Issue 36 - June 1999

Revenue

TAX BRIEFING

REVENUE'S PROSECUTION POLICY

"We aim to maintain public confidence in the equity of Revenue administration by adopting a tough stance on tax evasion, the black economy and other illegal activity. In particular, we will initiate the prosecution of offenders in cases of serious evasion or fraud"

Revenue Statement of Strategy 1997 - 1999

Introduction

The Taxes Acts provide for criminal prosecution of tax offences under various tax headings. The Revenue Commissioners consider that criminal prosecution can be a powerful incentive to comply with tax laws and as a consequence, to deter tax evasion. The main drive against tax evasion is through the Revenue Audit and Investigation programmes. These have proven to be very effective in collecting tax and interest and in penalising tax fraud and tax evasion. The tougher stance being taken against the most serious tax offenders/offences through the prosecution programme, as initiated under Revenue's Statement of Strategy, 1997-1999, means that those convicted (in addition to paying tax, interest and penalties due) may also be punished by a fine or imprisonment or both.

Prosecution Policy Unit

A Prosecution Policy Unit was established during 1996 to design and oversee the implementation of a Prosecution Policy aimed at deterring tax evasion and under-pinning the drive to maximise voluntary compliance.

Role of Investigation Branch

Following on this a special Prosecutions Unit was formed in Investigation Branch to investigate cases involving possible Revenue criminal offences. The officers in the Unit had formerly been principally concerned with investigating cases for the purposes of achieving a monetary settlement with additions for penalties and interest.

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Key Dates '99

May

21 ***PAYE/PRSI***
P35 for 1998/99

June

9 ***Income Tax***
Latest date for payment of first instalment under direct debit scheme for Preliminary Tax.

14 ***PAYE/PRSI***
Monthly remittance for month ended 5 June 1999.

14 ***DWT***
Return & Payment of DWT for month ended 31 May '99.

1-28 ***Corporation Tax***
Preliminary Tax and ACT for APs ending between 1-31 December 1998.

1-30 ***Corporation Tax***
Returns for APs ending between 1-30 September 1998
Returns of Third Party Information for APs ending between 1-30 September 1998.

30 ***PAYE***
Return filing date for Form P11D.

July

5 ***Income Tax***
Deadline for claiming Separate Assessment.
Deadline for nominating Assessable Spouse.

14 ***PAYE/PRSI***
Monthly remittance for month ended 5 July 1999.

14 ***DWT***
Return & Payment of DWT for month ended 30 June '99.

19 ***VAT***
Remittance for period May/June.

1-28 ***Corporation Tax***
Preliminary Tax and ACT for APs ending between 1-31 January 1999.

1-31 ***Corporation Tax***
Returns for APs ending between 1-31 October 1998
Returns of Third Party Information for APs ending between 1-31 October 1998.

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REVENUE'S PROSECUTION POLICY

(continued from page 1)

The focus of the Prosecution Unit now is on investigating cases and assembling evidence with a view to reporting them via the Revenue Solicitor to the Director of Public Prosecutions.

An Admissions Committee in Investigation Branch evaluates possible prosecution cases and co-ordinates activities countrywide to ensure that the most suitable cases are referred on an ongoing basis for consideration.

Training

The Prosecution Policy Unit began by organising training in the area of criminal investigation. The training dealt with the practices and procedures which must be adhered to where the assembling of evidence for prosecution purposes has to be undertaken. The training was provided with the assistance of experts in criminal law, including the Office of the Director of Public Prosecutions, the Gardaí and Senior Counsel. It also involved extensive contact with Revenue authorities in other countries to study their experiences.

"contacts have been established to pursue a best practice approach in relation to criminal investigations"

Additionally, officers of the Investigation Branch have in recent years participated in an anti-fraud sub-committee of the EU.

As a result, further contacts were established to pursue a best practice approach in relation to criminal investigations.

Whilst the training of investigators was of fundamental importance in developing the skills necessary to meet the evidential requirements of criminal investigation work, Revenue also recognised the need to ensure that its officers are skilled in detecting cases of serious fraud.

The Unit also arranged for detailed training to be given to outdoor staff in tax offices (audit and compliance) so that they would be able to identify and report on cases of serious fraud to Investigation Branch.

Arrangements with the Director of Public Prosecutions (DPP)

A senior officer from the Office of the DPP is available to Revenue for the purpose of case referral and for consultation. Officers from Revenue's Prosecution Policy Unit and Investigation Branch have regular meetings with him to discuss individual cases and to discuss evidential and other issues which have arisen or are likely to arise. The former practice of referring Revenue files to the Gardaí for investigation has since 1996 been largely superseded by the reference of Revenue offences, after full investigation by Revenue officers, directly to the Office of the Director of Public Prosecutions for a decision on prosecution.

Evidence of Tax Offences

To obtain a conviction in a case of tax evasion there must be sufficient evidence to prove the offence. The standard of proof required is the same as that in any criminal prosecution, that is proving the offence *beyond reasonable doubt*. Directions that a case should be prosecuted are made by the Director of Public Prosecutions only if the Director is satisfied, on the evidence, that there is a case to answer. The work involved in collating such evidence and in the processing of a prosecution case is time consuming and resource intensive. As resources are finite, it is important that they are employed on the most significant cases.

To achieve these objectives, a set of criteria to identify ***the type of criminal activities that are most likely to be investigated, and the factors which influence the decision to investigate with a view to prosecution,*** has been compiled.

Type of tax offences which are most likely to be investigated

- Use of forged or falsified documents
- Systematic scheme to evade tax
- False claims for repayment
- Failure (as distinct from minor delays) in remitting fiduciary taxes
- Deliberate and serious omissions from tax returns
- Use of off-shore bank accounts to evade tax
- Insidious schemes of tax evasion
- Aiding and abetting the commission of a tax offence
- Offences under the *Waiver of Certain Tax, Interest and Penalties Act, 1993*.

Having identified an offence of the type described above, the following factors will be considered before the decision to investigate with a view to prosecution is taken.

- The strength of the available (or likely to be available) admissible evidence. It must be considered sufficiently strong to enable the Prosecution to prove beyond reasonable doubt that the accused person was guilty of the alleged offence.

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- The period of time since the alleged offence was discovered bearing in mind that delay in initiating proceedings may damage a case
- The likely length and expense of a trial. The cost of pursuing prosecution should not be disproportionate to possible benefit to be obtained.
- The degree of culpability, responsibility, and experience of the alleged offender
- The need for deterrents, both personal and general, in relation to particular offences
- Whether the alleged offender has made a full disclosure of the irregularities, has co-operated in reaching settlement and has paid all the tax, interest and penalties which are due
- Relativity - the apparent seriousness of the case in comparison with past prosecution cases and other cases under consideration.

The list of criteria is not exhaustive but is an outline of the factors which, alone or in combination, can influence a decision to investigate a case with a view to prosecution.

Progress on Prosecutions

Because of the burden of proof involved and the resource-intensive nature of the work only a small number of criminal prosecutions of tax offences are likely to arise each year. The bulk of cases arising from investigation or audit will continue to be the subject of monetary settlements.

The following Table shows the progress on prosecutions since 1986. It will be seen that since the setting up of the Prosecution Policy Unit in 1996 the number of prosecutions has increased significantly.

In the period since 1991 there were also almost 2,500 cases convicted, on summary prosecution, for failure to file or late filing of income tax and corporation tax returns - these figures are not reflected in the Table below.

Revenue Criminal Prosecutions since 1986

Year	Number of Prosecutions
1986	None
1987	None
1988	1
1989	None
1990	None
1991	None
1992	None
1993	None
1994	None
1995	1
1996	1
1997	1
1998	6
1999 (to date)	1

Details of the cases in recent years are as follows:

1996

A summary prosecution was brought against Mr. Edward O'Mahony of Beechwood House, Grange, Skerries, Co. Dublin, a haulier, and a conviction was obtained in December 1996, for knowingly or wilfully issuing invoices with false Value-Added Tax registration numbers and for failing to produce his books to a Revenue officer. Fines of **£1,250** were imposed.

1997

In 1997, Mr. Padraig O'Malley, an accountant, of "Tara Buildings", Tuam Rd., Galway, was convicted in the Circuit Criminal Court, Galway, of knowingly or wilfully delivering incorrect VAT returns. He was fined **£500.**

1998

Completed prosecutions were as follows:

- P. Elliott & Co. Ltd - a firm of building and civil engineering contractors of 49 Church St., Cavan, pleaded guilty to 3 charges of knowingly or wilfully failing to keep proper records for tax purposes, producing an incorrect invoice and delivering an incorrect PAYE/PRSI Return. Fines totalling **£2,250** were imposed on the company.
- Mr. Brian Williams of 159 Inchicore Rd., Dublin, who is an accountant, pleaded guilty in the Circuit Criminal Court, Dublin, to 4 charges of knowingly or wilfully delivering incorrect Value Added Tax and PAYE/PRSI Returns for Cavan Crystal Ltd while he was a director of that company. He also pleaded guilty, under the Companies Acts, to carrying on the business of the company with intent to defraud the Revenue Commissioners. **A six month prison sentence was imposed** (suspended) and he was bound to the peace for 3 years. An earlier disqualification from acting as company director was re-affirmed.
- Mr. Patrick Walsh of 21 Portmore, Spanish Arch, Galway, a company director, pleaded guilty in the Circuit Criminal Court, Galway, to 3 charges of knowingly or wilfully delivering incorrect Income Tax Returns and failure to deliver a Statement of Affairs. A company, Walsh's Wholesale Ltd, a wholesaler of plumbing and heating equipment, pleaded guilty to 6 charges of knowingly or wilfully delivering incorrect accounts and Corporation Tax Returns. Mr. Walsh also pleaded guilty to being complicit in the offences committed by the company.

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He was sentenced to **imprisonment for 2 years** (suspended) in respect of each charge. The Company was fined **£12,000**.

- Mrs. Teresa Turley of 15 Hazel Park, Newcastle, Galway, was convicted of knowingly or wilfully producing an incorrect document in relation to tax on rental income. She was fined **£1,000**.
- Mr. Brian Mc Donagh of 8 Bloomfield Avenue, South Circular Road, Dublin, a company director, pleaded guilty to 8 charges of knowingly or wilfully delivering incorrect Income Tax Returns and Statements of Affairs. He was fined a total of **£8,000**.
- Mr. Brendan Mc Namee of 257 Beechdale, Dunboyne, Co. Meath, is the director of a company, Brendan Mc Namee Ltd, which designs and manufactures electronic systems. The company pleaded guilty to 18 charges of knowingly or wilfully delivering incorrect Value Added Tax and Corporation Tax Returns. Fines of **£5,250** were imposed on the company. He himself pleaded guilty to being complicit in these offences and was also fined **£5,250**.
- In addition, also during 1998, a person who had been convicted in 1995 and had failed to make full restitution of the monies defrauded under the Value Added Tax system was committed to **prison for 10 months**.

By the end of 1998, a further 4 cases were before the Courts (one on appeal to the Circuit Court), 4 were being prepared for prosecution, and 18 others were at various stages of investigation.

1999

Already in 1999, one prosecution, that of Liffey Meats (Cavan) Ltd. has been completed and three other cases are awaiting hearing in the Circuit Criminal Court.

Liffey Meats (Cavan) Ltd. of Ballyjamesduff, Co. Cavan, pleaded guilty to three charges of knowingly or wilfully delivering incorrect PAYE/PRSI returns. The company was fined **£5,000** in respect of each of the charges.

Conclusion

It can be seen from the above that Revenue are intent on tackling evasion and fraud in the tax system by our various audit and compliance programmes and also by actively detecting and investigating cases suitable for prosecution. However, it should be borne in mind that prosecution in the Courts is not an end in itself but rather one of the means of achieving a level playing pitch for all taxpayers and thus enhancing the public confidence in, and compliance with, the administration of tax laws.

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REVENUE AUDIT

Publican Trade

The following item should be read in conjunction with the Trade Profile on Publicans. It will be included as an appendix to further issues of the Trade Profile.

Summary of a Report by the National Standards Authority of Ireland (Legal Metrology Service) on certain aspects of the bar trade - produced for Revenue.

At the request of Revenue a survey was undertaken by the National Standards Authority of Ireland (Legal Metrology Service) to determine:

- The average net quantity of Guinness/beer in each keg delivered to the licensed retail trade, ***and***
- The average quantity of Guinness/beer in each pint glass measure sold to the consumer at the retail end.

Average Net Quantity of Guinness/Beer Delivered

The average net weight of full kegs was found to be as follows:

Guinness Extra Stout
Average Net Weight 50.31 kg
Standard Deviation 0.21 kg.

Carlsberg Lager
Average Net Weight 50.38 kg
Standard Deviation 0.12 kg

Average Quantity of Guinness/Beer sold in a pint glass measure

The results of the survey were as follows:

Guinness Extra Stout
Average Net Weight 541.7 g
Standard Deviation 10.4 g

Carlsberg Lager
Average Net Weight 548.8 g
Standard Deviation 11.2 g

Conclusions

Based on the survey, before the usual wastage factors are taken into account, the theoretical average numbers of pints in a keg is as follows:

Guinness Extra Stout

$$\frac{\text{Average Net Weight Keg } 50.31\text{kg}}{\text{Average Net Weight Pint } 541.7\text{g}} = 92.87 \text{ pints}$$

Carlsberg

$$\frac{\text{Average Net Weight Keg } 50.38\text{kg}}{\text{Average Net Weight Pint } 548.8\text{g}} = 91.80 \text{ pints}$$

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CODE OF PRACTICE FOR REVENUE AUDITORS Update

Interest, Surcharge and Penalties

Introduction

The Code of Practice for Revenue Auditors which was made generally available in November 1998 sets out Revenue's policies on the practice and procedures applied in all audit cases. It applies to single taxhead audits, VAT, PAYE/PRSI, CGT and RCT, as well as comprehensive audits. It reflects Revenue's resolve to support voluntary compliance by taking appropriate action against non compliant taxpayers.

The Code was issued after consultation with tax practitioners through the Tax Administration Liaison Committee (TALC) audit sub committee and is the subject of ongoing monitoring and review.

Tax Practitioners will notice that, in audit settlements negotiated to date in 1999, auditors are seeking full statutory interest for all years and full penalties subject to the mitigation criteria shown below.

This article details some of the features of the Code which appear to be causing difficulties.

Interest

Statutory interest will be charged from the original due dates in respect of all tax undercharges in all audits including Comprehensive, VAT, Relevant Contracts Tax and PAYE/PRSI audits. If agreement is not reached between the taxpayer and the auditor, collection of the interest due will be referred for enforcement.

Where, exceptionally, payment of an audit settlement has been agreed on an instalment arrangement, additional interest covering the period of the agreement must be paid as part of the overall settlement.

Penalties

Practitioners are advised to fully acquaint themselves and their clients with the circumstances in which penalties arise. Where in the course of an audit, any return or declaration is found to be incorrect because of negligence or fraud, penalties will generally be imposed.

The following are the main penalty provisions applied:

- *Section 1053 Taxes Consolidation Act 1997* - Income Tax / Corporation Tax / Capital Gains Tax Return - Penalty for fraudulently or negligently making incorrect returns of income
- *Section 1054 Taxes Consolidation Act 1997* - Corporation Tax Return - Increased penalties in the case of a body of persons
- *Sections 26/27 VAT Act 1972* - Penalties for breaches of VAT regulations and increased penalties in the case of a fraudulent or negligent VAT return
- *Section 987 Taxes Consolidation Act 1997* (as extended by the provisions of *Section 41 Finance Act 1999*)- Penalties for breaches of the PAYE regulations
- *Section 886/986 Taxes Consolidation Act 1997* - Failure to keep proper records
- *Section 1052 Taxes Consolidation Act 1997* - Penalties for failure to make certain returns etc.

These sections refer to civil penalties. Penalties may also arise under other sections of the Taxes Consolidation Act.

Situations giving rise to Penalties

Penalties arise where a return has been submitted and it is found to be incorrect by reason of negligence or fraud. Material adjustments in the following areas normally give rise to penalties:

- Undisclosed Sales / Receipts / Income / Gains
- Undisclosed Remuneration / Relevant Contract Payments
- Understated Assets, including the Valuation of Stock and Debtors
- Overstated Liabilities, Creditors etc.
- Non Compliance with the VAT / PAYE / RCT regulations
- Improper claims for expenses / deductions either by way of debit in the profit and loss account or otherwise (including incorrect claims against PAYE income)
- Improper claims for Capital Allowances or other allowances or reliefs.

Negligent omissions from Tax Computations will also give rise to penalties.

This list is not exhaustive and the circumstances of each case dictate whether penalties are imposed.

Non Penalty Errors

Where an incorrect return was made, *neither fraudulently nor negligently*, and it comes to the taxpayer's notice that the return was incorrect, then provided that the error is remedied *without unreasonable delay*, no penalty will be applied to that return.

Mitigation of Penalties

Penalties provided by the Acts can be mitigated by the Revenue Commissioners under the provisions of *Section 1065 Taxes Consolidation Act 1997*, to a level appropriate to the circumstances of each case.

The factors which influence the mitigation of penalties include:

- Full voluntary disclosure
- Co-operation throughout the audit / investigation

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- The scale and gravity of the issues involved

Full Voluntary Disclosure

It is Revenue policy to encourage disclosure by the mitigation of penalties.

Where the disclosure is prompted by a communication from Revenue, whether in the form of an audit notice or preliminary enquiry, and the disclosure is complete, mitigation by reference to voluntary disclosure may be as high as 40%. Where the disclosure is made on the taxpayer's own initiative, mitigation may be as much as 60%. Ongoing co-operation during the audit is an inherent dimension of any voluntary disclosure made to the Revenue.

Co-operation throughout the Audit

Where no voluntary disclosure is made before the commencement of the audit/enquiry but there is co-operation by the taxpayer and by his/her agent throughout the audit, and all of the information necessary to bring the enquiry to a satisfactory conclusion are supplied without difficulty, mitigation of the penalty may be high as 30%.

Scale and Gravity

The magnitude and gravity of the offences in each case for each taxhead under audit will influence the level of penalties to be applied. Where the adjustments are small in relation to the taxpayer's overall liabilities, mitigation may be up to 15%. Where the adjustments are large and the nature of the offences serious, mitigation, if any, will be lower.

The maximum mitigation in any case is 95%.

Maximum Mitigation

(See the table below)

Where the voluntary disclosure is not received in writing, auditors will record, in writing, details of the disclosure made, read the note of the disclosure back to the taxpayer to ensure it is complete and initial the note with the time and date of the disclosure.

Publication

Section 1086 Taxes Consolidation Act 1997 provides that, generally, publication applies to any settlement made with the Revenue Commissioners where the settlement exceeds £10,000 inclusive of the tax due, interest and penalties. Publication does not apply where the taxpayer makes a full voluntary disclosure before the audit commences.

The provisions of *Section 1086* impose an obligation on Revenue to publish where the conditions for publication are met and auditors have no discretion in the matter.

To avoid publication, a full and complete disclosure must be made, before the audit commences, of all tax underpayments for all years irrespective as to whether or not those taxheads or years/periods are covered by the audit letter. Adjustments not arising from neglect are excluded from publication.

Surcharge for Late Filers

Section 1084 Taxes Consolidation Act 1997

Where a return for Income Tax, Capital Gains Tax or Corporation Tax was not filed on time, the surcharges applicable in respect of an incorrect return will be added to the audit settlement.

Where a return is filed on time, and subsequently is found to be incorrect, the overall level of penalty in the particular settlement *(Section 1053/1054 Taxes Consolidation Act 1997)* will normally be regarded as covering the offence of filing an incorrect return.

Maximum Mitigation

	Voluntary Disclosure		Non Voluntary Disclosure Case
	Unprompted	Prompted	
Full Voluntary Disclosure	60%	40%	-
Co-operation	30%	30%	30%
Size & Gravity	15%	15%	15%
Maximum Mitigation	**95%**	**85%**	**45%**

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COMPLIANCE FOCUS

PAYE Directors

Background

The income of many directors consists almost entirely of remuneration arising from directorships which has been subject to tax under PAYE. A sample study of these directors - commonly referred to as 'PAYE Directors' - in the 3 largest Tax Districts in respect of 1996/97 and 1997/98 shows that the tax return compliance rate for those years is disappointing.

Compliance focus

As a result of the disappointing tax return rate for 'PAYE directors', this group was collectively selected for a compliance campaign. The Form 12 (Directors) 1998/99 issued to these directors, consequently, contained an insert advising that:

- Revenue is 'stepping-up' its on-going campaign to ensure that tax returns are submitted on time by those who are required to submit them
- Their tax return has been selected for monitoring as regards timely submission
- Those who fail to submit their tax returns will be subject to a full-scale compliance campaign
- Those who fail to submit their tax returns on time will, if they are *chargeable persons*, be liable to the late filing surcharge which may increase their tax liability by up to 10%.

Directors who have complied with the legislation and have submitted their returns on time and who continue to do so have nothing to worry about as the campaign is aimed only at non-compliant directors.

Tax return filing requirements - Directors

To facilitate practitioners who may not be aware of the tax return filing requirements of directors, the subject is covered in detail hereunder.

Remember: Any director who is a *chargeable person* for a tax year must submit a tax return for that year notwithstanding that:

- He/she may not have received a tax return form from the tax office, *and/or*
- All tax due has been paid through the PAYE system.

Directors and Self Assessment

The obligation to make a return of income under the Self Assessment system was introduced in 1992 for company directors (and for the assessable spouses of company directors) to complement the return filing requirements for companies.

All directors except those referred to below are chargeable persons for the purposes of Self Assessment.

Directors - Tax return filing requirements

The type of director and their obligation to file a tax return is as follows:

- A director (or the assessable spouse of the director) who is a **chargeable person** for Self Assessment purposes
  - Is obliged to submit a tax return before the 31 January following the end of the tax year to which the return refers.
  - Will be subject to the late filing surcharge if the tax return is not submitted on time.
- A director (or the assessable spouse of the director) who is **NOT** a ***chargeable person*** for Self Assessment purposes
  - Must submit a tax return when requested by notice in writing from an Inspector of Taxes. **Such notice is contained in the Form 12 (Directors) 1998/99 which issued last April**.
  - Will not be subject to the late filing surcharge if the tax return is not submitted on time.

Which directors are NOT chargeable persons for the purposes of Self Assessment?

Statutory exclusions *[Section 950(1), Taxes Consolidation Act 1997]*

Provided that they are not otherwise *chargeable persons* by virtue of non-directorship income [e.g. rental income], certain directors (and the assessable spouses of certain directors) are not chargeable persons for the purposes of Self Assessment. These include directors of shelf companies, directors of genuinely dormant companies and others who take up temporary directorships prior to a company commencing activity are not chargeable persons.

Other exclusions

In addition to the statutory exclusions above, the Revenue Statement of Practice IT/1/93 - ***Finance Act 1992 and Directors*** deems certain directors to be outside the scope of Self Assessment (a copy of this Statement of Practice is reproduced on page 10). These are **non-proprietary directors** [see ***Note 1***] -

- Who are not otherwise chargeable persons ***and***
- **All** of whose income including fees, benefits, distributions, etc. has been subject to tax directly or

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indirectly under PAYE [see ***Note 2***].

NOTE 1
The term *'proprietary director'* means a director of a company who is the beneficial owner of or is able, either directly or indirectly, to control more than 15% of the ordinary share capital of the company.
A non-proprietary director is a director other than a proprietary director.

NOTE 2
In the case of benefits, distributions, etc., it is sufficient for this purpose that such directors supply up-to-date details to the Inspector of Taxes so that the tax is collected by the restriction of tax-free allowances/credits by reference to **reasonable estimates** of the benefits, distributions, etc.

Details of benefits, distributions, etc. can be supplied either in the form (TFA1) inserted with the annual *'Notice of Determination of Tax-Free Allowances'*, in a tax return or by way of letter.

On what tax liability is the late filing surcharge calculated?

Where the late filing surcharge applies, it is calculated on the tax liability before credit is given for the tax deducted under PAYE on the directorship income [see ***Example A*** below].

Example A
Mr. Brown owns 50% of XYZ Ltd. and is a director of the company. His only income in 1998/99 was from this company which gave rise to a tax liability of £8,000 (paid in full under the PAYE system). As Mr. Brown is a chargeable person for Self Assessment purposes, if he [i.e. the assessable spouse] does not submit his 1998/99 tax return before the 31 January 2000, he will be liable to:

- The 5% surcharge [£400 in this example] if his tax return is submitted between the 1 February and 31 March, 2000 ***or***
- The 10% surcharge [£800 in this example] if his tax return is submitted after the 31 March 2000.

Example B
Some non-proprietary directors cannot avail of the special provisions outlined in Paragraph 4 of the Statement of Practice IT/1/93 - ***Finance Act 1992 and Directors***. For example:

Jean Smith is a non-proprietary director of a ABC Ltd. Her salary for 1998/99 was subject in full to tax under the PAYE system but no account was taken under the PAYE system of benefits such as the use of a house and/or a car provided by the ABC Ltd., preferential loans, etc..

Although Jean Smith is a non-proprietary director, as no account was taken through the PAYE system of the tax due on her benefits, she is a chargeable person for the purposes of Self Assessment.

Statement of Practice

The content of SP IT/1/93 - ***Finance Act 1992 and Directors***, is reproduced on page 10.

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DIVIDEND WITHHOLDING TAX (DWT)

Issue 35 of ***Tax Briefing*** contained a detailed article on Dividend Withholding Tax which was introduced under the 1999 Finance Act. The following is an update on progress made toward implementation of the scheme.

- Return forms and payslips have been designed and are available from the
  DWT Section,
  Office of the Revenue Commissioners,
  Government Offices,
  Nenagh,
  Co. Tipperary.
  Telephone +353-67-33533
  Fax +353-67-32916
- In consultation with persons charged with deducting DWT (companies and authorised withholding agents) an electronic format for the receipt of distribution details is being designed. Work on this is nearing completion.
- Forms for use by persons claiming exemption from DWT are now available and can be obtained from the DWT Section.
- A draft explanatory leaflet has been prepared and can also be obtained from the above address. When finalised it is hoped to produce this document in booklet form and to also make it available on the Revenue Website.

Practitioners requiring information in relation to DWT should contact the DWT Section at the above address.

Employees' Subsistence Expenses

Revenue Leaflet IT 54 sets out the basis under which employees' subsistence expenses can be paid without the need to deduct tax. The leaflet, which was first issued in June 1997, is designed to ensure that a uniform approach to such payments is adopted throughout the country. The introductory paragraph states that *'existing arrangements which are within the scope of the leaflet do not of course have to be changed'*.
We would like to remind practitioners, in cases where clients had Revenue approval to pay expenses prior to the introduction of the leaflet, that only those arrangements which are within the scope of the leaflet can continue to be paid without deduction of tax.

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Statement of Practice - IT/1/93 Finance Act 1992 & Directors

1. INTRODUCTION

1.1 The 1992 Finance Act brought company directors and, where joint assessment applies, spouses of company directors within the Self Assessment provisions. Prior to the 1992 Act these persons did not come within the Self Assessment provisions if all of the director's income was taxable under the PAYE-system.

1.2 The new provisions were introduced to ensure the effectiveness of Self Assessment audits of companies. Because of the close association between a company and its directors, the effective auditing of the company requires full returns of all payments made to or expenses incurred for the benefit of the directors.

1.3 The 1992 Act excludes certain categories of directors from the necessity to make returns and these are set out at para. 3. In administering the new provisions the Revenue Commissioners will adhere to the procedures set out in para. 4 in relation to certain other categories of directors whose returns are not critical to the audit process.

2. OBLIGATIONS IMPOSED BY FINANCE ACT 1992

The new provisions come into effect for the year 1992/93. Directors or spouses of directors will, therefore, be obliged to file returns of income for that year by 31 January, 1994. Failure to do so will render the person concerned liable to the surcharge. The surcharge will be calculated on the basis of the person's gross income tax without any credit being given for tax deducted under PAYE. This provision is necessary if the surcharge is to be effective in ensuring compliance even in the case of directors who have paid their tax under PAYE.

3. EXCLUSIONS IN THE 1992 ACT

3.1 The 1992 Act excludes certain types of directors from the new provisions, for example, directors of shelf companies, directors of genuinely dormant companies and others who take up temporary directorships in the period prior to a company commencing activity.

3.2 These examples are covered by the exceptions listed in the Act. The exceptions are directors of a body corporate which during the three years ending on 5 April in the year of assessment:

- Was not entitled to any assets other than cash on hands, or a sum of money on deposit within the meaning of *Section 895 Taxes Consolidation Act 1997*, not exceeding £100, and
- Did not carry on a trade, business or other activity including the making of investments and
- Did not pay charges on income within the meaning of *Section 243 Taxes Consolidation Act 1997*.

4. SPECIAL PROVISIONS IN RELATION TO CERTAIN NON-PROPRIETARY DIRECTORS

4.1 The Revenue Commissioners also accept that the returns of certain non-proprietary directors including unpaid directors, directors of voluntary bodies or charitable organisations are not critical to the audit process and would not give rise to the detection of any additional tax liability. Accordingly, in administering the new provisions they have decided that, until further notice, returns need not be filed automatically and the surcharge will not, therefore, apply in the case of non-proprietary directors:

(i) **Who are not otherwise chargeable persons**, and

(ii) All of whose income including fees, benefits, distributions etc. has been subject to tax directly or indirectly under PAYE.

4.2 In the case of benefits, distributions etc., it is sufficient for this purpose that such directors supply up-to-date details to the Inspector of Taxes so that the tax is collected by the restriction of tax-free allowances, by reference to reasonable estimates of the benefits, distributions etc. Details of benefits, distributions etc. can be supplied either in the form inserted with the annual Notice of Determination of Tax-Free Allowances, in a letter or in a tax return, as appropriate.

4.3 The term "proprietary director" means a director of a company who is the beneficial owner of or is able either directly or indirectly to control more than 15% of the ordinary share capital of the company.

Revenue Commissioners
April 1993

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FREEDOM OF INFORMATION IN REVENUE The Story so Far

Introduction

The Freedom of Information Act is now over one year in operation. This first year has been a very busy year with publications, training, learning and deciding on and reviewing applications made.

Requests

The Act commenced on 21 April 1998 and Revenue has received 538 requests in the first 12 months of operation. Of these, 360 have been for personal information and 178 for non-personal information. Prior to the commencement of the Act, it was expected that most of the requests would be either personal requests or requests relevant to information held by the Office of the Chief Inspector of Taxes. This has proved to be the case with the bulk of the non-personal requests relating to the Chief Inspector's Office. See below for figures at 21 April 1999.

Requests to date		**538**
Personal	360*	
Non-personal	178	
Staff requests	237	

*(includes staff requests)

Requests "not processed"		**21**
Withdrawn	10	
Outside FoI	6	
Invalid	1	
Transferred	5*	

*(Transferred to other Departments)

Net requests		**517**
Personal	348	
Non-personal	169	
Staff requests	237	

Request decisions		**476**
Granted in full	239	
Granted in part	119	
Refused	86	
Not yet decided	32	

Internal Reviews		**113**
Upheld	79	
Varied	26	
Annulled	2	
Not yet decided	6	

Information Commissioner appeals		**33**
Affirmed	0	
Varied	1	
Annulled	0	
"Agreement"	2	
Withdrawn	1	
Not yet decided	29	

How FoI operates in Revenue

The Freedom of Information Central Unit is responsible for the operation of FoI in Revenue. It receives and distributes the requests to the appropriate Divisions for reply. Revenue consists of 13 Divisions. In each of the Divisions there is a decision maker who decides on whether information held by that Division can be released under FoI. In the case of some requests an answer from more than one Division is required. The FoI Central Unit co-ordinates and checks the replies and ensures that the various time limits imposed by the Act are met.
In the case of an internal review, the review is undertaken by a review officer of a more senior grade in a different Division. This policy was adopted by Revenue to ensure that each review would be a new decision, taken by somebody from a different area and with a different perspective.

There have been 113 internal reviews thus far. Of these, 79 original decisions have been upheld, 26 varied and 2 annulled. Decisions are awaited in 6 more. In the cases varied, more information was released. In the cases annulled, the decision to refuse was overturned and the information requested released.

The Information Commissioner

To date 33 requests have been appealed to the Information Commissioner. We have received a judgement in one case and agreements have been brokered by the Information Commissioner in two other cases. One of the cases where an agreement was made was in the 'Charities' case. Revenue initially refused to provide names of charities who were granted charitable status. This refusal was on the grounds that the information was given to Revenue in confidence and on the basis that it would be treated as confidential by Revenue. This decision was upheld on internal review. The Information Commissioner under *Section 34 (7)* of the Act effected a settlement between Revenue and the requester. A list of charities who raised no objections to appearing on such a list is now available. The Information Commissioner is now reviewing the position of those charities who raised objections and he will decide whether or not their names will be published.

Decisions of the Information Commissioner are published on his web site. This can be accessed at **www.irlgov.ie/oic**.

Making a request

The following points should be noted when making a request:

- State that the request is made under the Freedom of Information Act 1997
- Try to identify exactly what you are looking for

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Revenue

FREEDOM OF INFORMATION IN REVENUE

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- If you say you are acting on behalf of an individual or on behalf of a company, include a letter of authorisation
- There are forms available to make requests but these are **NOT** essential for the making of a request. The Act requires that the request be in writing.
- Send your request to the address given at the end of this article
- If you are part of a practice making a request, please ensure that a named individual makes the request.

Section 15 and 16

There are two publications produced by Revenue under the FoI Act:

- *Section 15* gives an overview of the Revenue organisation and is available free of charge from the FoI Central Unit or any Revenue office. This publication is being updated at present and should be available in July.
- *Section 16*, a CD-Rom containing Revenue rules, procedures, practices, guidelines, interpretations and precedents, is available for purchase from the FoI Central Unit at a cost of £15. This price includes the first update free. The first update has been completed and includes any manuals not included in the previous CD-Rom. It is not a general updating of the material on the CD-Rom. This version has issued to all those who purchased the original CD-Rom. If you have not received the update you should contact the FOI Unit. The next version of the *Section 16*, including all updated material, should be released later on in the year.

If you have any comments or observations on either publication please let us know at the address below.

Precedent Database

Section 16 of the Act required Revenue to publish an index of precedents kept by the body. This we did. However, we recognised that it would be more helpful if we were to provide the actual electronic database of precedents held by Revenue. All of the current precedent records were created prior to 21 April 1998 and therefore are not subject to the 'right of access' (*Section 6 (4)* refers). It is our contention that the precedents are self contained and do not require further explanation. In all cases, the requester can contact Revenue if clarification is needed. We will be reviewing our database of precedents for Version 2 of our *Section 16* publication. A number of decisions on precedents were referred to the Information Commissioner. The Information Commissioner has not yet issued a decision on any of these appeals.

Personal Information

The definition of personal information in the Act *(Section 2)* refers to information about an identifiable individual that:

- Would, in the ordinary course of events, be known only to the individual or members of the family, or friends, of the individual

  or

- Is held by a public body on the understanding that it would be treated by it as confidential.

The Act goes on to list types of information which would be included in the definition of personal information.

Our advice to date is that there is a distinction to be made between personal information and business information. Personal information is of an essentially private nature i.e. known only to family and friends.

Business information, on the other hand, relates to the engagement of a person in commercial activities of a non-personal nature with a third party, usually for material gain. As there is no limit to the access to personal information and there is for non-personal, this distinction has implications for requesters. Requesters who look for information relating to them in respect of their company, co-operative, partnership will not have an entitlement to records created prior to 21 April 1998 unless access is needed to understand records created after the commencement of the Act. For an Information Commissioner's ruling on personal information, see Case number 9822. Mr. T.C vs The Office of the Director of Consumer Affairs (at **www.irlgov.ie/oic**)

To release or not to release?

After a year in operation it is difficult to say if there is a trend emerging. We in Revenue might say that we are releasing more information then we have ever done before. We would point to our *Section 16* manual as evidence to our commitment to be as open and helpful as we can. However, you might not share this view especially if we have refused your request. One of the main lessons to be learned is that we will not be releasing non-personal information created prior to the 21 April 1998. In the case of precedent requests we have refused access to background papers. In some cases we have given information but in most cases none. Some of these decisions are now being appealed to the Information Commissioner.

There is a provision in the Act allowing for the Minister for Finance to prescribe further records for 'right of access'. There has been no prescription in the past year.

All decisions made are made by reference to the Act. We must give our reasons when we refuse access to records.

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Sometimes we get it wrong. If you are not happy with our decision, look for a review. If you are not happy with our review, appeal to the Information Commissioner.

What has been released to date?

We are preparing a list of non-personal records requested, released or refused under FoI and are hoping to publish and maintain this on our website. In this way individuals will know what type of information has been released under the Act. The following are some examples of the type of information which has been released or refused.

Information released

- Code of Practice issued to Revenue Auditors
- A list of charitable bodies registered with Revenue
- Reports on Y2K progress in Revenue
- Trade profiles - Access to part
- Information on all FoI requests - list issued but names withheld
- Information regarding Trusts

Information refused

- Papers on precedents
- Reasons why company was chosen for audit
- Copy of Revenue's findings on visit to company premises
- List of people who have received Artist's exemption
- List of companies who have a profit sharing scheme in operation.

Can we help you?

If you have any queries about Freedom of Information the Central Unit will be happy to help in any way. The address of the unit is:

Freedom of Information Central Unit,
Office of the Revenue Commissioners,
5th Floor,
Wicklow House,
South Great George's Street,
Dublin 2.

Telephone: 01 - 702 0850
Fax: 01 - 670 8418

Email: **infor@foi.revenue.ie**

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Lump Sum Payments on Redundancy/Retirement Queries

The following are some queries we have received in relation to years of service and lump sum payments.

Q1. What service is taken into account if a Career Break has been taken?

The service pre and post a career break may be added together for the purposes of determining 'each complete year of the service'. The periods where the individual was on the career break would not be reckonable service.

For SCSB purposes where the employee has less than 3 years paid service in the immediate period prior to the date of leaving, the emoluments of the last 36 months of paid service would be taken into account in arriving at 'the average for one year of the holder's emoluments of the office or employment for the last 3 years of his/her service'.

Q2. What service is taken into account for Job-sharers?

For job-sharers the length of service should be taken as the number of complete years with no apportionment to take account of the part time nature of the employment.

Q3. What happens if an employee moves within group companies in Ireland?

Where the terms of the severance specifies that the payment to an employee is in respect of employment in group companies and the employee worked for such companies within the State then those years of service can be taken into account in calculating the 'years of service of the holder in the office or employment.'

Unusual features of Employment Service

If a taxpayer's employment service includes any unusual features and he/she is unclear about what service should be taken into account the matter should be referred to the local tax office.

FINANCE ACT 1999 CHANGES

The basic exemption in *Section 123 TCA 1997* has been increased for payments made on or after 1 December 1998. The exemption is now £8,000 plus £600 for each complete year of service.

Revenue

CAPITAL GAINS TAX

Queries

Time of Disposal

Following the reduction of the general rate of CGT to 20% - since 3 December 1997 - and the subsequent application of the 20% rate to gains on certain disposals of development land, we have been receiving many queries relating to the time at which a disposal (and acquisition) takes place. Many of the queries relate to the time of disposal under conditional contracts and indeed, whether a particular stipulation in a contract makes the contract a conditional contract. The most frequent questions are answered below.

Q. What legislation deals with the time of disposal and what does it provide?

A. *Section 542 Taxes Consolidation Act 1997* sets out the provisions relating to the time of disposal. The section provides that for the purposes of CGT, where an asset is disposed of and acquired under a contract, the time at which the disposal and acquisition is made is the time at which the contract is made (and not, if different, the time at which the asset is transferred). Where the contract is conditional, the time at which the disposal and acquisition is made is the time at which the condition is satisfied.

Q. Where a contract provides that the disposal and acquisition is subject to planning permission being obtained, is the contract a conditional contract?

***A*. Yes.** A contract is 'conditional' if the condition attaching to it is a 'condition precedent'. A condition precedent is a condition which neither party to the contract covenants to bring about, but which has to be satisfied before an obligation to perform the contract arises. The contract is not enforceable until the condition is satisfied. Under a contract which provides that the disposal and acquisition is subject to planning permission being obtained, the disposal and acquisition will not take place if planning permission is not obtained. Accordingly, obtaining planning permission is a condition precedent to the performance of the contract.

Q. What is the time of disposal under a contract where the disposal and acquisition is subject to planning permission being obtained ?

A. The time of disposal is the time at which planning permission is obtained. In this context, it should be noted that for the purposes of *Section 649A Taxes Consolidation Act 1997* (which applies the 20% rate of CGT to gains on certain disposals of development land), one of the conditions is that, at the time at which the disposal is made, planning permission for residential development must have been granted.

Q. Where a contract provides that the disposal and acquisition is subject to loan approval being obtained, is the contract a conditional contract?

***A.* Yes.** As with contracts which are made subject to planning permission being obtained, a contract which provides that the disposal and acquisition is subject to loan approval being obtained is a conditional contract since the disposal and acquisition will not take place if loan approval is not obtained. Obtaining loan approval is a condition precedent to the performance of the contract.

Q. What is the time of disposal under a contract where the disposal and acquisition is subject to loan approval being obtained ?

A. The time of disposal is the time at which loan approval is obtained.

Disposal of a Taxi Plate

Q. Can a person who disposes of a taxi plate qualify for retirement relief in circumstances where, prior to the disposal, the person carried on a trade of taxi driver as well as allowing another person to operate as a 'cosy' driver on his/her plate?

***A.* Yes, provided the other conditions of the relief are met.** It is Revenue's view that, in the circumstances outlined above, the disposal of a taxi plate is a disposal of qualifying assets for the purposes of retirement relief. Accordingly, provided all of the other conditions of the relief are met, the relief is allowable in full. The rationale for this view is set out below.

In *Section 598 Taxes Consolidation Act 1997*:

- *Subsection 2* provides that retirement relief applies to an individual who disposes of the whole or part of his or her ***qualifying assets***
- Under *subsection 1*, 'qualifying assets', in relation to a disposal includes certain ***chargeable business assets***
- Again under *subsection 1*, a 'chargeable business asset' is an asset which is an asset ***used for the purposes of a trade*** carried on by the individual.

The issue is whether a taxi plate is used for the purposes of a trade carried on by the individual. If it is, it is a chargeable business asset and therefore a qualifying asset (subject to the other conditions being met). In this case full relief is allowable. If it is not used for the purposes of a trade carried on by the individual, it is not a chargeable business asset and therefore not a qualifying asset in which case no relief is available.

Revenue take the view that the taxi plate is used for the purposes of a trade carried on by the taxi operator.

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The fact that the taxi plate is also used by a cosy driver does not alter this. Taxi plates are now generally operated on a 24 hour basis; the cosy driver is in operation only when the owner (i.e. the individual claiming retirement relief) is not carrying on his/her trade. Accordingly, the whole of the asset is used for the purposes of the trade of the taxi operator for the hours during which he/she carries on the trade, and the same asset is used by a cosy driver in the period when the trade is not carried on.

Land let on Conacre

Q. Is farmland which has been let on conacre for a number of years prior to retirement by a retiring farmer who is over 55 years of age be regarded as 'qualifying assets' for the purposes of retirement relief?

A. No. A chargeable business asset is a qualifying asset only if it has been a chargeable business asset *throughout* the period of 10 years ending with the disposal of the asset. Accordingly, where land is let on conacre immediately prior to disposal, this requirement will not have been met and the relief will not be due.

It is worth noting, however, that as respects disposals on or after 6 April 1998, the definition of 'qualifying assets' includes land used for the purposes of farming carried on by the individual which he or she owned and used for that purpose for a period of 10 years ending with the transfer of an interest in the land for the purposes of complying with the terms of the Scheme of Early Retirement From Farming introduced by the Minister for Agriculture and Food for the purpose of implementing Council Regulation (EEC) No 2079/92 of 30 June 1992.

Foreign Earnings Deduction

Amendment to *Section 823 TCA 1997*

The foreign earnings deduction was introduced with effect from the tax year 1994/95. It provides for a deduction from employment income, proportionate to time spent on working assignments abroad, other than in the UK, by non-public sector resident employees. It is focused on those spending substantial periods working abroad in a tax year. To qualify for relief an employee must spend at least 90 qualifying days abroad in a tax year or in a continuous period of 12 months straddling two tax years. A further condition stipulates that each period of absence must be for a minimum of 14 days at a time.

Finance Act 1999 Amendment
Section 21 Finance Act 1999, has made significant changes to the definition of the **specified amount**, which determines the amount of the deduction available under *Section 823 TCA 1999*. The amendment ensures that the base for the calculation of the foreign earnings deduction is essentially the employee's earnings for the year, net of pension contributions. The change applies to income accruing to an individual on or after 10 March 1999.

The income base on which the deduction is calculated excludes the following:

- Amounts represented by general benefits-in-kind
- The value of the benefit-in-kind in respect of a car
- Amounts in respect of preferential loans
- Severance payments
- Amounts in respect of restrictive covenants
- Amounts arising from the exercise of share options.

In addition, the income on which the calculation is to be made must be net of superannuation contributions.

Separate Calculations
The amendment adds text to the relieving subsection to put beyond doubt the requirement for separate **specified amount** calculations where an individual has more than one foreign employment in a year. (However, it does not affect the individual's right to amalgamate the qualifying days from different employments for the purposes of meeting the 14 or 90 day rules). The foreign earnings deduction in relation to an office or employment is the lesser of the specified amount or the income, profits or gains from that employment.

Example
Mary spends 50 qualifying days working abroad for Company A early in a tax year. Having changed employment in June, Mary subsequently spends 80 qualifying days working abroad for Company B. Earnings for the year are as follows

Salary from Company A £5,000
Salary from Company B £35,000

As the number of qualifying days are 130 and thus exceed 90 for the year, Mary can claim the foreign earnings deduction as follows;

Employment with Company A

$$\frac{50}{365} \times £40{,}000 = £5{,}479$$

Employment with Company B

$$\frac{80}{365} \times £40{,}000 = £8{,}767$$

As the calculation in respect of the employment with Company A results in an amount that exceeds the income from that employment, the deduction is limited to the amount of the income i.e. £5,000. The total deduction for the year is therefore £13,767.

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UNAPPROVED SHARE OPTION SCHEMES

Returns & Assessments

Introduction

This article outlines:

- The ***employer return requirements*** in relation to the provision of unapproved share options and other rights to directors and employees *(Section 128 TCA 1997)*

  and

- The ***assessment procedures*** which apply where employees have only occasional taxable income under share option schemes.

Employer Return Requirements

The legislation requires that employers must provide information to Revenue about the grant, assignment or release of rights or the allotment of shares or the transfer of any asset under a right granted. ***Self assessment principles apply to the making of a return. Employers must therefore make such a return within 30 days of the end of the year of assessment.***

For the tax year **1998/99** the main development to note is the availability of Form SO2, for return filing purposes. The Form SO2 was designed in response to requests from practitioners for a return form to facilitate the filing of particulars required under *Section 128*. Copies of the form are available on request from local tax offices - remember to mention whether the *IR£ or euro version* is required.

The normal return filing date is 30 days from the end of the tax year. However, as this is the first occasion that the Form SO2 is being used it has been decided that **filing of the return by 30 September 1999 will be regarded as satisfying the return filing requirements in respect of the tax year 1998/99**.

The intention is to issue Forms SO2 to about 1,000 companies in June 1999 for completion. If a company has already returned the share options particulars the form may simply be returned with a note to that effect.

Notwithstanding that an employer may not receive a Form SO2 for completion the return of particulars must be made in all cases where share options or other rights are granted, assigned etc.

Assessment Procedures for Employees with occasional taxable income under share option schemes

Where a director or employee, by reason of his/her office or employment, obtains a right to acquire shares ("share option") in any company or any other asset(s) *Section 128* provides for income tax and capital gains tax consequences.

The **charge to income tax** arises for the tax year in which the share option or other right is exercised, assigned or released. In the case of "seven year options or rights", the charge may also arise for the tax year in which the option or other right is granted. The shares or other assets acquired by the exercise of a share option or other right are **chargeable to capital gains tax** on the subsequent disposal of those shares or assets. Further details on the taxation treatment of gains arising on the exercise etc. of share options are set out in ***Tax Briefing***, Issues 31 and 35.

An employee in receipt of non-PAYE income which, on occasion, is too large to **code in** under the PAYE system is a "chargeable person" by definition and subject to the self assessment provisions. [**Coding** is a process by which TFA is reduced by the amount of non-PAYE income to effectively collect tax on that income.] The normal rules as regards payment of preliminary tax and return filing obligations apply. However, such PAYE cases with **only occasional income (i.e. a share option gain taxable under Schedule E) subject to self assessment procedures** would continue to have their tax affairs dealt with in their normal PAYE District. Returns should be made to the PAYE District which will arrange for any assessment to be made.

Equally, **any capital gains arising on the subsequent disposal** of shares or other assets acquired by the exercise of a share option or other right are subject to the self assessment rules as regards payment of preliminary tax and filing of a tax return. The CGT return should similarly be made to the PAYE District and any CGT assessment will be made by that district.

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CESSATION OF A TRADE OR PROFESSION

Basis of Assessment

General

Under the general rule for an ongoing business, Income Tax under Cases I and II is charged on the full amount of the profits of a trade or profession arising in the year or assessment. Where it has been customary to make up accounts for the trade or profession a taxpayer is charged to Income Tax on the profits arising in the twelve month period of account ending in the year of assessment.
Different rules apply in the case of:

- An account which is for a period greater or lesser than one year
- Commencement of a trade or profession
- Cessation of a trade or profession.

This article is confined to the special rules applicable at the **cessation** of a trade or profession. It also contains a worked example of the revised basis of assessment where the profit or gains of the penultimate year of assessment have been computed in accordance with *Section 65(2)(c) TCA 1997*. The same principle applies where the profits of the penultimate year of assessment are computed in accordance with *Section 65(2)(b)*. *(Section 65(2) (b) and (c)* apply in the case of an accounting period greater or lesser than 1 year).

Special Basis on cessation of a trade or profession
Section 67 TCA 1997

The final year's assessment is based on the profits from the preceding 6 April to the date of cessation.

Example
Business ceases on 30 November 1998. Accounts for 10 months ended 30/11/98 showing an adjusted profit of £22,000 are submitted. Final year of assessment is 1998/99.
Basis period for 1998/99 is 6 April 98 to 30 November 1998.
Assessable profit is:
£22,000 x 8/10 = £17,600.

Revision of year preceding the year of cessation

The penultimate year of assessment is initially based on the profits arising in the twelve month period of account ending in the year of assessment provided the rules of *Section 65 (2) (a)* have applied. The Inspector must compare the assessed profits with the actual profits and revise the assessment to the actual profits if greater.

Example
Business permanently ceases on 30/6/99. Accounts have been submitted showing the following profits as adjusted for tax purposes:

Year ended	*Profit*
30/9/97	£22,000
30/9/98	£24,000
Nine months ended	
30/6/99	£36,000

Assessments

1997/98

Basis Period	y/e 30/9/97
Assessable Profits	£22,000

1998/99

Basis Period	y/e 30/9/98
Assessable Profits	£24,000

1999/00

Basis Period	6/4/99 - 30/6/99
Assessable Profits	£12,000*

*(£36,000 x 3/9)

Review 1998/99 - Penultimate Year

Assessed Profits	£24,000
Actual Profit	
6/4/98- 30/9/98	
(£24,000 x 6/12)	£12,000
1/10/98 - 5/4/99	
(£36,000 x 6/9)	£24,000
	£36,000

As assessed profits £24,000 is less than actual profits £36,000, assessment must be revised to actual profit of £36,000.

Penultimate year revision and pre-penultimate year revision where Section 65 (3) rules are applicable.

Example
Business permanently ceases on 31 July 1999. It is customary to make up accounts to 31 July. Accounts are submitted for year ended 31 July 1997 showing a profit (as adjusted for tax purpose) of £32,000.

Accounts are then submitted for 24 months ended 31 July 1999. These accounts as adjusted for tax purposes show profits of £100,000.

Assessments

1997/98

y/e 31/7/97	£32,000

1998/99

£100,000 x 12/24	£50,000

1999/00

£100,000 x 4/24	£16,667

As no accounts were made up to a date within the year 1998/99, *Section 65(2)(c)* applies i.e. tax is charged on the full amount of the profits or gains of the year of assessment. By virtue of *Section 65(3)* the profits or gains of the corresponding period relating to the previous year of assessment (1997/98) must be ascertained and compared with the profit actually assessed.

Profits or gains of the corresponding period (6/4/97 to 5/4/98) relating to the previous year of assessment (1997/98) are £44,000 i.e.:

6/4/97 - 31/7/97

£32,000 x 4/12	£10,667

1/8/98 - 5/4/98

£100,000 x 8/24	£33,333
	£44,000

Assessed Previously	£32,000

The assessment for 1997/98 must be increased to £44,000

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Footnote

To make a full and true disclosure the taxpayer or practitioner is obliged to notify the Inspector of all material facts necessary for the making of an assessment. The fact of cessation is a material fact. To ensure that the due date for any additional tax due by reason of a penultimate year review is one month from the date of any necessary amendment, notification of cessation together with revised computations of liability for all years should where possible be provided to the Inspector as soon as is practicable and without unreasonable delay.
If this is not done, the taxpayer may be liable to a surcharge in accordance with *Section 1084(1)(b)(ii) TCA 1997* and any tax due by reason of a penultimate year review will be deemed to have been due on the same day as the tax charged by the original assessment *(Section 958 (8) TCA 1997)*.

SEAFARER'S ALLOWANCE Update

Introduction

Tax Briefing - Issue 32, contained summary features on many of the changes introduced by the *1998 Finance Act*. The provisions dealing with seafarers were covered briefly in this article. The Minister for Finance made the Order bringing the new *Section 472B Taxes Consolidation Act 1997* into operation on 17 February 1999 (SI 48/99). The following article gives more detailed information on the operation of this Section, including an amendment made to the Section in the *1999 Finance Act.* An amendment made to the operation of the foreign earnings deduction is also covered in the article.

Seafarer's Allowance and FED Amendment

Section 14 Finance Act 1998 contains two measures for the benefit of seafarers.

Firstly, it provides for a new deduction of £5,000 for certain seafarers in arriving at their taxable income *(Section 14 (1) (b) FA 1998)*. The £5,000 allowance was subject to EU Commission approval and applies from the tax year 1998/99. The allowance is conditional on a seafarer being at sea for at least 169 days in a tax year.

Secondly, the section provides for the amendment of the foreign earnings deduction to allow the time spent by seafarers visiting a UK port in the course of an international voyage to count as time spent abroad for the purposes of that deduction *(Section 14 (1) (c) FA 1998)*.

For seafarers entitled to claim the foreign earnings deduction, there will now be a choice. They can claim the new deduction or the foreign earnings deduction, **but not both**. This choice only arises for seafarers on voyages to destinations outside the UK as the foreign earnings deduction does not apply to periods of absence on direct visits to the UK. Seafarers on direct voyages to UK routes will be entitled to the £5,000 deduction only.

The Deduction - *Section 472B(4) Taxes Consolidation Act 1997*

Where an individual makes a claim and satisfies Revenue that he/she is a *qualifying individual* and was absent from the State for at least 169 days in a tax year for the purposes of performing the duties of a *qualifying employment,* he/she will be entitled to a deduction of £5,000 against the income from the qualifying employment. The deduction cannot be set against other income of the individual or against the income of his or her spouse. The £5,000 is a deduction in arriving at taxable income. The relief is not standard rated and is available at the taxpayer's marginal rate of tax.

- **Qualifying individual** is defined as an individual who holds a **qualifying employment** and has an agreement (known as the "articles of agreement") with the master of a ship.
- **Qualifying employment** means an employment the duties of which are performed on a **sea-going ship** on an **international voyage**. Employment is defined as an office or employment of profit, the emoluments of which are charged to tax under Schedules D or E. *(In determining whether the duties of an employment were performed on a sea-going ship on an international voyage, any duties not so performed which were merely incidental, are regarded as having been performed on a sea-going ship on an international voyage.)*
- **Sea-going ship** means a passenger or cargo ship registered in an **EC Member States' Register.** Fishing vessels are specifically excluded from the definition of a sea-going ship and, as a consequence, fishermen are

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excluded from the benefits of the new deduction.

- **Member States' Register** is defined in the Official Journal of the European Communities. The new allowance will be due only to employees on board ships entered in the European Communities' Member States' Registers.
- International voyage means a voyage beginning or ending in a port outside the State. For year of assessment 1998/99, a rig or platform situated in maritime area outside the continental shelf is regarded as a port outside the State for the purposes of the section. For year of assessment 1999/00 a rig or platform situated in **any** maritime area is regarded as a port outside the State for the purposes of the section *(Section 15 Finance Act 1999 refers)*. A voyage to such a rig would therefore qualify as an international voyage for the purposes of the new deduction. The original section applied the allowance to seafarers on vessels which serviced drilling rigs in foreign waters. The effect of the 1999 amendment is to extend the allowance to seafarers on vessels servicing drilling rigs in Irish waters.

In determining whether the individual has the necessary period of absence from the State, he/she is regarded as being absent from the State for a day if he or she is absent at midnight.

Exclusions *Section 472B (3) and (5)*

The new deduction is not available where the income from an employment:

- Is subject to the remittance basis of assessment *(Section 71 (3) Taxes Consolidation Act 1997)*
- Is subject to the split year treatment. *(Section 822 Taxes Consolidation Act 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.]*
- Arises to State employees or employees of State-sponsored bodies or statutory boards

If an individual has claimed the new seafarer's deduction, a claim cannot be made in respect of:

~ The foreign earnings deduction *(Section 823 Taxes Consolidation Act 1997)*

~ The trans border workers relief *(Section 825A Taxes Consolidation Act 1997)*

Amendment of foreign earnings deduction

To qualify for the foreign earnings deduction a taxpayer must be absent from the State for at least 90 days in a year in minimum periods of at least 14 days at a time. However, visits to the United Kingdom did not qualify for the purposes of the deduction.

With effect from 6 April 1998, where, in a period of at least 14 days in which a **qualifying individual** is absent from the State for the purposes of performance of the duties of a **qualifying employment**, on a **sea-going ship** which visits a port in the UK and also visits a port outside the State and the UK, the time spent in the UK port will count for the purposes of the foreign earnings deduction. However, the visit to the UK port cannot be a direct visit from a port in the State. It must be part of a longer international voyage.

Qualifying individual, qualifying employment and sea-going ship have the same meaning as in *Section 472B Taxes Consolidation Act 1997* i.e. the meanings as explained above.

The effect of the amendment is that seafarers who would qualify for the seafarers allowance can also include visits to a UK port for the purposes of the FED, provided such a visit was part of a longer international voyage.

Examples 1998/99

		Example 1 £		Example 2 £	
Income from qualifying seafaring employment (assessable spouse)			25,000		4,000
UK Dividends			500		Nil
Income from other employments			Nil		15,000
Rental Income			Nil		5,000
Income from employment (non assessable spouse)			10,000		2,000
Total			35,500		26,000
Seafarers Allnce	5,000			*4,000	
Personal Allnce	6,300			6,300	
PAYE Allowance	1,600		12,900	1,600	11,900
Taxable			22,600		14,100
20,000**(1)**/14,100**(2)** @ 24%		4,800		3,384	
2,600**(1)** @ 46%		1,196	5,996	-	3,384
Credits					
Medical Insurance Relief 750**(1)**/700**(2)** @ 24%		180		168	
UK Withholding Tax 500**(1)** @ 15%		75		-	
Mortgage Interest 2,000**(2)** @ 24%		-	255	480	648
Tax Due			***5,741***		***2,736***

* Deduction only applies to income from qualifying employment

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STOCKLENDING & REPO TRANSACTIONS Revised Tax Treatment

Introduction

In ***Tax Briefing*** - Issue 17, No.1 1995, Revenue published details of the tax arrangements that would apply to stocklending (or securities lending) and repurchase (repo) transactions. Revenue have now decided to revise the existing arrangements in relation to stocklending and repo activities.

Nature of transactions

Stocklending and repo transactions are a common feature of well developed financial centres. These transactions involve the temporary transfer of stock or securities from one party to another with a simultaneous commitment to reverse the transaction at some point in the future. The difference between a stock loan and a repo transaction is that in a repo contract there is an agreed return date whereas in a stock loan contract there is no pre-agreed return date. There are two important aspects to stocklending and repo transactions from a tax viewpoint:

Transfer of Title
A key feature of these transactions is that a transfer of legal title occurs which is subsequently reversed on completion. If the taxation of these transactions were to reflect the legal form of what has occurred, a charge to Capital Gains Tax or Income/Corporation Tax might arise. Notwithstanding this legal form, the substance is essentially one of lending.

Income receipts/payments
Where stock is on loan the borrower is normally entitled to any dividend/interest payments made because, as noted above, a transfer of legal title takes place so that the stock is held in the borrower's name. However, the borrower will normally be required to reimburse the lender for any dividend payments. This compensating payment is termed a "manufactured payment".

The effect of this reimbursement transaction is that the lender is put in the same position as if he/she had not loaned the stock and had received the real dividend, and the borrower, as if he/she had not borrowed the stock and so received no dividend. In stocklending transactions the profit earned by the lender will either be reflected in a small margin between the "selling" and "repurchase" price or in the form of a side fee paid by the borrower, depending on the particular circumstances.

Revenue Approach

Arrangements have been agreed by Revenue to recognise the substance of these transactions, to tax only the accounting profit earned and, in general, to leave both the borrower and the lender in the same position as if no stock loan had taken place. In particular these arrangements mean that:

(i) A stock loan or a repo will not be regarded as a disposal or acquisition for tax purposes. Similarly, the subsequent return of the stock by the borrower will not be regarded as a disposal or acquisition. If the loan and return take place at different prices then any profit earned will be treated as a fee received by the lender and taxable in full.

(ii) Manufactured payments will normally be taxable in the hands of the recipient. However, manufactured payments will be treated as exempt from tax when received by a lender for whom the corresponding real dividend would have been an exempt receipt or would not have given rise to Irish tax if it had been received by the lender.

Examples of this treatment include:

- the receipt of manufactured payments by tax exempt funds such as charities, pension funds or the pension fund business of a life assurance company
- the receipt of manufactured dividends in respect of Irish equities by an Irish resident company for whom the real dividends would have ranked as franked investment income
- the receipt of manufactured payments in respect of overseas securities by Irish taxable lenders for whom the real dividends on such securities would have attracted a nil Irish tax liability by virtue of an entitlement to a credit against Irish tax for foreign underlying tax. This situation will apply only where the combined rate of foreign underlying tax and withholding tax would have exceeded the Irish tax rate if the lender had received the real dividend. If the manufactured payment on such dividends exceeds the real dividend received (net of foreign withholding tax, but before Irish encashment tax) then the excess will be taxable in full.

(iii) Stocklending fees received by tax exempt funds will be regarded as exempt for tax purposes provided that the income from the stock loaned would also have been exempt from tax.

(iv) Manufactured payments will normally be deductible by borrowers against the real dividends or interest in computing the borrowers' liability to Irish tax.

No deduction will, however, be granted for the manufactured

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payment where the real dividend or interest:

~ is exempt from tax either because the income is franked investment income or because the borrower is an exempt fund, ***or***

~ does not give rise to Irish tax in the hands of the borrower by virtue of an entitlement to credit relief for foreign underlying tax.

(v) By way of exception to (iv) above, where an Irish taxable borrower borrows overseas securities from an Irish taxable lender, the borrower may choose, in order to maximise the benefit of any available credit relief for foreign withholding tax on the real dividend or interest, to treat the manufactured payment as if it was a charge on income and so deduct it from total profits rather than directly from the real dividend or interest. This facility will not apply where credit relief is also available for underlying tax in respect of the real dividend or interest.

(vi) Rebates of interest on cash collateral will be deductible against the interest arising on such cash collateral.

(vii) Transfers of stock which take place under a stock loan or repo transaction to which these arrangements apply will be treated as exempt from Irish stamp duties.

Conditions and Restrictions

The arrangements outlined above will apply subject to the following conditions and restrictions:

(a) The arrangements will apply to lending and borrowing institutions whether trading or non-trading which are within the scope of Irish tax and which are:

- Companies
- Building Societies
- Pension Funds
- Charities
- Collective Investment Funds.

There is no requirement that both parties to the stocklending or repo transaction be within the scope of Irish tax. The arrangements will not apply to individuals or partnerships.

(b) Subject to the two exceptions outlined below, the arrangements will apply to:

- All interest bearing, discounted and premium bearing securities
- Equities quoted on recognised stock exchanges.

Exceptions

The first exception to the above concerns Irish equities which are lent across dividend payment dates. In relation to stocklending/sale and repurchase transactions involving Irish equities, the arrangements will not apply unless the lender, if he/she had received the real dividend and had filed any required declarations or claims, would have been eligible for exemption from the dividend withholding tax provisions under domestic law or the terms of a Tax Treaty.

The second exception relates to Irish corporate bonds which are lent across coupon dates. The arrangements will not apply to stocklending/sale and repurchase transactions involving Irish corporate bonds, except in either of the following circumstances:

- Where the lender of the bonds is eligible for exemption from the interest withholding tax provisions under domestic law or the terms of a Tax Treaty, ***or***
- Where both parties to the transaction are subject to the interest withholding tax provisions.

(c) Stocks/Securities may be denominated in any currency.

(d) Statutory audited accounts of the relevant institutions, insofar as these transactions are concerned, must recognise the substance rather than the form of the activities. In this regard the accounts must be unqualified. Revenue will apply the tax treatment in line with the accounting treatment. Deviations from this will not be allowed.

(e) Any party to a stocklending/sale and repurchase transaction who avails of the terms of these arrangements is required to keep a record of any such transactions.

(f) It has been decided to limit these arrangements to transactions extending for periods of 6 months or less.

(g) These arrangements will be effective for stocklending/sale and repurchase transactions which take place on or after 6 April 1999.

These arrangements will be kept under review. Revenue reserve the right to withdraw any or all of these arrangements in the event of their being used for tax avoidance purposes. In particular, Revenue are aware that exempt vehicles, such as pension funds, could be utilised to secure tax benefits that would otherwise not be available. If this happens, these arrangements will be withdrawn and the strict technical position applied.

Any unusual situations not dealt with here will be examined on a case by case basis by Revenue.

Note: Copies of this information notice are available in leaflet format from:
Direct Taxes Administration Branch,
Financial Services Unit,
Dublin Castle, Dublin 2,
Tel: 01 - 679 2777 Ext. 48018 or from the ***Revenue Forms & Leaflets Service*** at (01) 878 0100.

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CAPITAL ACQUISITIONS TAX (CAT) Finance Act 1999

The principal features relating to CAT in the *Finance Act 1999*, are as follows:

Section 200

- This section provides that only those benefits taken on or after 2 December 1988, need be taken into account for the purposes of determining the CAT due on a benefit taken on or after 2 December 1998
- It imposes an obligation on a person to deliver a CAT return if requested to do so by Revenue even if no gift or inheritance has been received. This provision came into effect on 25 March 1999.
- It also imposes an obligation on the donor of a gift or a disponer in relation to a discretionary trust to make a return to Revenue in certain circumstances - i.e. in the case of a gift where 80% of the relevant class threshold is exceeded and, in the case of a discretionary trust, where the disponer is living and domiciled in Ireland. **Practitioners should note that the obligation to make a return is not contingent on the receipt of a written request to do so from the Revenue Commissioners**. This provision applies to taxable gifts taken on or after 11 February 1999, and to dispositions of property to a discretionary trust made on or after 11 February 1999. Copies of the relevant return forms are available from:
  Capital Taxes Division,
  Taxpayer Advisory Service,
  Dublin Castle,
  Dublin 2.
  Tel.: 01 - 679 2777
  Ext: 48593/48597
  or from the
  Revenue Forms & Leaflets Service at 01 - 878 0100.

Section 202

- This section provides that where a relief from tax is clawed back, interest on the tax consequentially due will be payable from the date of the event giving rise to the clawback rather than from the date of the benefit
- The reliefs affected by this provision are agricultural relief, business relief, the relief for heritage objects and the relief for the heritage property of companies
- The new interest provision operates where the event which triggers a clawback occurs on or after 11 February 1999.

Section 203

- This section provides that the particulars of any transfer or lease of land, which are supplied to Revenue under *Section 107 Finance Act 1994* (stamp duty), may be used as prima facie evidence of those particulars in any appeal relating to the value of land for CAT purposes.

Section 204

- This section increases the small gift exemption from £500 to £1,000 with effect from 1 January 1999.

Section 205

- This section exempts from CAT monies raised by public subscription for permanently incapacitated individuals provided that those monies are held on a qualifying trust
- The effect of the exemption is to ensure that the receipt by a permanently incapacitated individual of funds which are held on a qualifying trust, or of income deriving from funds held on such a trust, will not constitute a gift or inheritance taken by that individual
- This exemption from CAT applies to gifts or inheritances taken on or after 6 April 1997. [It operates in conjunction with an exemption from Income Tax provided for by *Section 12 Finance Act 1999*].

Section 206

- This section exempts from Inheritance Tax and Probate Tax any balance in an "approved retirement fund" or an "approved minimum retirement fund" which passes on the death of a pensioner, or on the death of the pensioner's spouse, to a child who is aged 21 or over at the date of the disposition.
- For the purposes of the exemption the terms "approved retirement fund" and "approved minimum retirement fund" have the meanings assigned to them by *Sections 784A and 784C* respectively of the *Taxes Consolidation Act 1997*.
- The exemption applies to a qualifying inheritance taken upon the death of a disponer dying on or after 25 March 1999.

Further information may be obtained from:

Capital Taxes Division,
Taxpayer Information Service,
Dublin Castle,
Dublin 2.
Telephone 01 - 679 2777
Ext. 48593/48597

RPT

Finance Act 1999 - *Section 198*

This section increases the threshold below which a residential property tax clearance certificate is not required to **£200,000.**
The revised threshold will apply to sales occurring on or after 5 April 1999.

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STAMP DUTY

Finance Act 1999

Introduction

The 1999 Finance Act, contains a number of measures designed to tidy-up the stamp duty code in advance of the publication of a Stamp Duties Consolidation Bill later this year. The most significant feature is the insertion of a new *First Schedule* into the *Stamp Act 1891*. The effect of this new schedule is to reduce the number of instruments which are chargeable to the fixed stamp duty of £10. This has been achieved by:

- The omission of a number of heads of charge
- Providing exemption from stamp duty where a prescribed certificate is contained in the instrument
- Making certain partitions and divisions not liable to the fixed £10 charge.

There is however no change in the liability to ad valorem stamp duty where instruments effect the transfer of property by way of gift or sale.

Changes to the First Schedule

Omissions from First Schedule

The following heads of charge are omitted:

[*REMEMBER!* Instruments described below do not need to be presented to Revenue for stamping.]

- **Appointment** of a new trustee, and **Appointment** in execution of a power of any property, or any use, share, or interest in any property, by an instrument not being a will ***(£10)***
- **Covenant** - Any separate deed of covenant (not being an instrument chargeable with ad valorem duty as a conveyance on sale or mortgage) etc.***(£10)***
- **Declaration** of any use or trust of or concerning any property by any writing, not being a will, or an instrument chargeable with ad valorem duty as a settlement.***(£10)***
- **Deed** of any kind whatsoever, not described in this Schedule ***(£10)***

Marketable Security :
Transfers of marketable securities will still be liable under the Conveyance or Mortgage heads of charge.

- **Marriage Settlement**. (See Settlement)
- **Policy of Life Insurance** made for a period not exceeding two years where the risk to which the policy relates is located in the State ***(£0.10p)***
- **Revocation** of any use or trust of any property by any writing, not being a will ***(£10)***
- **Settlement** - Any instrument, whether voluntary or upon any good or valuable consideration etc. ***(£0.25p per £100)***
- **Share Certificate, Foreign** (See Marketable Security).

Exemptions

Certain heads of charge now contain an exemption from the fixed rate of duty of £10 subject to the instrument containing the certificate specified in the Schedule.

[*REMEMBER!* Instruments described below which contain the prescribed certificate do not need to be presented to Revenue for stamping.]

These heads of charge and the wording of the relevant certificates are as follows:

- **Conveyance or Transfer** of any kind not already described in this Schedule.
  Where such instrument relates to:
  - immovable property situated in the State, or any right over or interest in such property, *or*
  - the stocks or marketable securities of a company having a register in the State ***(£10)***

Certificate: *"It is hereby certified that the instrument is a conveyance or transfer on any occasion, not being a sale or mortgage."*

- **Exchange** - instruments effecting:
  - In the case specified in *Section 104 Finance Act 1993*, see that section
  - In any other case ***(£10)***.

Certificate: *"It is hereby certified that the instrument is an instrument effecting an exchange which is not an exchange which is specified in Section 104 Finance Act 1993."*

- **Release** or **Renunciation** of any property, or of any right or interest in any property
  - On a sale, see Conveyance or Transfer on sale
  - In any other case ***(£10)***.

Certificate: *"It is hereby certified that the instrument is a release or renunciation of property, or of a right or interest in property, which is not a release or renunciation on a sale."*

- **Surrender** of any property, or of any right or interest in any property
  - On a sale, see Conveyance or Transfer.
  - In any other case (£10)

Certificate: *"It is hereby certified that the instrument is a surrender of property, or of a right or interest in property, not being a surrender on a sale."*

Not Liable

Instruments effecting Partitions and Divisions, other than in the case specified in *Section 73 Stamp Act 1891*, are no longer liable to the fixed duty of £10.

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STAMP DUTY

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Increase in rate of duty

The rate of duty specified at paragraphs (4) and (5) of the **Lease** head of charge is increased from £1 to £10. This change affects a lease with a rent review clause which will now attract a fixed duty of £10 (previously £1) in addition to the ad valorem duty otherwise payable.

Other Principal Changes

Percentage rates and rounding
All ad valorem rates of duty are now expressed as a percentage subject to rounding up to the nearest £. For example,

- Purchase of a house for £186,550, stamp duty at 5% = £9,327.5 rounded to £9,328
- Mortgage, securing a sum of £326,555 - stamp duty at 0.1% = £326.55 rounded to £327
- Lease for 35 years with a premium of £127,755 and rent at £26,790pa - stamp duty on premium £127,755 at 4% = £5,110.2 rounded to £5,111;
  stamp duty on rent £26,790 at 1% = £267.9 rounded to £268;
  total stamp duty £5,379

Effective Date

The new First Schedule and the other changes mentioned above apply to instruments executed on or after 25 March 1999.

Further Information

A leaflet describing the principal effects of the Act is in course of preparation and will be available shortly on request from our:

Dublin Office

Telephone	01 - 679 2777
Exts.	48310/48612/48992
Fax	01 - 679 4115

Cork Office

Telephone	021 - 968783
Exts.	73105/73109/73141
Fax	021 - 318088

EMPLOYER'S P35 Update

Introduction

By now all registered employers should have received their P35 stationery. This year, in an effort to ease the burden on employers, the deadline for submission of returns and for the issue of P60's to employees has been extended to **21 May.** The new due date was agreed with employers' representatives and their agents as a realistic deadline for making the return.

Helpline

The P35 Helpline is available again this year to assist employers in dealing with any queries or problems that they may have completing the returns. In order to encourage employers to avail of the Helpline, we have now introduced a new lo-call number on *1 890 254565*.

Employers with Computer Payrolls

Most employers with computerised payroll systems are now forwarding their employee details on diskette. This is a very attractive option for these employers with a range of benefits including:

- Reduced compliance costs through less form filling
- Employers receive their employee tax-free allowance details on diskette in subsequent years
- Less time is required to make the return.

There are however, still some employers with computerised payroll systems not forwarding their returns on diskette. We are asking these employers to forward their returns on diskette and in the process avail of the benefits in terms of reduced costs and time .
Detailed advice on the diskette system can be obtained from John Grace on *1 890 254565* (ext. 63172).

Employers with Manual Payrolls

The completion of the P35 form has been simplified considerably in recent years for manual payroll users.

One of the most significant steps is that practitioners now have the option of returning employee details using a pre-formatted diskette provided by Revenue. The software on the diskette can also be downloaded from Revenue's website **(www.revenue.ie)**.

This system is an attractive user friendly option for accountants to complete P35 returns electronically for clients instead of using hand-written forms. The pre-formatted diskette also includes the facility to print P60's. The benefits for practitioners are substantial including:

- The P35 Declaration becomes the only form for manual completion
- P60's can be printed from the diskette via a laser printer
- Multiple employer returns can be made on one diskette
- Basic validation of the data entered on the diskette is provided.

Employers with no Employees

A return indicating zero liability must be made for registered employers who had no employees during the tax year.

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General

As the most up to date technology is being used by Revenue to capture and process data, practitioners and employers can greatly assist Revenue to achieve accurate and timely processing of returns by:

- Ensuring that the forms and giro are only used for the employer to whom they are issued. This is because each form is pre-coded with details that are unique to that employer.
- Returning the original forms. The technology used by revenue to process returns is designed to operate with original forms
- Fully completing each form.

New penalty structure

Practitioners and employers are no doubt aware that a new penalty structure has been put in place. Employers who fail to meet the **21 May** deadline are now liable to

- a penalty of £500

  and

- the penalty will increase by £500 for each month or part of a month that the P35 remains outstanding, subject to a maximum penalty of £2,000.

However, the extra three weeks now available should ensure adequate time for practitioners and employers to complete and return their P35's and thus avoid the risk of incurring a penalty.

VALUE-ADDED TAX — Motor Vehicles

Seventh VAT Directive and the Special Scheme for Motor Vehicles

Introduction

The aim of this article is to remind practitioners of the Special Scheme for Motor Vehicles which applies under the Seventh VAT Directive and which was transposed into Irish Law in the *1995 Finance Act*.

The Value Added Tax Special Scheme for Means of Transport (Documentation) Regulations 1996 (referred to below as the Regulations) which govern the practical application of the scheme were introduced with effect from 1 July 1996.

There is detailed explanatory leaflet (VAT Treatment of Second-Hand Vehicles - October 1995) available on the scheme.

Audits on motor dealers who supply qualifying vehicles under the scheme have indicated problems particularly in the quality of documentation available to support a deduction of residual VAT and the invoicing procedures for vehicles sold under the scheme.

Documentation supporting claims for residual input credit

Dealers who claim residual input credit on qualifying motor vehicles must be in possession of proper documentation to support the claim.

Where the vehicle is acquired from another dealer the invoice must in accordance with Paragraph 7 of the Regulations show the following endorsement:

"Special Scheme - this invoice does not give the right to an input credit of VAT"

Where the vehicle is acquired from other sources e.g. private individuals within the State, a settlement voucher prepared in accordance with Paragraph 4 of the Regulations must be issued to the person from whom the vehicle is acquired. A copy of this settlement voucher must be available for inspection.

Where residual VAT is claimed on vehicles coming from other Member States of the EU invoices for such vehicles must not show VAT separately and must be endorsed by the supplier to the effect that the vehicle has been sold under the margin scheme /second-hand goods scheme in that Member State. Where the vehicle is zero- rated under the intra-community supply rules it means that the dealer in the other Member State is not supplying the vehicle under the special scheme and the vehicle is therefore not a qualifying vehicle. Because of this the Irish dealer will not be entitled to claim any residual input credit on the vehicle.

Invoicing of vehicles supplied under the scheme

When a dealer supplies a vehicle under the scheme he/she may not issue a VAT invoice to the purchaser but must issue an invoice which does not show VAT separately and must include the endorsement referred to above.

Motor dealers who purchase vehicles under the scheme will be able to claim residual input credit on the vehicles but other VAT registered persons such as driving schools or vehicle leasing companies (who normally could claim a deduction in respect of a passenger motor vehicle) who purchase the vehicles for use in their business will not be able to claim any type of input credit. It is very important therefore that the correct type of invoice is issued to the purchaser at the time of the supply of the vehicle.

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VAT / Motor Vehicles

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Where vehicles are supplied to customers outside the State, a liability to account for VAT on the supply arises except where the vehicle is supplied as an intra-community supply or export in which case zero-rating can apply. However, in such cases the purchaser will forfeit his entitlement to claim residual input credit.

Revenue Audits

In the course of carrying out audits on the motor trade, auditors will pay particular attention to documentation produced to support claims for residual input credit and the requirement to account for VAT on all supplies of vehicles. If required, assessments may be raised to recover VAT input credit incorrectly claimed as a result of inadequate documentation

Changes in the 1999 Finance Act

Since the introduction of the scheme, Farm Machinery Dealers were concessionally allowed to claim residual input credit on farm machinery acquired from flat rate farmers who used such machinery in the course of a farming activity. The entitlement to claim residual input credit in such cases has been confirmed by *Sections 114 (b) and 117 of the Finance Act 1999*.

Copies of the explanatory leaflet mentioned above are available from local tax offices or from the *Revenue Forms & Leaflets Service* at 01- 878 0100.

VAT — Hot Take-Away Food

The following is a copy of a notice which appears in the May issue of the trade magazine *"Checkout"*.

NOTICE TO RETAILERS

VAT RATE APPLICABLE TO ALL SUPPLIES OF HOT TAKE-AWAY FOOD

All supplies of hot food, including cooked chickens, have been liable to VAT at the reduced rate since 1 July 1986. The current VAT rate applicable is 12.5 per cent.

However, the supply of freshly baked bread which may have retained some heat after baking (but has not been maintained heated) qualifies for the zero rate of VAT.

"Take-away" cooked food supplied cold, is liable to VAT at the zero rate.

May, 1999.

website: http://www.revenue.ie

Revenue

There may have been some confusion regarding this subject and the purpose of this notice is to clarify and confirm the Revenue position in relation to such supplies.

Traders who have been treating the sales of hot food incorrectly should contact their Inspector of Taxes to finalise the matter.

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

VAT — Goods imported by parcel post

By agreement with An Post, VAT registered persons importing goods for use in their business by parcel post up to £200 in value are not required to pay VAT due at the point of entry if their VAT number is quoted on the customs declaration accompanying the parcel.

With effect from 1 January 1999 all such importations must be included in Box T1 on the VAT 3 return form. Traders entitled to input credit may set off any VAT deductible in respect of the parcel in Box T2 of the return. Thus in the case of persons entitled to full input credit the entries will be self cancelling with no net liability.

There is no change in the VAT treatment of parcels exceeding £200 where VAT will be paid as before.

Revenue

Health Expenses

Extension of health expenses relief for child oncology patients to children with other serious life threatening illnesses

Tax Briefing Issue 33 contained an article on health expenses. The relief available on certain items of expenditure relating to child oncology patients was outlined in the article.

This relief is now extended to include children who:

- **Are suffering a serious life threatening illness**, ***and***
- **Require constant or regular hospital care.**

Constant or regular hospital care does not necessarily mean a stay in hospital. However it does imply regular hospital attendance or supervision appropriate to the serious illness.

This extension applies for 1998/99 and subsequent years.

Direct Debit

Payment of Income Tax Preliminary Tax

Issue 35 of ***Tax Briefing*** provided details of the more flexible arrangements which apply from 6 April 1999 to the payment of Preliminary Tax by direct debit. Since the launch of the new more flexible scheme, Revenue has been requested by some trade and representative bodies to draw the attention of practitioners to the particular benefit of the scheme to individuals who are engaged in **seasonal business** - the scheme provides for variable payments during the year to reflect business cashflow. In making such payment arrangements, it is important to bear in mind that a minimum of 70% of the Preliminary Tax payable for the tax year must be paid on or before 31 December of that tax year. In addition, payments by direct debit can be made in a minimum of ten instalments over the tax year.

VAT

VAT Repayments to Registered Traders
Relocation of work to Ennis

The processing of VAT Repayments will be relocated to our Ennis Office with effect from 31 May 1999. This relocation will have no direct impact on traders or their agents and claims should continue to be submitted to the *Collector-General's Office, Sarsfield House, Limerick*. However, if traders or their agents have queries regarding the payment of claims after the above date they should contact the Ennis Office.
The address of our Ennis Office is:
Office of the Revenue Commissioners,
Government Offices,
Ennis, Co. Clare.
Telephone No. 065-6841200
(Lo Call 1890-202033);
Fax: 065-6841366

Revenue will, of course, continue to meet their commitment to repay most claims within ten working days of receipt.

Electronic Commerce

Electronic Commerce and the Irish Tax System

Electronic commerce is emerging as a major business issue. The related topic of how e-commerce should be taxed has also begun to get attention in specialist tax journals. Revenue has been looking at tax and e-commerce from two different angles:

- ***First***, a Revenue-wide working group has examined how e-commerce is likely to affect all the main taxes
- ***Second***, we have been participating in working groups examining tax and e-commerce in the EU and at the OECD.

We plan to pull these two strands together by completing work on a draft report. When finalised, it is envisaged that the report will be published in paper format and on the internet (on Revenue's website, **www.revenue.ie**).

The report focuses on taxation and the internet. It touches only briefly on other e-commerce channels such as traditional EDI. The report examines the internet environment as a source of tax challenges and opportunities. While definitive conclusions are not possible at this stage, all the main taxes are examined.

There is also an analysis of the main themes emerging so far in the international tax debate on internet commerce.

An announcement will be made when the report is published.

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Revenue

REVENUE NEWS

Minister for Finance Charlie McCreevey TD is presented with the first copy of Revenue's new booklet titled "New Pensions Options" by Revenue Chairman Dermot Quigley and Assistant Secretary Michael O' Grady (seated)

Revenue publish 'New Pensions Options' booklet (IT 14)

Revenue have published a booklet explaining the new provisions relating to pensions introduced by the Minister for Finance in this years Finance Act. The booklet sets out, in an easy to read format, the new options available to the self employed, directors of family companies and employees who are not in an occupational pension scheme.

The booklet explains the increased tax deductions which apply for pension contributions. Based on the age of the individual a higher percentage of earnings (up to 30%) can now be set aside as pension contributions and be fully tax deductible, these amounts are detailed in the booklet. There are also new rules relating to individuals whose income comes from specified sporting activities - they can contribute up to 30% of their earnings each year, regardless of age.

The biggest change comes in the area of drawing down pension benefits on retirement in that the **obligation to purchase an annuity has been removed**. From 6 April 1999, there are three new options available:

- An individual may take a 'tax free' lump sum and invest the balance in an 'approved minimum retirement fund' (AMRF) or in an 'approved retirement fund' (ARF)
- Withdraw all the capital in the pension fund in cash- subject to normal Income Tax provisions
- Take a 'tax free' lump sum of up to one quarter of the fund and invest the balance in an annuity.

A section of the booklet is devoted to answering the questions most likely to arise from the new provisions and provides a number of examples of how the new options will operate.

More than 300,000 copies of the booklet have been sent to people who may benefit from the new arrangements - the self employed and directors of family companies.

Copies of the booklet are available from local tax offices, from the *Revenue Forms & Leaflets Service* at 01 - 878 0100 or on the Revenue web site **www.revenue.ie**.

Update

Save As You Earn (SAYE) Schemes

A booklet has been prepared on the new SAYE schemes. The booklet describes the provisions of *Chapter 2, Part 17, Taxes Consolidation Act 1997* and *Schedule 12A* of that Act, relating to savings - related share option schemes. It also includes specimen scheme rules, specimen scheme documents and a specimen Annual Return of Information Form. In view of the limited audience the booklet will not be available in printed format. It can be downloaded from the Revenue internet site (**www.revenue.ie**) or ordered on diskette from the *Revenue Forms & Leaflets Service* at 01 - 878 0100.

Corporation Tax - Reduced Rate and programming problems

Due to the changes in the profits chargeable at the reduced rates a computer calculation error may arise in a very small number of cases. Where such an error arises this should be brought to the attention of the tax office who will correct the assessment. The problem will arise in cases where all of the following circumstances apply:

- The accounting period ends on a date other than 31 December
- There are assessable profits in the case
- The assessable profits are in the range of £50,000 to £100,000
- The reduced rate is claimed by a number of different companies i.e. group structure but including associated companies ***and***
- Different amounts of reliefs are claimed in these companies and in the different deemed accounting periods.

Basically, these will be companies who allocate some of the specified amount to an associated company even though they have enough profits to absorb it themselves.

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