has not been deducted at source) or Case V of Schedule D, or Schedule F.
- Income arising to the incapacitated individual in respect of payments made by the trustee, together with income arising from the investment of payments made by the trustees out of the trust fund and consisting of dividends or other income chargeable to tax under Schedule C or Cases III, IV or V of Schedule D or Schedule F. The exemption under Case IV covers income from which tax has been deducted at source under *Section 59 TCA 1997* and income from which tax has not been deducted at source under *Section 745 TCA 1997*.

The exemption, in the case of the individual, only applies where the payments made by the trustees and dividends or other income referred to above are the **sole or main income** of the individual. "Sole or main" means more than 50 per cent.

If the incapacitated individual is in receipt of an invalidity pension or benefit payable by the Department of Social, Community and Family Affairs, and the individual's injury or disability which gave rise to the payment of the benefit/pension by that Department is the same injury or disability for which the public appeal was made and the special trust established, then that benefit/pension will not be taken into account **for the purposes of determining whether the investment income** is

the sole or main income of the individual.

Repayment of appropriate deposit interest retention tax (DIRT) can be made to trustees of trusts which qualify for exemption from tax under *Section 189A TCA 1997* in respect of interest arising from the investment of the trust funds which is paid on or after 6 April 1997.

The incapacitated individual who is entitled to exemption under *Section 189A TCA 1997* can claim a refund of deposit interest retention tax attaching to such income even though the relevant interest does not form part of his/her total income.

Dates applicable

The exemption applies for 1997/98 and subsequent years of assessment even where the public subscriptions were raised or the qualifying trusts were established by deed prior to 6 April 1997.

Claims under the Section

As noted above, the trustees and the individual are required to submit annual returns of income. When a claim under the section is first made the following documentation should be submitted to the tax office:

- ▼ A medical certificate stating the cause, nature and extent of the infirmity, and the nature and extent of the individual's incapacity
- ▼ Copy of the trust deed
- ▼ A declaration from the trustees confirming that the conditions regarding 'public subscriptions' contained in *Section 189A TCA 1997* and which are referred to above, are met.



COMPLIANCE CAMPAIGN

2000

Corporation Tax Returns for accounting periods ending in 1998

Return due dates

The final due date for all companies in respect of corporation tax returns for accounting periods ending in 1998 expired on 30 September 1999. We ask for your co-operation in ensuring that all companies which you represent that have not submitted their corporation tax return for any accounting period ending in 1998 do so now.

We would appreciate if you would notify Revenue when a client company of yours moves address, goes into liquidation, is dissolved, etc. This may avoid further unnecessary contact from Revenue.

Commencement of the Compliance Campaign

The compliance campaign in respect of corporation tax returns for accounting periods ending in 1998 will commence in January 2000 with the issue of a letter to the secretaries of all non-compliant companies seeking that tax return. This letter (see draft at the end of this article) differs from that which issued last year.

Unlike previous years, there will not be a reminder one month later.

Tax Practitioners

As in previous years, practitioners will, on request, be able to get a list of their non-filer client cases from Districts circa mid February 2000 when the final lists of the non-filers are extracted. Districts have advised that very few practitioners sought lists of their non-filers last year.

Targeting of non-filers

While we aim to target all non-filers, those with more than one tax return outstanding will be the priority target.

Contact by tax officials

During the campaign in 2000, company secretaries (or other company officers or representatives) may be contacted by a tax official by way of telephone or personal visit and asked to submit **all** the company's outstanding corporation tax returns. In some instances, the company representative may be asked to call into the tax office to resolve issues relating to non-compliance.

Companies which have been:

- Convicted in respect of non-filing offences or
- Targeted as part of previous non-compliance campaigns

may not receive one of these 'contacts' and are likely to be referred immediately to prosecution stage in respect of all current outstanding corporation tax returns.

Criminal Prosecution

Criminal prosecution under *Section 1078 TCA 1997* in respect of a non-filing offences is now a regular feature of our compliance campaigns [See separate articles in this issue on non-filer prosecutions].

We would like to bring to the attention of practitioners that, in addition to prosecuting a body corporate, *Subsection (5) of Section 1078 TCA 1997* allows, in certain circumstances, for the prosecution of:

- A director, manager, secretary of other officer of the body corporate or
- A member of the committee of management or other controlling authority of the body corporate in respect of a non-filing offence committed by the body corporate.

Consequences of late filing and non-filing

These are set out in detail on pages 21 and 22 of Issue 34 of **Tax Briefing** (December 1998) and continue to apply.

Draft letter to issue to non-compliant companies in January 2000

Corporation Tax Return Accounting period ending in the year ended 31 December 1998

Dear Sir/Madam,

This letter is issued to you in your capacity as secretary to the above company.

Contact reason	My records show that your company has not submitted a corporation tax return [i.e. a completed Form CT1] for the above period.
What should you do?	You should immediately either: <ul style="list-style-type: none">• Submit your company's corporation tax return in respect of the accounting period ending in the year to 31 December 1998, or• Contact this Office if for any reason you consider your company was not obliged to submit a corporation tax return for this period or if that tax return has already been submitted.
Criminal Proceedings	It is Revenue policy to institute criminal proceedings against those who do not submit their tax returns. These proceedings are taken in the name of the Director of Public Prosecutions and are listed for hearing in the local District Courts.

Yours faithfully,
Inspector of Taxes



COMPLIANCE CAMPAIGN

Court Proceedings

Prosecution for failure to submit Income Tax and Corporation Tax Returns

“Non-filer criminal convictions on the increase”

The number of criminal convictions for failure to submit tax returns is on the increase. The most recent figures show:

Year	Number of convictions in the District Courts	Total of fines imposed (i.e. After any mitigation granted by the court)
1997	311	£174,060
1998	857	£709,090
1999 to 30 June	665 [6 months]	£618,960 [6 months]

Details of some recent convictions

Many of those convicted did not take seriously the fact that **criminal** prosecution may follow the failure to submit their tax returns. This proved costly for some. For example, in the 3 months April - June 1999, 40 cases had fines totalling in excess of £1,500 imposed, 12 of these cases had fines totalling in excess of £4,000 imposed and in one of the cases, fines totalling £8,000 were imposed. [These fines are after any mitigation granted by the court]. More recently, **jail sentences were imposed in a number of cases.**

Brief details of some recent convictions are as follows:

Type of Case	Number of Offences	Were the tax returns submitted by the time of the court hearing	Legally represented in court	Result
Sole Trader	3	No	No [nor did the defendant appear in court]	Sentenced to 3 months imprisonment in respect of each offence - sentences to run consecutively.
Sole Trader	3	No	Yes	Fined £1,000 (not mitigated) in respect of each of 2 offences and sentenced to 1 month's imprisonment in respect of the third offence.
Sole Trader	4	No	Yes	Fined £1,000 (not mitigated) in respect of each of 3 offences and sentenced to 1 month's imprisonment in respect of the fourth offence.

What's the message?

The message we would ask practitioners to pass on to their non-compliant clients is that:

The costs of:

- The surcharge for late filing of a tax return
- The fines imposed by the court in respect of a non-filing offence
- Professional representation in court and/or

A possible jail sentence can be avoided if their tax returns are submitted on time.

For those practitioners who may not be aware of non-filer criminal prosecution procedure, a separate article on the subject is published below.

Criminal Proceedings

Introduction

This article which is set out in question and answer format:

- Focuses on prosecutions initiated by the local tax Inspector for failure to submit income tax and corporation tax returns
- Is intended as an aid to those practitioners who may not be familiar with the procedures relating to criminal proceedings for failure to submit an income tax or corporation tax return and
- Does **not** deal with persons charged with an indictable offence [which carries, on conviction, fines of up to £100,000 and/or a jail sentence of up to 5 years].

Who may be prosecuted?

Persons (individuals and bodies corporate) who do not submit their tax returns on time may be prosecuted under the provisions of *Section 1078 TCA 1997*. Particular focus is on those with more than one tax return outstanding.

Who prosecutes?

Non-filer prosecutions are generally taken by way of summary proceedings [in the District Courts] in the name of the Director of Public Prosecution [DPP] and prosecuted on behalf of the DPP by either the Revenue Solicitor [Dublin cases] or the relevant State Solicitor [non-Dublin cases].



Are the proceedings of a tax, civil or criminal nature?

Proceedings under the provisions of *Section 1078 TCA 1997* are **criminal** in nature [i.e. they are not what would generally be regarded as tax or civil matters]. While members of certain professional bodies may represent clients in court on tax matters, it is for the courts to decide whether or not a tax practitioner may represent a client in court on criminal matters.

Are the non-filing prosecution proceedings held in open court or 'in camera'?

The proceedings are held in open court which may be attended by the press and the public.

Are details of convictions for failing to submit tax returns published?

Yes. The names and addresses of those convicted are published in *Iris Oifigiúil*. In addition, reports of the non-filer court proceedings may be carried in both national and local papers at the time of the conviction.

Is the failure to submit tax returns for, say, 5 years just one offence?

No. If a person is being prosecuted for failure to submit tax returns for 5 tax years, then he/she will be charged with 5 separate offences.

What are the stages leading to prosecution for failure to submit a tax return?

Following the annual compliance campaign carried out by the Inspector of Taxes, cases are referred to the Revenue Solicitor with an instruction to institute legal proceedings in respect of failure to submit a tax return(s).

The Revenue Solicitor may either:

- Usually for first offenders, issue what is known as a 'pre-prosecution warning letter'. If the tax returns are **not** submitted within 21 days of issue of this letter, the prosecution procedure advances to the serving of a summons to appear in court
- or
- Advance the case immediately to the summons stage without the issue of a 'pre-prosecution warning letter'. For example, in cases where a person has previous convictions for failure to submit tax returns and is now being prosecuted again for similar offences in respect of later tax years.

Are there any further reminders or contact after the issue of the 'pre-prosecution warning letter' by the Revenue Solicitor?

No.

My client has been served with a summons to appear in court in respect of non-filing offences. If the tax returns are submitted immediately, will the proceedings be halted?

No. As the summons has been served, the case will have been listed for hearing in the District Court and the proceedings continue.

Does having the tax return submitted prior to the court hearing mean that the Judge will not convict?

No. However, it has been noticed that some Judges, in considering mitigation of the statutory fines imposed, take into account the fact that the tax returns have been submitted at the time of the court hearing.

What if the tax returns have not been submitted before the date of court hearing?

Firstly, *Section 211 Finance Act 1999* amends *Section 1078 TCA 1997* in that, where a person has been convicted of a non-filing offence, an application may now be made to the court to seek an order compelling that person to submit the outstanding tax returns(s).

Secondly, as outlined above, ensuring that the tax return has been submitted by the time of the court hearing may be a factor taken into account by the Judge in considering mitigation of the statutory fine.

What is the fine if convicted of a non-filing offence?

In cases taken by way of summary proceedings in the District Court, the fine, if convicted, is £1,000 per offence which, at the discretion of the court, may be mitigated to not less than £250 [**NB - see below as regards jail sentences**]

Can the Probation of Offenders Act 1907 apply, particularly for a first offence?

The 'Probation Act' **cannot** apply in non-filer prosecution cases - *Section 1078(8) TCA 1997* is specific on this point.

Can the Court impose a jail sentence on conviction?

Yes. In cases taken by way of summary proceedings in the District Court, the Judge may, on conviction, impose a prison sentence of not more than 12 months in addition to, or instead of, the fine.



FROM BUDGET TO FINANCE ACT

The Stages



The Fiscal Legislative Process

Introduction

This article gives an outline of the fiscal legislative process. It is not intended to be of an exhaustive nature - this would not be possible in the space available - but it is hoped that readers will find the material of interest. The material includes the budgetary process, the preparation of the Finance Bill, the Oireachtas procedures by which a "Bill" becomes an "Act" and the preparation of Statutory Instruments.

The Legislative Framework

The Finance Bill/Act gives effect to the taxation provisions of the Budget and the Government's taxation programme for the year. The Bill/Act is not produced in isolation, and account must be taken of certain rules and legal conventions. The principal legislation that governs that process includes:

- The Constitution of Ireland (1937)
- The Standing Orders
- The Provisional Collection of Taxes Act 1927
- The Interpretation Act 1937.

The Constitution of Ireland (1937)

The Constitution provides that a Money Bill, that is, a Bill imposing charges on the people (this includes the Finance Bill), may only be initiated in the Dáil and may not be amended by the Senate.

Articles 20, 21, 22, and 25 of the Constitution are concerned with legislation, including a Finance Bill or Act, which is classified as a "Money Bill/Act". The relevant articles are:

Article 20:

States that a Money Bill may only be initiated in Dáil Éireann and may not be amended by An Seanad.

Article 21:

States that if a Money Bill has not been returned by An Seanad to the Dáil within 21 days then it shall be deemed to have been passed by both Houses of the Oireachtas.

Article 22:

Defines what a Money Bill is and provides that the Ceann Comhairle of Dáil Éireann has the function of deciding whether or not a Bill constitutes a Money Bill.

Article 25:

Provides for the signing of Bills into law by the President.

The Standing Orders

The Standing Orders of the Dáil, and of the Senate, set out the various stages a Bill must go through in each House to become an Act and the rules of procedure at each of those stages.

Standing Orders govern the everyday workings of the Dáil, and of the Senate and cover various topics including Sittings of the Dáil, and of the Senate, the Order Paper, Parliamentary Questions, Rules of Debate, Committees, Bills, etc.

The Provisional Collection of Taxes Act 1927

The Provisional Collection of Taxes Act 1927 allows Budget Financial Resolutions to become the law of the land but for a limited period only pending the enactment of the Finance Bill.

This Act provides for the mechanism known as "Financial Resolutions", which are, in effect, temporary legislation. These are passed by the Government on Budget night and

can, if required, be brought into effect immediately. They are most commonly used to increase the excise duties on such products as tobacco, spirits, beer, wine, motor vehicles, etc. They would also be used to introduce restrictions to tax reliefs which require to be implemented with effect from Budget night.

The *Provisional Collection of Taxes Act 1927* provides that these Resolutions can remain in force for up to four months from their introduction. This provides the Government with sufficient time in which to give them permanent effect in the Finance Act.

The Interpretation Act 1937

The Interpretation Act 1937 governs all legislation by the Oireachtas and is an essential reference text at the drafting stage of the Finance Bill process.

This Act, which came into effect immediately after the coming into force of the 1937 Constitution, applies to all Acts of the Oireachtas including Finance Acts. Basically it makes provision in relation to "the form, operation and interpretation of Acts of the Oireachtas and of instruments made under such Acts." It provides guidance with regard to, amongst other matters:

- The citation of Acts of the Oireachtas
- The commencement of Acts and instruments
- Certain general rules of construction of particular words and expressions. This is helpful on such matters as the meaning of the word "person", the use of the singular and plural in Acts, the significance (or lack of significance!) of marginal notes etc.
- The effect of repeals and revocations



- The interpretation of particular expressions and words. This is set out in the Schedule to the Act.

Pre-Budget process

The Budget Cycle

The Budget process is continuous in that the Tax Acts remain permanently in force, that is until they are changed by the Oireachtas. It is a fact that taxes are paid or accrue every minute of the day, every day. The pre-Budget process thus has a distinct, cyclical pattern involving:

- The monitoring of tax collection throughout the year and planning for corrective action in the forthcoming Budget and hence leading to Finance Bill legislation
- The Estimates Process requiring forecasts of revenues and projected expenditure in the following year i.e. the framing of the Budget “arithmetic”.

Budget Day

The Minister for Finance presents to Dáil Éireann his annual financial statement which sets out the estimate of the revenue and expenditure of the country for the year ahead. This annual financial statement is better known as the Budget.

The word budget is derived from the Old French bougette, meaning a leather bag. By the early 18th century it had become a common word for a despatch box in which official papers were kept. Hence, the Minister for Finance was said to “open his budget” when he made his annual financial statement.

The Budget speech gives details of the previous year’s budget outturn, that is, it comments on the accuracy of the previous year’s Budget estimates. It also comments on the economic situation of the country and the outlook for the year ahead and gives details of the Government’s economic policy, the general objectives of the Budget, the proposed public expenditure for the year and the various changes in

taxation that the Government propose to make.

Sources of proposals for legislation

The first stage in the Finance Bill process is the consideration and choice of proposals for legislation. This stage of the annual Finance Bill cycle generally begins in earnest some 6 to 8 months preceding the Finance Bill. Some issues may have been considered earlier or have been left over from the previous Finance Bill. On the other hand some issues inevitably arise for consideration late in the Finance Bill cycle and must be incorporated into the Finance Bill, after it has been published, as Committee Stage amendments to the Bill or, even later, as Report Stage amendments to the Bill.

There are many sources of proposals for change in tax legislation:

- Government programmes and policy documents
- Party political manifestos
- Pre-Budget submissions from representative bodies
- Decisions of the Courts
- Recommendations of working parties
- Reports of Commissions and Tribunals.

In addition to proposals from these various sources EU directives and decisions must be implemented.

Revenue forwards to the Department of Finance proposals for provisions to be considered for inclusion in the Finance Bill. In recent years, the formal consideration of major tax proposals has extended beyond Finance and Revenue. In particular, the “Tax Strategy Group” which meets throughout the year includes not only representation from the Board of Revenue and senior officials of the Department of Finance’s Budget and Economic Division, but also civil servants from other Departments and various ministerial advisers and programme managers.

Although the final decision on any proposal is made by the Minister for Finance and the Government, the recommendation of the Tax Strategy Group would be given full consideration.

Financial Resolutions

Budget Financial Resolutions

In so far as proposed changes in taxation are concerned, it is important to note that the Budget speech itself has no legal standing - the proposed changes must subsequently be legislated for in the annual Finance Bill. However, changes in taxation mentioned in the Budget speech can be given temporary statutory effect (pending the enactment of the Finance Bill) by way of Financial Resolutions.

Financial Resolutions and imposition of a charge

Under Dáil Standing Order No. 141 a Financial Resolution is required whenever a charge is imposed upon the people. A charge may take the form of:

- The imposition of a new or increased tax
- or
- A reduction in, or repeal of, a relief from tax.

In the context of the Budget and the Finance Bill, Financial Resolutions may require to be moved either on Budget Day or just before the Committee Stage of the Finance Bill.

If the charge to be imposed on the people does not give rise to an actual imposition until after the Finance Bill becomes law, then, the Financial Resolution covering the charge may be moved in advance of the Committee Stage of the Finance Bill. These pre-Committee Stage Financial Resolutions are necessary solely to comply with Dáil Standing Order No.141 and, because the charge covered by the Resolution will actually be legislated for in the Finance Bill, may be worded in a general manner.

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FROM BUDGET TO FINANCE ACT

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*If, however, the charge to be imposed on the people will impact at any time before the Finance Bill becomes law, a Financial Resolution governing the charge will have to be passed by Dáil Éireann on Budget day. Such Resolutions are given immediate statutory authority under the *Provisional Collection of Taxes Act 1927*. Where this happens the wording of the Resolution is drafted as law and framed in specific unambiguous terms. (e.g. the 1987 Resolution which provided for the withholding tax on professional fees.)*

However, this statutory authority is of a temporary nature only. A Finance Bill containing the Financial Resolutions must be passed by the Dáil as having had its "Second Reading" within 84 days of Budget Day. In addition, the Finance Bill must be enacted within 4 months from the passing of the Financial Resolutions, effectively, within 4 months of Budget Day.

When are Budget day Financial Resolutions necessary?

Budget day Financial Resolutions are necessary in relation to measures which impose a charge upon the people and which are intended to come into operation:

- Immediately (e.g. measures imposing increased excise duties on beer or tobacco as on and from the day after the Budget)
- or
- Before the passing of the Finance Act.

Budget day Financial Resolutions and income tax reliefs

Normally, Financial Resolutions are required only where a tax is increased or a relief is reduced e.g. reduction in rate band and reduction in personal allowance. There is no requirement for a Financial Resolution in connection with reliefs such as increases in income tax personal

allowances or reductions in rates of income tax.

A Budget day Financial Resolution is not necessary in the case of the restriction of certain expenditure based income tax reliefs [e.g. home loan interest]. Entitlement to such reliefs is determined on the basis of the expenditure incurred in the relevant tax year and the definitive amount of such expenditure cannot be finally determined until after the end of the tax year at which stage the required legislative changes would have been enacted in the Finance Act.

All Budget day Financial Resolutions must be formally agreed by the Parliamentary Draftsman

The Minister in the Budget speech also mentions proposals for changes to tax legislation which do not require Budget day Financial Resolutions. The details of these changes are not usually given in the speech often because they have not yet been worked out. The announcements, however, do give interest groups the opportunity to make representations to the Minister on the proposals and to influence their development.

Drafting of Resolutions

Since Budget day Financial Resolutions become law for a period when passed by the Dáil they must be drafted with the same care as provisions of the Finance Bill. The drafting of Resolutions in consultation with the Parliamentary Draftsman are much the same as the drafting procedures in relation to the Finance Bill.

The Opposition may seek to amend or simply oppose a Financial Resolution and may call for a division or vote. The defeat of a Budget day Financial Resolution effectively represents a vote of no confidence in the Government and would normally result in the Taoiseach requesting the President to

dissolve the Dáil and the calling of a general election.

Financial Resolutions in advance of Committee Stage

In addition to Financial Resolutions taken on Budget day, other Financial Resolutions which impose a charge or withdraw or reduce a relief are moved just before the Committee Stage of the Finance Bill. These Resolutions relate to measures which do not need immediate statutory effect since, although they increase tax liability, they are not effectively applied until they come into force on the passing into law of the Finance Act.

Drafting the Finance Bill

The requirement that Budget day Financial Resolutions must be incorporated into a Finance Bill within 84 days, and passed into law within 4 months, sets deadlines for the drafting and publication of the **entire** Finance Bill and its passage into law.

Most of the drafting of the Finance Bill, is, with the advent of a December Budget, therefore, concentrated into the months of December, January and early February.

In the case of most legislation, **other than tax legislation**, only the Heads of Bills, which outline what the required legislation is to achieve, are sent to the Parliamentary Draftsman and the Draftsman proceeds to draft the legislation to meet these needs. Revenue is in a unique position in that the Office actually supplies completed drafts of each section of the Finance Bill to the Draftsman for consideration. This extended role for Revenue in producing the Finance Bill is necessitated by the scope, frequency and complexity of fiscal legislation and also by the time constraints that apply to its preparation.



The Parliamentary Draftsman prepares the legislation having due regard to the material drafted by Revenue and is ultimately responsible for the form of the legislation that appears in the Finance Bill.

Preliminary List

Since 1996 the Minister for Finance, about 4 weeks before publication of the Finance Bill, publishes a preliminary list of the items which will be included in the Bill (apart, that is, from some anti-avoidance measures or measures requiring further detailed consideration). Each item is accompanied by a brief explanatory note on the proposals. The aim of the publication is to contribute to a more informed debate on the actual Bill once it is published.

Publication of the Finance Bill

First Stage - Permission to introduce the Finance Bill

At the end of the Budget Debate in December, the Minister for Finance would have sought, and usually obtained without a vote, permission of the Dáil to introduce the Finance Bill. This formality is referred to as the “First Stage” of the Bill. Around that time also, the Government and Opposition Whips would have agreed a schedule for publication of the Bill and for the Second Stage, Committee Stage and Report Stage Dáil debates on the Bill.

When the Finance Bill is published it is accompanied by an **Explanatory Memorandum**. This document carries a commentary on each section of the Bill and sets out, in straight forward language, the meaning of each of the Bill’s provisions.

Second Stage - Debate Stage

About a week after the publication of the Finance Bill the Minister introduces the Bill to the Dáil, outlining its contents in the “Second Stage” debate. The Minister usually focuses on measures which did not

feature in the Budget, or changes to measures announced in the Budget. The Second Stage debate concludes with the Dáil formally voting on a motion that the Bill be treated as having passed its second stage and that its passage should proceed.

The Second Stage of the Finance Bill must be passed by the Dáil within 84 days (i.e. 12 weeks) of Budget day except

- (i) Where the Dáil is in recess on any day between the 82nd and the 84th day, in which case the Second Stage must be completed within 5 sitting days of the resumption

or

- (ii) Where the Dáil, having passed a Financial Resolution, has been dissolved on Budget day or within 84 days of Budget day,
 - in which case the Second Stage of the Finance Bill must be passed within 84 days of Budget day plus the number of days during which the Dáil was dissolved,
 - with a similar extension for the four calendar month deadline for the passing of the Bill by the Oireachtas.

Third Stage - Committee Stage

The third stage of consideration of a Finance Bill by the Dáil is usually referred to as the Committee Stage. Before 1993 this was somewhat misleading as the “Committee” in question included all Dáil Deputies. Since 1993 the Select Committee on Financial and General Affairs has considered the Bill at “Committee Stage”.

This has involved the movement of the Committee Stage debate from Leinster House to a committee room in Kildare House nearby and also a slightly less formal and less adversarial debate. Nevertheless this “Committee” stage continues to be the stage at which it is most exposed to detailed examination, analysis and amendment.

Since 1993 Revenue and Department of Finance officials have introduced the Bill to the Committee and answered Deputies’ questions before the arrival of the Minister. It is the intention in this prelude to the debate that the civil servants should explain the content of parts of the Bill of particular interest to Deputies, rather than defend the underlying policies.

A more recent development involved the Consultative Committee of Accountancy Bodies, Institute of Taxation and Law Society each addressing the Select Committee and then being questioned by the Committee on a particular provision.

The Committee Stage debate should, in theory, proceed section by section through the Bill establishing the “intention of the legislature”. In practice, the Party Whips divide the time agreed for the debate between the parts of the Bill and the debate on each of those parts then focuses almost exclusively on explanation of Ministerial amendments and rebuttal of opposition amendments.

Opposition amendments which would impose or increase a charge or reduce or withdraw a relief are out of order and are not, therefore, discussed. There is no such limitation on Ministerial amendments. These may introduce new provisions, or reflect policy changes, agreed by Government after the publication of the Bill; they may also correct oversights of substance in the drafting of the Bill as published; or they may simply correct printing errors.

When the end of the agreed time allocated to a part of the Bill is reached in the Committee Stage, all Ministerial amendments relating to the Part are deemed to have been carried. Precisely because some sections and amendments provoke particular interest or controversy and are debated at length, other sections and amendments may not be debated at all before the guillotine falls on part of the Bill.

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This is perhaps inevitable given the size of recent Finance Bills. When the Committee Stage debate concludes a further version of the Bill is printed. This draft is headed "As amended by Select Committee".

Fourth "Report" Stage

The Bill, as amended by the Committee for Financial and General Affairs, now reverts to Leinster House and the Dáil for the Report Stage debate. The point of the Report Stage debate is that, following the Committee's detailed deliberations, all Deputies are given the opportunity to contribute to a debate on the Bill as amended by the Committee.

Dáil Standing Orders restrict amendments at Report Stage to issues arising out of the Committee Stage proceedings. A decision may be made, too late for a Committee Stage amendment, to include a new provision in the Bill or to amend a provision already in the Bill. The Minister must then give notice, before the conclusion of the Committee Stage debate, of his intention to introduce the required amendment to the Bill at Report Stage. Substantial amendments at Report Stage are risky because once made they cannot be revisited until the following year's Finance Bill. That said, they are usually made in preference to allowing an error or omission persist until the next Bill.

Recommittal of the Bill

As stated above an amendment cannot be moved at Report Stage unless it arises out of the Committee Stage proceedings and no amendment can be moved if it creates a charge on the people. In the event that an amendment which breaks those rules is needed Standing Orders provides for a mechanism whereby this can be done. The mechanism employed is a motion for the recommittal of the Bill.

Essentially a motion is proposed that the Dáil returns the Bill to Committee Stage for the purposes of discussing the proposed amendment. If the motion is successful this reversion to Committee will occur immediately. On disposal of the matter the Dáil will return to the Report Stage.

This procedure is not a common occurrence in the context of Finance Bills.

Fifth Stage

The Fifth Stage of a Finance Bill is normally taken immediately on the conclusion of Report Stage. A motion is put to the House "*That the Bill do now Pass*". What ensues does not normally extend beyond expressions of thanks by the Minister and some final remarks by the Opposition spokespersons.

Standing Orders limit amendments during the Fifth Stage to "verbal amendments" only. No substantive amendment can be made at this stage and neither can the mechanism of recommittal of the Bill be employed at the Fifth Stage as it can at Report Stage.

Once the Dáil debate on the Finance Bill concludes the Bill is once again reprinted. This draft is headed "As passed by Dáil Éireann".

Money Bills - The Role of the Senate

The Constitution provides that every Bill initiated in and passed by the Dáil must be sent to the Senate. However the Senate cannot amend a Money Bill - it may only make "recommendations" for change. In the event of the Senate passing a "recommendation" in respect of a provision of a Finance Bill, the Bill is returned to the Dáil where the recommendation would be taken through the Committee and Report Stages. It would be the Dáil and not the Senate which would amend the

Bill, that is, if the Dáil accepted the recommendation.

The processing of the Finance Bill through the Senate is much the same as the Second Stage, Committee Stage, Report Stage and Fifth Stage debates in the Dáil.

As a Money Bill, the Finance Bill must be returned to the Dáil even when the Senate has passed no recommendations. On its return to the Dáil the Ceann Comhairle informs the House that the Senate has accepted the Finance Bill without recommendation. The Bill is then deemed passed by both Houses of the Oireachtas and is ready for presentation by the Taoiseach to the President for signature.

Here the Bill is printed once again and this draft is headed "As passed by both Houses of the Oireachtas".

Signature by the President

The final proof of the Bill, (i.e. as passed by both Houses) will be on vellum. It is a vellum copy of the Bill that is signed by the President to bring its provisions into law.

The Constitution (Article 25) provides that as soon as any Bill is passed by both Houses of the Oireachtas the Taoiseach shall present it to the President for signature. Signature in the normal course must take place not earlier than the fifth day and not later than the seventh day on which the Bill has been presented. However, the Government may decide to request the President to sign the Bill earlier than the fifth day. In that case they must get the prior agreement of the Senate. It is usual for the Finance Bill to get early signature so that it may become law before the expiration of the four months since Budget day. This is necessary to prevent time running out on Resolutions passed on Budget day.



Statutory Instruments, Orders and Regulations

Very often primary legislation provides for the imposition of conditions relating to the subject matter. This may be by way of secondary legislation, that is a “Statutory Instrument”.

The term “Statutory Instrument” is a general term for both “Orders” and “Regulations”. In the context of fiscal legislation Orders are instruments that are made exclusively by the Minister for Finance. Orders do not normally arise as a direct result of Finance Act provisions. Regulations are instruments that can be made by the Minister or by the Revenue Commissioners depending on the context, with the consent of the Minister, if required.

Occasionally, Ministerial consent is required where the Regulations would have Exchequer implications. These Orders and Regulations can only be made under powers set out in primary legislation. Statutory Instruments are subsidiary to primary legislation.

Consolidation

The *Taxes Consolidation Act 1997* was enacted into law on 30 November, 1997. The Act, which is the largest single enactment in the history of the State comprising 1104 sections and 32 Schedules, consolidates the law relating to income tax, corporation tax and capital gains tax.

Consolidation of legislation is consistent with the principles of good quality regulation - in particular, the need to reduce the quantity and improve the quality of legislation as formulated under the Government’s Strategic Management Initiative. One of the main benefits of consolidation is the reduction in the volume of direct tax legislation by almost one-half. Other benefits are:

- ▼ All direct tax legislation is now available in a single up-to-date Act, in a coherent, orderly and more simplified format

- ▼ The legislation is more accessible and user friendly to the business community, tax practitioners, tax administrators and members of the Oireachtas. This is of particular importance for smaller firms of tax practitioners and smaller businesses

- ▼ As part of the consolidation process a significant amount of deadwood and obsolete material was eliminated from the tax code and there has been considerable simplification in content

- ▼ All future changes to the taxes involved should be capable of being slotted into the Consolidated Act by amendment

- ▼ Our tax legislation is now more coherent to foreign investors and their advisors

- ▼ The task of future simplification of the tax system will be facilitated.

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- The task of future simplification of the tax system will be facilitated.

As annual Finance Act legislation is passed the various provisions are incorporated into the Taxes Consolidation Act 1997.

On 3 November 1999, the *Stamp Duties Consolidation Bill 1999*, was published. The Committee Stage of the Bill was taken by a Joint Committee of the Dáil and Senate (as provided for by Dáil and Senate Standing Orders on Consolidation Bills) on 30 November, 1999. This Bill is a further step in Revenue’s programme to update and modernise our tax legislation.

Future Consolidation

In his Budget Speech on 1 December 1999, the Minister for Finance, Mr. Charlie McCreevy, stated as follows:

“In recent years, substantial consolidation of various taxes has been effected. I aim, however, to build on this significant record and I have asked Revenue to turn their attention to the remaining areas of tax law not yet consolidated, that is, Capital Acquisitions Tax and VAT and to prepare a programme of work to consolidate tax law in these areas.”

Profit Sharing Schemes

Approved Profit Sharing Scheme/Termination Payments/SCSB

The value of any rights arising to an employee under an Approved Profit Sharing Scheme may be regarded as emoluments for the purposes of *Schedule 3, TCA 1997* - for the purposes of calculating Standard Capital Superannuation Benefit.



PATENT ROYALTIES

Income & Distributions

Income derived from Patent Royalties

In response to requests from practitioners we include this article on patent royalties. The article deals with income derived from patent royalties and the treatment of distributions paid out of income from patent royalties.

Introduction

Section 234 TCA 1997 provides that certain income derived from patent royalties is exempt from tax and is not to be taken into account for any purposes of the Tax Acts.

Exemption

An **Irish resident** individual or company on making a claim is entitled to have any **income accruing from a qualifying patent** disregarded for the purposes of the Income Tax Acts or Corporation Tax Acts, as appropriate. Applicants claiming exemption must, however, make the appropriate tax returns.

An individual in receipt of income from a qualifying patent is not entitled to have that income treated as exempt income unless the individual carried out, either solely or jointly with another person, the research, planning, processing, experimenting, testing, devising, development or other similar activity leading to the invention which is the subject of the qualifying patent.

Revenue may, in determining the amount of income to be disregarded, make such apportionment of receipts and expenses as may be necessary.

Persons in receipt of disregarded income are obliged to show the amount of such income in their tax returns.

Qualifying Patent

A qualifying patent is a patent where the work which gives rise to the invention which is patented is carried out **in the State**. Where difficulties arise in establishing whether the work concerned was wholly carried out in the State (for example, study and research may have to be carried out in libraries abroad into works of reference not available here or tests may have to be made abroad in particular climatic or other circumstances) a reasonable attitude will be adopted where Revenue are satisfied that the spirit of the section is fulfilled (that is, that the exemption provided arises out of genuine inventions researched and developed in Ireland).

Income from a qualifying patent

Income from a qualifying patent is any royalty or other sum paid in respect of the user of the invention to which the qualifying patent relates and includes any sum paid for the grant of a licence to exercise rights under the patent. The royalty or other sum must be paid for the purposes of activities which:

- ▼ Are regarded as activities within the 10 per cent scheme of corporation tax, other than international financial services carried on from the International Financial Services Centre and Shannon Zone services activities (it is to be noted, that the repair or maintenance of aircraft in the Shannon Zone are not excluded) **or**
- ▼ Would be eligible manufacturing activities even though they are carried on by an unincorporated enterprise or are carried on outside the State. However, as respects royalties or other sums paid after 23 April 1996, only so much of a royalty or other sum paid to the holder of a patent by a connected manufacturing company as does not exceed an

amount which would be paid between persons acting at arm's length is treated as income from a qualifying patent.

Also treated as income from a qualifying patent are royalties or other sums paid:

- For the purpose of a non-manufacturing activities where the payer is not connected ("connected" here means connected for the purposes of the Capital Gains Tax Acts as defined in Section 10 TCA 1997) with the beneficial recipient of the royalty or other sum **and**

- Where no arrangements exist which have as a main purpose the satisfying of the condition that the royalty or other sum must be received from a unconnected person. In other words if third parties are brought into the payment stream to achieve exemption of royalties, the royalties or other sums are not exempt.

Resident of the State

Resident of the State is any person resident in the State for tax purposes and not resident elsewhere. A company is regarded as a resident of the State if it is managed and controlled in the State.

Distributions out of Income from Patent Royalties Section 141 TCA 1997

Introduction

Certain distributions made out of income from certain patents which has been disregarded for income tax or corporation tax purposes under Section 234 TCA 1997 are themselves disregarded for the purposes of income tax and corporation tax. Such distributions do not attract a tax credit.



Distributions

A distribution made partly out of disregarded income and partly out of other profits is treated as if it consisted of two distributions, one made out of disregarded income and the other made out of **other profits**.

Distributions out of **disregarded income** made to a person are disregarded for income tax purposes:

- Where the distribution is made in respect of **eligible shares** or
- Where the distribution is made out of disregarded income, being income derived from a qualifying patent where the person to whom it is paid was involved in the carrying out of the research, etc which gave rise to the invention the subject of the patent (referred to as “relevant income”)

A distribution made partly out of disregarded income which is relevant income and partly out of other disregarded income is treated as if it were two separate distributions, one made out of relevant income and the other out of the other disregarded income.

Distributions out of disregarded income made to a company are, where the distributions are made in respect of eligible shares, treated as disregarded income of the recipient company.

Disregarded income

Disregarded income is income derived from:

- ▼ A qualifying patent which has been disregarded for income tax purposes under *Section 234(2) TCA 1997* and
- ▼ A qualifying patent which is disregarded for corporation tax purposes under *Section 234*.

However, such income accruing to a company on or after 28 March 1996, does not include income from a qualifying patent paid by a connected manufacturing or deemed manufacturing company (such

income is referred to as “specified income”).

Eligible shares

Eligible shares are shares forming part of the ordinary share capital of the company which:

- ▼ Are fully paid-up
- ▼ Carry no present or future preferential right to dividends or to assets on the company’s winding up
- ▼ Carry no present or future right to be redeemed and
- ▼ Are not subject to any different treatment from other shares of the same class, in particular different treatment as to dividends payable, repayment, restrictions, or offers of substituted or additional shares, securities or any other rights in respect of the shares.

Other profits

Other profits includes dividends and distributions, but excludes a distribution made to a company out of disregarded income where that distribution is in respect of eligible shares.

Distributions out of Specified Income

Where a company makes a distribution out of specified income (see definition of disregarded income above) which accrued to the company on or after 28 March 1996, the distribution is treated as a distribution out of disregarded income to the extent that the distribution does not exceed the aggregate expenditure on research and development incurred by the company for the accounting period in which the distribution is made.

Alternatively, where a person in receipt of specified income shows to the satisfaction of Revenue that the specified income derived from a qualifying patent for an invention involving **radical innovation** which was not patented primarily for tax avoidance purposes, Revenue may

determine that all distributions made out of the specified income derived from the patent are to be treated as made out of disregarded income. In making their determination Revenue may consult appropriate experts. A person aggrieved by such a determination of Revenue has a right to appeal the determination to the Appeal Commissioners and subsequently to the courts.

Research and development activities

Research and development activities has the meaning set out in Section 766 (deduction for certain expenditure on research and development).

Amount of the expenditure on research and development

The amount of the expenditure on research and development is expenditure on emoluments, materials, goods, and payments to third parties made in relation to research and development activities. Research and development expenditure incurred by companies which are members of a group may on a joint written election be treated as such expenditure by one member of the group. For this purpose, in addition to the usual requirement that one company is a 75 per cent subsidiary of another company or that the two companies are 75 per cent subsidiaries of a third company, two companies are in a group if both are owned to the extent of 75 per cent by the same individual or individuals.

The amount of aggregate expenditure on research and development incurred by a company in relation to an accounting period is the amount of expenditure on research and development activities incurred in the State by a company in an accounting period and each of the two preceding accounting periods. Where 75 per cent or more of all expenditure on research and

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PATENT ROYALTIES

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development is incurred in the State then all such expenditure is to be taken into account in determining this aggregate.

Dividend warrants

The statements required to accompany dividends and other distributions must show, where appropriate, that distributions are made out of disregarded income.

The amount of a supplementary distribution must be shown on the dividend warrant.

Attribution to accounting periods

A distribution for an accounting period is regarded as being made, as far as is possible, out of the distributable income of that period, any excess of the distribution over that income is treated as having been made out of the income of the most recent preceding accounting period in priority to earlier ones.

Subsections (6) and (7) of Section 145 apply to distributions out of disregarded income. These provisions provide, respectively, for the apportionment of distributions where the period for which a company makes up accounts is partly within and partly outside an accounting period for corporation tax purposes, and for regarding a distribution which is not for any specified period as having being made for the accounting period in which it is made.

REVENUE NEWS

Update

New Publications

VAT Treatment of Building and Associated Services - Leaflet 2/99

A revised Information Leaflet on Building and Associated Services has been published. The leaflet describes how VAT is applied to the various goods and services associated with the building industry. Copies are available from local tax offices, the *Revenue Forms & Leaflets Service* at 01 - 878 0100 and on the Revenue website - <http://www.revenue.ie>.

Some queries have arisen with regard to the rate of VAT to be charged on the supply of new houses together with fittings such as carpets, curtains, kitchen appliances, etc. where a single consideration is charged which includes both the house and the fittings.

Under Section 11(3) VAT Act 1972, where a house (liable at 12.5%) is supplied together with fittings (liable at 21%) for a single consideration, then the rate of VAT applicable to the entire supply is the highest VAT rate i.e. 21%.

However where Revenue are satisfied that there is no attempt to avoid VAT properly due and the cost of the fittings can be clearly identified and are recorded in the books of the builder, then separate considerations for the supplies can be attributed to the house and the fittings and VAT accounted for on the supplies at the appropriate rates i.e. 12.5% and 21% respectively.

The consideration on which VAT is accounted for on the fittings must be equal to or in excess of the cost of the fittings to the builder.

Value Added Tax - Change in property multiplier

Readers are advised that the current multiplier for use in the valuation of a supply of an interest in immovable goods is, and will continue to be, displayed on the Revenue website [www.revenue.ie]. The multiplier was increased to **23.47** with effect from the 30 June 1999. Any traders who have used an incorrect multiplier should immediately contact the *Office of the Chief Inspector of Taxes, Technical Services VAT, Setanta Centre, Nassau Street, Dublin 2*, explaining the circumstances in which the incorrect multiplier was used. Each case will be considered on its own merits.

RCT Article Tax Briefing Issue 37

Clarification

The RCTDC has been simplified and is now a two part document. Supplies of the RCTDC are available **only** from local tax offices and are not available from the *Revenue Forms & Leaflets Service*.

RCT 30 - the monthly return- blank forms are available **only** from the *Collector General's Office, Production Control, Sarsfield House, Limerick* Telephone: 061 - 310310 ext 56752 or 1850 203070.

Revenue's web site <www.revenue.ie>

Revenue's web site is currently being redesigned and the new site will be launched very shortly. The new site will contain many new features that will be of interest to practitioners and these will be explained in detail in the next issue of *Tax Briefing*.

In the meantime, the Internet Team would like to thank those practitioners who provided feedback on the service we provide. That feedback has been very valuable to us in our efforts to improve the Revenue web site.