

BUDGET 2001

Summary

Budget Summary

This article sets out a summary of the main Budget 2001 changes.

Personal Allowances



Tax Credits

Personal Allowances	Existing	Budget 2001	Equivalent Tax Credits	
			Full Tax Year	Short Tax "Year"
Single Person	£4,700	£5,500	£1,100	£814
Married Person	£9,400	£11,000	£2,200	£1,628
Widowed Person				
Without dependent children	£5,700	£6,500	£1,300	£962
Qualifying for One-Parent Family Tax Allowance	£4,700	£5,500	£1,100	£814
One-Parent Family				
Widowed Person	£4,700	£5,500	£1,100	£814
Other Person	£4,700	£5,500	£1,100	£814
Widowed Parent Allowance				
Bereaved in 2000/01	£10,000	£10,000	£2,000	£1,480
1999/00	£8,000	£8,000	£1,600	£1,184
1998/99	£6,000	£6,000	£1,200	£888
1997/98	£4,000	£4,000	£800	£592
1996/97	£2,000	£2,000	£400	£296
Home Carer's Allowance Max.	£3,000	£3,000	£600	£444
PAYE Allowance	£1,000	£2,000	£400	£296
Age Allowance				
Single/Widowed	£800	£800	£160	£118
Married	£1,600	£1,600	£320	£237
Blind Allowance				
One Spouse Blind	£3,000	£3,000	£600	£444
Both Spouses Blind	£6,000	£6,000	£1,200	£888
Incapacitated Child Allowance Max.				
	£1,600	£1,600	£320	£237
Dependent Relative Allowance Max.				
	£220	£220	£44	£33

Tax Rates and Tax Bands

Tax Rates

The tax rates are being reduced by 2% - from 22% to 20% and from 44% to 42%.

Tax Bands

The following are the changes to the tax bands:

- the standard rate band will be widened from £17,000 to £20,000 for a single or widowed person without dependent children
- the standard rate band will be widened from £20,150 to £23,150 for a single or widowed person with dependent children and who qualifies for the one-parent family tax allowance
- the standard rate band for a married couple with one income will be widened from £28,000 to £29,000
- the standard rate band for a married couple, both with income, will be £29,000 subject to an increase of up to £11,000. The increase will be the lower of £11,000 or the amount of the income of the spouse with the lower income - this increase is not transferable between spouses.

Summary Chart - Tax Rates and Bands

Personal Status	Bands of Taxable Income	
	Full Tax Year	Short Tax "Year"
Single/Widowed without dependent children	£20,000 @ 20% Balance @ 42%	£14,800 @ 20% Balance @ 42%
Single/Widowed qualifying for One-Parent Family Tax Allowance	£23,150 @ 20% Balance @ 42%	£17,131 @ 20% Balance @ 42%
Married couple (one spouse with income)	£29,000 @ 20% Balance @ 42%	£21,460 @ 20% Balance @ 42%
Married couple (both spouses with income)	£29,000 @ 20% [with increase of £11,000 max] Balance @ 42%	£21,460 @ 20% [with increase of £8,140 max] Balance @ 42%

Note: The move to a full tax credit system means that tax tables and table allowances will no longer be a feature of the PAYE system.

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Summary

Exemption Limits

Single/Widowed	Existing	Budget 2001	Short Tax "Year"
General Limit (under 65 years of age)	£4,100	£4,100	£3,034
65 years of age & over	£7,500	£8,500	£6,290
Married			
General Limit (under 65 years of age)	£8,200	£8,200	£6,068
65 years of age & over	£15,000	£17,000	£12,580

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

The above exemption limits are increased by £450 (£333 in the short tax "year") for each of the first two dependent children and £650 (£481 in the short tax "year") for the third and subsequent children.

Rent Relief for Rented Accommodation

Rent relief will be increased as follows:

Rent Relief	Existing	Budget 2001	Equivalent Tax Credits	
			Full Tax Year	Short Tax "Year"
Single	Under 55 Max.	£750	£200	£148
	Over 55 Max.	£2,000	£400	£296
Widowed	Under 55 Max.	£1,125	£400	£296
	Over 55 Max.	£3,000	£800	£592
Married	Under 55 Max.	£1,500	£400	£296
	Over 55 Max.	£4,000	£800	£592

Incapacitated Person (Employing a Carer)

The allowance is being increased from £8,500 (max) p.a. to £10,000 (max) p.a. at the individual's highest rate of tax.

Medical Expenses Relief

Dependent Relative

Tax relief will be available from 6 April 2001 to an individual in respect of qualifying medical expenses incurred on behalf of a dependent relative, without reference to the relative's level of income.

Maternity Care

The existing restriction on routine maternity care has been removed with effect from 6 April 2001.

Trade Union Subscriptions

A new tax relief for members subscriptions to Trade Unions has been introduced. The maximum relief available is £100 p.a. at the standard rate of tax.

Service Charges

The maximum tax relief available for charges for refuse collection in respect of the "tag" system has been increased from £50 p.a. to £150 p.a. with effect from 6 April 2001.

Mortgage Interest Relief

Tax relief for Home Loan Interest paid is unchanged.

Medical Insurance

Relief at source applies from 6 April 2001. Relief for premiums paid in the year to 5 April 2001 will also be given in the short tax "year".

Benefit-in-Kind

Preferential Loans

The "specified" rate for the purposes of calculating the benefit-in-kind on preferential loans is being increased from 6 April 2001. The specified rates will be:

Home Loans	6% (previously 4%)
Other Loans	12% (previously 10%)

Seafarer's Allowance

The number of days abroad for the purposes of this allowance is being reduced from 169 days to 161 days.

Capital Allowances - Plant / Machinery & Cars

Expenditure incurred on or after 1 January 2001 will be written off on a straight line basis over 5 years.

Car Allowance Restrictions

The cost threshold for capital allowances for new cars and running expenses for all cars has been increased from £16,500 to £17,000. The cost threshold for capital allowances for second hand cars has been increased from £10,000 to £17,000. These new limits will apply to expenditure incurred in an accounting period / basis period ending on or after 1 January 2001.

The one-third rule for calculating the restriction on running expenses is abolished.

Rent a Room Scheme

Where a room (or rooms) in a person's principal private residence is let as residential accommodation, gross annual rental income of up to £6,000 will be exempt from tax. The relevant CGT / Stamp Duty provisions are not affected.

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Farming

The 25% stock relief and the 100% stock relief for young trained farmers will be extended for a further 2 years from 6 April 2001, subject to EU approval.

Withholding Taxes / DIRT

The rate of DIRT and the withholding tax on professional services, dividend income and investment products is being reduced from 22% to 20% with effect from 6 April 2001.

Permanent Health Benefit

A "net pay" basis will apply to premiums paid by PAYE taxpayers to Approved Schemes from 6 April 2001. This results in a PRSI saving.

BES and Seed Capital

The schemes are being extended to 31 December 2001.

Credit Unions

- n Interest on deposits made liable to DIRT at 20%. Members may opt to have their dividends taxed, either
 - n As at present
 - n By having DIRT (at 20%) applied to the dividends, or
 - n By placing their shares in special 3 or 5 year savings accounts - first £375p.a. (£500p.a. for 5 year accounts) will be tax exempt and DIRT at 20% will apply to the balance.

Other Taxes

Corporation Tax

Rates effective from 1 January 2001

- n 20% (previously 24%) for trading income
- n 25% for non-trading income
- n 12.5% for small and medium-sized enterprises where the trading income does not exceed £200,000 (provision for marginal relief where income does not exceed £250,000).

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

Capital Acquisitions Tax

Foster Children

Group 1 threshold (£300,000) applies for gifts/inheritances taken on or after 6 December 2000, subject to conditions.

Probate Tax

Probate Tax is being abolished in respect of deaths occurring on or after 6 December 2000.

CGT / Stamp Duty

- n Parent to child site transfer (on or after 6 December 2000) for purpose of construction of child's principal private residence - exempt from CGT/Stamp Duty (limited to one site with a maximum value £200,000 per child)
- n Farmers - reinvestment period for roll-over relief extended to 2 years before and 4 years after CPO (1 to 4 years for CAT)
- n The 0.1% Stamp Duty on Life Assurances policies taken out on or after 1 January 2001 is abolished.

Value Added Tax

The standard rate of VAT is being reduced from 21% to 20% with effect from 1 January 2001.

The VAT "flat rate addition" payable to unregistered farmers will be increased from 4.2% to 4.3% with effect from 1 January 2001. The associated VAT rate for livestock etc. will also increase to 4.3% from the same date.

PRSI & Health Levy

Class A

(Normal rate at which contributions are made)

Income (£)	Employer	Employee
Up to 28,250	12%	6%
Over 28,250	12%	2%

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

Employees earning less than £226 p.w. will be exempt from PRSI and those earning less than £280 p.w. will be exempt from the Health Contribution of 2%.

Class S (Self-Employed)

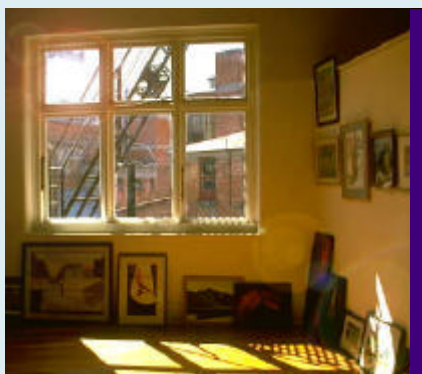
Income (£)	Rate
All income	5%

The annual exemption has been abolished. Exemption from the Health Contribution of 2% applies where annual income is less than £11,750.

The minimum annual PRSI contribution is £200.**z**

ARTISTS EXEMPTION

Questions and Answers



Introduction

This article sets out answers in relation to some frequently asked questions concerning the artists exemption scheme. The artists exemption scheme was recently discussed by the TALC Technical Sub-committee and it was agreed in that forum that taxpayers and practitioners would welcome an article outlining practical information regarding the scheme. The statutory basis for the artists exemption scheme is contained in *Section 195 Taxes Consolidation Act 1997* which also authorises the making of Guidelines by the Minister for Arts, Heritage, Gaeltacht and the Islands and The Arts Council (with the consent of the Minister for Finance) for the purpose of interpreting *Section 195*.

Further details regarding the artists exemption scheme, including information about how and where to apply for the exemption and the text of the current Artists Exemption Guidelines, may be found in the Revenue booklet on the scheme which is available from Revenue offices and at www.revenue.ie. A list of useful contact numbers in relation to various aspects of the scheme is given at the end of this article.

What income is exempted under the Artists Exemption Scheme?

Artists exemption exempts from the charge to income tax the profits or gains arising to a painter, composer, sculptor, writer or playwright from

the publication, production or sale of his/her work.

Who can claim artists exemption?

An application must be made to Revenue to establish if an individual falls within the category of taxpayers who can claim artists exemption. To claim artists exemption the individual must:

t Have produced a work or works which is an original and creative work or works in one of the following categories:

- (a) a book or other writing
- (b) a play
- (c) a musical composition
- (d) a painting or other like picture
- (e) a sculpture

which has received a determination from Revenue in respect of cultural or artistic merit, and

t Be either resident in the State and not resident elsewhere or ordinarily resident and domiciled in the State and not resident elsewhere.

Where should the application for artists exemption determination be sent?

Applications should be submitted to:

*Office of the Revenue Commissioners,
Direct Taxes: Administration (Artists Exemption),
Block 8-10,
Dublin Castle,
Dublin 2,
Ireland.*

Tel: 353 1 6475000
Ext. 48683; 48684 and 24106
Fax: 353 1 6799287
Internet: www.revenue.ie
e-mail: direct-taxes-admin@revenue.ie

If the determination is granted, how does the individual claim exemption from income tax on the profits or gains from the work involved?

The exemption should be claimed on the return of income submitted annually under the self-assessment system to the Inspector of Taxes. PAYE taxpayers must also make this return. Despite having obtained the artists exemption determination, the individual is still obliged by law to include details of the exempted profits or gains on his/her annual return of income. Because this return is made under self-assessment, it is accepted on a non-judgmental basis by the Inspector of Taxes but, as with all self-assessment returns, it may be subjected to a verification audit by Revenue at a later date.

If the artists exemption determination is granted, does the individual need to apply in respect of all future works?

No - the determination covers both the original work submitted as well as any future work in the same category provided that this work comes within the Guidelines. However, a fresh application must be made to Revenue in respect of work produced in a different category. For example, if a determination is granted in respect of category (a) "a book or other writing" and subsequently the taxpayer writes a play, the play must be submitted for a determination in category (b) "a play".

What claim form should be used to make the application?

Claim form 2 is the most commonly used form. A determination granted on the basis of this claim form will cover the particular work or works submitted with the claim as well as all future works in the same category provided that they come within the Guidelines.

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ARTISTS EXEMPTION

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The claim form requires an “RSI number” - what is this and how can it be obtained?

The RSI number has now been replaced by the PPS number. The Personal Public Service Number (PPS Number) is the citizen's unique reference number for all dealings with the Irish Public Service, including social welfare, tax, education and health services eligibility. If the individual already has an RSI number it automatically becomes his/her PPS number. If the individual does not have a PPS number he/she should contact the local Social Welfare Office.

If an individual is audited in relation to artists exemption, what would the audit focus on?

The audit would focus on whether:

- n The profits or gains on which artists exemption was being claimed are derived from works in respect of which a determination has been granted, and
- n Any later works in the same category as the work(s) which received the determination - the legislation provides that any later work(s) in the same category as the originally-determined works are also entitled to the exemption provided that they meet the criteria set out in the Guidelines.

It should be noted that, independent of any audit, an individual may apply to Revenue either directly or via the expression of doubt facility for a determination in respect of any later works.

What happens if the determination is refused?

If a determination is refused, the taxpayer may:

- n Re-submit the claim, perhaps with additional supporting documentation, for further consideration by Revenue, or

- n Appeal Revenue's failure to make the determination to the Appeal Commissioners.

The Appeal Commissioners will hear the case and the appellant will be permitted to bring formal evidence and witnesses in support of the claim and can be represented by a lawyer or tax practitioner. The decision of the Appeal Commissioners can be appealed by way of submission to the High Court of a case stated on a point of law.

Does the exemption also extend to PRSI and levies?

No - PRSI and levies are payable on the profits or gains derived from a work or works which have received a determination. This is a matter for the Department of Social, Community and Family Affairs and the contact point in that Department is:

*Department of Social, Community and Family Affairs,
Cork Road,
Waterford.*

Tel: 051-356002
Fax: 051-877838
e-mail: selfemployment@eircom.net

The Artists Exemption Guidelines refer to certain categories of work such as a book or other writing, a play etc. - if the work does not fall into those categories, can artists exemption apply?

No - the work must come within one of the five categories referred to. It should be noted that the categories are provided for by the artists exemption legislation and not merely the Guidelines.

What is the effect of Appendix A of the Guidelines?

Part 9 of the Guidelines provides, inter alia, that a non-fiction book or other writing will be considered original and creative only if it comes within one of the categories cited in Appendix A of the Guidelines. The categories cited in Appendix A are the terms of reference of the following bodies:

- n The Arts Council
- n The National Heritage Council
- n The National Archives Advisory Council.

The effect of Appendix A is to establish, in the case of non-fiction books and other writings, a minimum threshold for deciding whether or not such a book or other writing is original and creative. In essence, where a book or other writing does not, as a minimum, come within the terms of reference of the bodies referred to in Appendix A, it cannot be considered original and creative.

Are Advance Royalties exempt from tax?

Yes - in certain circumstances. Where an individual receives advance royalties which are attributable to the subsequent publication of a book or other writing, a claim must be lodged with Revenue in the tax year in which the royalties are paid if the royalties are to be exempt. Confirmation from the publisher that the book will be published must accompany the claim.

Where a claim is received in the tax year in which the advance is received, but where a determination has not been granted, any tax liability arising on the advance must be paid. If a determination is subsequently granted, the Inspector of Taxes will review the taxpayer's liability and make any appropriate refund if tax has been overpaid.

Advance royalties paid before the year of claim are not exempt.

Can non-residents avail of Artists Exemption?

No - Claimants for artists exemption must be resident, or ordinarily resident and domiciled, in the State and not resident elsewhere for tax purposes. However, Revenue are prepared to give advance opinions regarding the exemption to claimants resident abroad. If these claimants receive a favourable advance opinion, they are given a formal determination in respect of artists exemption when they satisfy the residence criteria and submit a claim.

When the individual becomes resident he/she must submit a claim with evidence of residency, i.e. copy of lease, evidence of house purchase or rent etc. The individual must also apply to the local Social Welfare Office for a PPS No. A copy of leaflet RES 1 i.e. *Explanatory leaflet relating to residence in Ireland for tax purposes* is issued with each non-resident application form.

Practitioners should request a supply of the new information booklet and the new claim form 2 from Revenue (see address details over). The new forms are salmon coloured and the information booklet is terracotta on white. The old forms should be disposed of.

What is the position in relation to mechanical royalties paid under a recording contract?

This issue was discussed at a recent TALC Technical Sub-Committee meeting. Most of the sub-group's discussions focused on whether mechanical royalties - i.e. royalties paid in respect of the studio work leading to the final recording of a CD/tape - could qualify for artists

exemption as a musical composition within the meaning of *section 195 TCA 1997*. It was noted that an initial musical composition either composed by a singer-songwriter or a third party could be altered - in some cases very significantly - by studio work. Revenue agreed in principle that mechanical royalties could qualify for artists exemption if they derived from a musical composition within the meaning of *section 195* which was granted a determination under *section 195* and which was different from the initial musical composition. Revenue also stated, however, that

t it would be difficult both to envisage the alteration in the musical composition taking place and, if it did take place, to identify it musicalogically and practically,

and

t there might have to be apportionment of the recording royalty between the composition and recording elements in order to ensure that artists exemption was not granted in respect of any income derived from performance.

Practitioners felt that significant alterations in the initial musical composition do take place in practice.

Submissions from readers on this whole issue would be welcome and can be submitted to Direct Taxes: Administration (Artists Exemption) - see address over. **Z**

Useful Contact Numbers

Claim Forms and Information

Office of the Revenue Commissioners,
Direct Taxes: Administration (Artists Exemption),
Blocks 8 - 10,
Dublin Castle,
Dublin 2,
Ireland.

Tel: 353 1 6475000
Ext. 48683; 48684 and 24106
Fax: 353 1 6799287

Internet: www.revenue.ie
e-mail: direct-taxes-admin@revenue.ie

PRSI

Department of Social, Community and Family Affairs,
Cork Road,
Waterford.

Tel: 051-356002
Fax: 051-877838

e-mail: selfemployment@eircom.net

Appeals

Office of the Appeal Commissioners,
8th Floor,
Fitzwilton House,
Wilton Place,
Dublin 2.

Tel: 01-6624530
Fax: 01-6611892

DEBT MANAGEMENT

Revenue Strategy

Pursuing the Non-Compliant Taxpayer

Introduction

For some years now Revenue has been operating a successful two strand strategy to improve tax compliance:

- n A customer service approach aimed at ensuring that it is as easy as possible for the compliant customer to file his/her tax returns and pay his/her tax liability
- and
- n Early and effective pursuit of those customers who do not voluntarily meet their obligations.

The second strand of the strategy is the guarantee to complying customers that others will also have to pay their fair share of taxes. Revenue supports the compliant customer by ensuring non-compliant competitors are not allowed to get an unfair competitive edge by delaying payment of, or failing to pay, tax liabilities.

Practitioners will be familiar with the various customer service initiatives taken by Revenue to facilitate and encourage voluntary compliance. This article gives an outline of the actions being taken by Revenue to ensure that non-compliance is addressed in a timely fashion and in such a manner as to ensure that it carries the appropriate cost and sanction.

Cases of genuine difficulty

Revenue recognises that there will be occasions where a viable business runs into temporary cashflow difficulties. In such a case Revenue may be able to agree a satisfactory basis and framework within which a tax payment problem can be resolved. The essential point, however, is that the customer should approach Revenue in good time to discuss the problem. This will provide the possibility for flexibility

on Revenue's part which may not be available if enforcement action is underway.

Initial contact from Revenue

Revenue now operates a pro-active caseworking approach to non-payment of taxes. Customers who are either late in payment or who fail to pay are systematically identified and assigned to individual caseworkers for remedial action.

Initial contact from Revenue will, depending on the circumstances involved, either consist of an estimate/demand for the liability due or a contact (usually by phone, sometimes in writing) from a caseworker. The contact or estimate/demand is the "warning" from Revenue that the case has come to attention. For the customer who genuinely wishes to bring his/her affairs up to date, it is essential that this warning is not ignored as failure to positively respond will invariably result in additional cost:

- n for a customer with a continuing pattern of late payment, imposition of interest charges which will have to be paid or
- n for a customer with arrears, referral to enforcement.

Enforcement Options

There are a range of enforcement options available to Revenue when it is necessary to enforce an outstanding tax debt. The caseworker dealing with the case will select the method most likely to achieve the desired result (i.e. payment of the outstanding debt in the shortest possible timeframe).

Sheriff Action

Perhaps the most widely known enforcement option deployed by Revenue is its network of Sheriffs. This system was reformed in 1986 with the appointment of sixteen Revenue Sheriffs and since then has proved to be particularly successful. There were over 17,000 referrals to

the Sheriffs in 1999 and £39m in payments received. However, the certainty of Sheriff action, with the clear threat of seizure if default continues, is certainly responsible for the timely payment in a great many more cases.

Solicitor Action

Debts may also be referred to Solicitors in order to obtain a Court Judgement in respect of outstanding debts. Last year there were over 2,500 referrals with some £15m received in payments. From the start of this year, six firms of external solicitors have been appointed by Revenue to provide legal services to support collection of unpaid tax and interest and Revenue is confident that this expansion has enhanced the effectiveness of tax collection. The opportunity was also taken, in the context of negotiation of the contracts with these solicitors, to ensure the maximum use of the legal options available when pursuing the defaulting customer

Attachment

Attachment of third party debts is also deployed on an increasing basis. Using this enforcement method, a third party who owes an amount to a tax defaulter can, instead of paying the tax defaulter, be legally obliged to pay this amount to Revenue in satisfaction of all or part of the defaulters tax debt.

Pursuit of more entrenched arrears

The three enforcement options outlined above ensure early and effective collection of tax debts from the majority of tax defaulters. There are, however, certain cases that are not susceptible to the more standard enforcement actions. In these cases Revenue continues to demonstrate a firm commitment to take matters further to ensure payment of the debt.

Liquidations

In the case of companies, the ultimate enforcement action is liquidation of the company. This is an area where Revenue has become more pro-active in recent times by:

- n Regularly petitioning Courts to have companies wound up and
- n Attending, and actively participating in, creditors meetings where companies liquidate of their own volition,.

Indeed, the number of liquidations that Revenue initiates would be significantly higher but for the number of companies who themselves call creditors meetings when it becomes clear that failure to do so will result in Revenue insolvency action. Apart from the liquidation itself, in particular cases Revenue is prepared to fund liquidations, even where a dividend may be uncertain, when it appears that the conduct of the directors warrants investigation and that their restriction or disqualification under

the Companies Acts is likely. This strategy is being applied to good effect, especially in the context of abuse of limited liability by “phoenix” operators. See separate article on Insolvency on page 22.

Sole Traders

In the case of sole traders, the enforcement options pursued by Revenue include:

- n Registering the debt as a mortgage against the defaulters property and then seeking the permission of the Court to forcibly sell the property to recover the debt
- n Applications to the Courts for instalment orders and committal orders in the event of default
- n Bankruptcy of the defaulter.

Conclusion

The bottom line, in relation to compliance with tax payment and return filing obligations, that Revenue would ask all customers to take on board is:

- t If a customer has a tax compliance problem it is better to make an early approach to Revenue to resolve the matter since ignoring Revenue will inevitably result in additional cost and expense for the customer and reduce or eliminate Revenue’s ability to be flexible in responding to the problem
- t Revenue is committed to taking the necessary enforcement action to ensure payment of tax debts and
- t Every customer who is prepared to meets his/her obligations in a timely fashion releases more resources for Revenue to pursue those people who are not prepared to play by the rules, thus helping to ensure a level playing field for all.z

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.

INSOLVENCY

Introduction

This article outlines Revenue's policy in relation to insolvency and the organisational developments that have taken place to deal with insolvency. It also sets out the Revenue approach to company wind-ups (liquidations) and the use of phoenix companies.

A separate article on Debt Management is carried on page 20.

The Revenue Insolvency Unit under the management of the Deputy Collector-General Mr. Noel Lyons is based in Apollo House, Tara Street, Dublin 2.

Revenue Insolvency Policy

The aim of the Collector-General's Office is to collect tax. A variety of payment options is made available to taxpayers e.g. post, hand delivery, giro, direct debit, EFT and the Revenue On-line Service (ROS) which is in place from 29 September 2000. Revenue have developed a customer service approach to seek to promote compliance allowing us to correctly focus on non compliance. This approach has been supported by a variety of sophisticated technological developments. We have reduced paperwork.

Revenue are not bankers. A taxpayer experiencing difficulties in meeting tax payments should contact Revenue early. We will seek to work with a taxpayer or agent to allow a business to continue. We expect a case to be made for the granting of phased payment arrangements and we may need to see financial projections and may ask for a guarantee on occasion.

Revenue does not make a business insolvent. We distinguish between the normal business failure which can happen and the "failure" which is engineered to avoid paying debts (especially tax debts).

It is important to note that Revenue will actively participate in the winding up of companies that are insolvent. We seek to identify those who take unfair or illegal advantage of company law to avoid paying tax and are willing to consider wind-up earlier in such cases than we might in a "normal" case.

The decision to issue a notice under *Section 214 of the Companies Act 1963* is a clear statement that we intend to petition for the winding up of the company.

Organisational Developments in Revenue to deal with Insolvency

The Active Intervention Management (AIM) system developed in recent years has allowed Revenue to individually casework more cases. The system also allows for recording of all activities in a case such as audit, instalments, visits, investigation etc. Individual officers working a case using the AIM system are authorised to enforce payment and when appropriate progress the case

Revenue Policy

to insolvency. With approval of a manager an officer can transmit the necessary *Section 214* notice for signature by the Collector-General (or Deputy Collector-General in his absence).

At this point responsibility for the case passes to the Insolvency Unit who arrange for presentation of the petition for wind-up to the High Court. We have worked very hard to streamline the procedures and the Revenue Solicitor and Courts have done likewise.

The Insolvency Unit monitors all cases of creditors meetings published in the daily papers. The law requires that a notice of a creditors meetings be published in two daily newspapers at least 10 days prior to the meeting. As Revenue is generally a creditor we also receive the notice that is required to be posted to each creditor. We also get information from other interested parties e.g. creditors.

The Insolvency Unit consults with Revenue officers, creditors, agents and the Revenue Solicitor and decides if attendance at a creditors meeting is necessary. We have dramatically increased the number of creditors meetings attended in the past 3 years (over 150 attended directly in 1999) and we are prepared to represent creditors on Committees of Inspection. We attend all court liquidation hearings even if Revenue is not the petitioner.

In the past 3 years we have monitored the performance of liquidators with regard to their compliance with company law. In a number of cases we have petitioned the High Court to have a liquidator replaced. Where Revenue and other creditor interests are best served we are prepared to offer an alternative liquidator at a creditors meeting.

The essence of the message presented is that Revenue is proactive in insolvency issues. We support actions to have directors disqualified or restricted and will take action where there is evidence of fraudulent or negligent trading.

We also note the locations of creditors meetings and times and dates of such meetings. Last year we attended meetings on Christmas Eve, Good Friday and St. Patrick's Day and we ask the "obvious" questions in such cases and also in cases where a meeting is arranged in, say, the west of Ireland where the company or its creditors are in the Dublin area.

Insolvency Case Statistics

Liquidations (National figures)

	Creditors Voluntary	Members Voluntary	Court	Total
1999	410	504	51	965
1998	457	355	50	862
1997	465	222	52	739

In 1999 Revenue issued about 50 *Section 214* notices. In 23 of the cases Revenue subsequently petitioned the High Court for appointment of a liquidator. However all the others opted for voluntary liquidation before the Revenue petition was heard.

Receiverships, Examinerships, and Bankruptcy (National figures)

	Receiverships	Examinership	Bankruptcy
1999	9	5	6
1998	8	13	9
1997	21	16	17

It is not the practice for Revenue to have a receiver appointed at present. However we monitor all cases in receivership to ensure that payments due to Revenue and other creditors are made.

Revenue played a major role in the development of the practices and procedures for examinerships after the introduction of the *Companies Amendment Act 1990*. Revenue will continue this role in all examinerships.

Bankruptcy proceedings by Revenue can be expected to increase in the coming years. From a position where no proceedings were initiated by Revenue for a number of years, 6 cases were initiated in the past 12 months. The experience gained in successful proceedings are beginning to yield results.

Provisional Liquidation

Company law (*Section 226 Companies Act 1963*) provides the option for a creditor to apply ex parte for the appointment of a provisional liquidator. To petition the High Court for the appointment of a provisional liquidator it is necessary to show that there is a valid reason for not using the normal process (*Section 214 notice*). For example, in a particular case in 1998 Revenue were able to make a case for the appointment of a provisional liquidator on the grounds that there was good reason to believe that assets were to be moved out of a potentially insolvent company into another company. When a petition is made under *Section 226* the court appoints a provisional liquidator who must report back to the court within a time limit set by the court. At the time of appointment the court can make orders to limit the powers of the provisional liquidator and will normally

order that he/she report back to the court in, say, 21 days. The appointment will prevent disposal of assets and give the appointee power to look into the affairs of a company, to seize books and records and to report back to the court. The court may then decide to appoint the provisional liquidator as an official liquidator and wind up the company depending on the nature of the report to the court.

This is what has in fact happened in 6 cases initiated by Revenue in the past two years.

The key issue for a creditor in petitioning for appointment of a provisional liquidator is that the creditor can show cause as to why the normal due process will not work in the particular case to justify what is to be the surprise appointment to the company and its members. It is necessary to show that time is of the essence.

The appointment of a provisional liquidator can be particularly useful and relevant in potential phoenix cases where assets are to be moved on to a successor company leaving creditors of the original company at a loss and where time is of the essence. We will use this option when and where it is appropriate.

Phoenix Syndrome

Revenue and many other creditors are concerned at the use of phoenix companies as means of avoiding paying creditors (especially Revenue). We have put in place administrative procedures to deal with phoenix cases. All staff are instructed to identify potential phoenix cases. The cases are notified to a special unit who examine the case in detail and decide if special monitoring of new companies is required. If appropriate the companies are monitored and are subject to fast track enforcement and insolvency procedures. The key is to pay particular attention to the phoenix entity and to be in a position to move swiftly if returns are not received or payment is not made. We use technology to monitor individuals and companies identified as potential phoenix cases.

Company Law

Revenue is represented on the Company Law Review Group and will continue to work within the group for the development of company law. We also look forward to working with the new agency under the Director of Corporate Enforcement which will be in place early in 2001. **z**

TOWN RENEWAL SCHEME

Tax Incentives

Introduction

The Town Renewal Scheme provides tax incentives for certain towns with a population of between 500 and 6,000. The scheme is being introduced in two phases. The residential tax incentives apply with effect from 24 July 2000 and the commercial incentives will be introduced following approval by the EU. This article sets out details of the tax incentives available under both phases of the scheme.

A list of the 100 towns that will benefit under the scheme is included at the end of this article. The areas designated and the type of incentive available are in line with the recommendations made by a special Expert Advisory Panel appointed by the Minister for the Environment and Local Government and are based on Town Renewal Plans prepared by Local Authorities. A document titled "Incentives Recommended by the Expert Advisory Panel on Town Renewal" is available from the local authority involved. This document indicates which incentive is available in respect of each area within the Town Renewal Plan area. Copies of the maps of each area are available from the local authority involved.

Tax Incentives Available

The scheme provides for income tax and corporation tax reliefs for expenditure on certain residential and commercial/industrial developments. To qualify for relief the work must be carried out during the "qualifying period". The "qualifying period" for the residential part of the scheme commenced on 24 July 2000 and ends on 31 March 2003. **The commercial part of the scheme has not yet commenced as EU approval is awaited.**

The local authority which prepared a Town Renewal Plan must certify in writing that the construction, refurbishment or conversion work

carried out is consistent with the objectives of the plan. Queries regarding this certificate should be addressed to the relevant local authority. (This certificate is referred to as a "Letter of Certification" throughout this article).

A summary of the tax reliefs available for the two separate categories is as follows:

Residential Developments

The reliefs available under this category are:

- n **Owner-occupier relief** - where an individual is allowed the cost of all or part of the expenditure on his/her main residence as an additional tax-free allowance.
- n **Rented residential accommodation relief** - where the owner is allowed deduct all or part of the expenditure on a rented property in calculating his/her rental income.

Certificate of Compliance and Certificate of Reasonable Cost

Except where the work carried out is the refurbishment of a facade, the claimant must have a Certificate of Compliance or a Certificate of Reasonable Cost.

A Certificate of Compliance is required where a newly constructed, refurbished or converted property is purchased from a builder.

A Certificate of Reasonable Cost is required where a newly constructed, refurbished property is to be lived in or let by the person who carried out the work or who had it carried out.

An application for a certificate can be made by the builder/developer or the purchaser to:

*Department of the Environment and Local Government,
Housing Grants Section,
Room F9/10,
Government Offices,*

*Ballina,
Co Mayo.*

Telephone 096-24200
LoCall 1890 20 20 21

Refurbishment

Refurbishment in a residential context means the carrying out of works that are certified to have been necessary to ensure the suitability of the property as a dwelling. This certificate is contained in the Certificate of Compliance/Certificate of Reasonable Cost. Refurbishment includes the provision or improvement of water, sewerage or heating facilities.

An application for a certificate in respect of refurbishment projects should be made to the Department of the Environment and Local Government before commencement of work so that a prior inspection of the building can be carried out.

Refurbishment of a facade means works carried out in the course of restoration of the facade.

Owner-Occupier Relief

This relief is available to owner-occupiers of newly constructed, refurbished or converted residential properties and to owner-occupiers of residential properties where the facade has been refurbished.

To qualify, the property must be:

- n Not less than 38 sq. metres and not greater than 125 sq. metres in floor area
- n Situated within an area designated for the relief
- n Occupied by the individual after the expenditure is incurred as his/her sole or main residence, and
- n Occupied by the individual as his/her sole or main residence for each year of claim.

The relief available is as follows:

- n in the case of new construction, 50% of the allowable expenditure at the rate of 5% p.a. for each of the first 10 years
- n in the case of refurbishment or conversion expenditure, 100% of the allowable expenditure at the rate of 10% p.a. for each of the first 10 years.

The cost of the site does not qualify for relief. Grants are deducted in arriving at the amount of the expenditure that qualifies.

Where a property is purchased from a builder the expenditure that qualifies for relief is the proportion of the purchase price that relates to the construction expenditure. This amount is arrived at by applying the following formula to the price paid to the builder:

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

where

- A** = the expenditure on construction/refurbishment/conversion which was incurred in the qualifying period
- B** = the total expenditure on construction/refurbishment/conversion
- C** = the expenditure on site acquisition (including in the case of refurbishment/conversion the cost of the building which was refurbished or converted)

How relief is granted

Relief is granted at the individual's highest rate of tax. It can be given either by increasing an individual's tax-free allowance during the year or by repayment of tax at the end of the tax year. Where the individual is self-employed the tax relief is given in the annual tax assessment.

No relief is due in a year where the individual does not use the property as his/her sole or main residence. If the property is sold any relief granted is not withdrawn. A subsequent purchaser is not entitled to the relief.

Rented Residential Accommodation Relief

Often referred to as "Section 23 Relief", this relief is available to individuals and companies who lease newly constructed, refurbished or converted residential properties and to lessors of residential properties where the facade has been refurbished.

To qualify, the property must be:

- n Not less than 38 sq. metres and not greater than 125 sq. metres in floor area
- n Situated within an area designated for the relief, and
- n Let under a qualifying lease after the expenditure is incurred without being otherwise used.

The relief available is as follows:

- t The actual cost of construction, refurbishment or conversion which is carried out during the qualifying period (excluding site cost and grants, as appropriate)
- t Where a property is purchased from a builder the expenditure that qualifies for relief is the proportion of the purchase price that relates to the construction expenditure. This amount is arrived at by applying the following formula to the price paid to the builder:

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

where

- A** = the expenditure on construction/refurbishment/conversion which was incurred in the qualifying period

B = the total expenditure on construction/refurbishment/conversion

C = the expenditure on site acquisition (including in the case of refurbishment/conversion the cost of the building which was refurbished or converted)

How relief is granted

The amount of the expenditure that qualifies for relief is deducted in full from the rental income from the property. If this deduction exceeds the rental income in the first year from the property, the excess can be deducted from other rental income arising in the State for that year. Any rental loss created in the first year can be carried forward against rental income of succeeding tax years until the relief is exhausted.

If the property is sold within a period of 10 years of its first letting any relief granted is withdrawn. A subsequent purchaser of the property within the 10 year period is entitled to the relief.

How to claim the residential reliefs

A claim for the relief should be made to the person's tax office. A person who makes a tax return under self-assessment should claim the relief on the tax return for the appropriate year.

The following documents, as appropriate, are required in support of a claim. They should be retained and forwarded to the tax office if requested:

- t Letter of Certification issued by the local authority
- t A Certificate of Compliance or a Certificate of Reasonable Cost issued by the Department of the Environment and Local Government. (Production of the appropriate certificate will provide the necessary evidence that the property meets the floor area requirement and standards for construction and improvement).

TOWN RENEWAL SCHEME

Continued from page 25

- t In the case of a purchase, a copy of the memorandum of agreement between the parties showing the purchase price.
- t Where a property is newly constructed, a statement of the total cost of the work. If any of the work was carried out outside the qualifying period, details of the cost of work carried out between 24 July 2000 and 31 March 2003 should be shown separately. In the case of the purchase of a new property the cost of the site should also be provided.
- t Where a building is newly refurbished or converted, a statement of the total cost of the work. If any of the work was carried out outside the qualifying period, the cost of the work carried out between 24 July 2000 and 31 March 2003 should be shown separately. In the case of the purchase of newly refurbished or converted property, the site cost and the market value of the building before refurbishment or conversion should also be provided.
- t Where the property is let, a copy of the lease(s).

Commercial Developments

The tax incentives for industrial/commercial developments take the form of **capital allowances**. These allowances are available to individuals and companies for expenditure incurred on the construction or refurbishment of certain industrial and commercial buildings. **However, this part of the scheme has not commenced as EU approval for the allowances is awaited.**

The date of commencement of the qualifying period for the purposes of the commercial tax allowances will be announced when EU approval is received.

The allowances are **not** available to property developers in certain circumstances, to owner-occupiers of buildings in use in certain sectors and industries and for buildings provided for certain large scale projects. Further details regarding these exclusions are included in **Tax Briefing** Issue 41 - September 2000 which is available on our website - www.revenue.ie

The type of buildings qualifying are:

- n **Industrial** - Mills, factories and similar premises and certain laboratories
- n **Commercial** - e.g. offices, shops etc.

Expenditure on any part of a building in use as (or as part of) a dwelling house does not qualify for relief.

Refurbishment

Refurbishment in the case of commercial and industrial development means works carried out in the course of restoration of a building.

The relief

The amount of the allowances available are calculated by multiplying the qualifying expenditure by a rate from the following table:

COMMERCIAL/INDUSTRIAL DEVELOPMENT	
Owner-Occupier	50% initial allowance in Year 1 with 4% annual allowance thereafter until the balance of the qualifying expenditure has been written off or For those who do not wish to claim 50% of the expenditure in year 1, the annual allowance (4%) may be increased up to 50% in any year (known as free depreciation) with 4% annual allowance for other years until the qualifying expenditure has been written off. The free depreciation may be taken in year 1 or over a number of years but the maximum amount on which the increased rate may be claimed is limited to 50% of the qualifying expenditure.
Investor/Lessor	50% initial allowance in Year 1 and a 4% annual allowance thereafter until the balance of the qualifying expenditure has been written off.

How relief is granted

Owner-occupiers

The allowances are given in taxing the individual/company's trade and are available for relief at the individual's highest rate of tax.

An initial allowance and an annual allowance may **not** be claimed in respect of the same expenditure in the same tax year.

Lessors

The allowances are available primarily against rental income from all sources within the State. Where the allowance is greater than that income the excess can be deducted from the person's other income. The amount that can be offset against non-rental income is limited to £25,000 in the case of individuals.

Lessors are not entitled to claim free depreciation.

Withdrawal of Relief

Tax allowances granted for expenditure on these industrial or commercial buildings may be withdrawn in whole or in part if the premises is sold within 13 years.

How to claim the relief

A claim for the relief should be made to the person's tax office. A person who makes a tax return under self-assessment should claim the relief on the tax return for the appropriate year.

The following documents, as appropriate, are required in support of a claim. They should be retained and forwarded to the tax office if requested:

- n Letter of Certification issued by the local authority
- n In the case of a purchase, a copy of the memorandum of agreement between the parties showing the sale price
- n Where a building is newly constructed, a statement of the total cost of the work. If any of the work was carried out outside the qualifying period, details of the cost of work carried out during the qualifying period should be shown separately. In the case of the purchase of a new building the cost of the site should be provided.
- n Where a building is newly refurbished or converted, a statement of the total cost of the work. If any of the work was carried out outside the qualifying period, the cost of the work carried out during the qualifying period should be shown separately. In the case of the purchase of a newly refurbished or newly converted building, the site cost and the cost of the building before refurbishment or conversion should be provided.
- n Where the building is let, a copy of the lease(s).

TOWNS RECOMMENDED FOR DESIGNATION		
COUNTY	TOWNS SELECTED	
Carlow	Hacketstown Tulow	Muinbheag Tinnahinch/ Graigueenamanagh
Cavan	Cavan Baileborough	Cootehill Ballyjamesduff
Clare	Scarriff Kilrush Ennistymon	Sixmilebridge Miltown Malbay
Cork	Cloyne Charleville (Rathluirc) Kanturk Fermoy	Skibbereen Doneraile Bantry
Donegal	Moville Ramelton Ballybofey - Stranorlar	Ardara Ballyshannon
Galway	Portumna Loughrea Ballygar	Headford Clifden
Kerry	Listowel Killorglin	Castleisland Caherciveen
Kildare	Kilcullen Rathangan Monasterevan	Castledermot Kilcock
Kilkenny	Callan Thomastown Piltown	Castlecomer Urlingford
Laois	Mountrath Portarlinton	Rathdowney Mountmellick

TOWNS RECOMMENDED FOR DESIGNATION		
COUNTY	TOWNS SELECTED	
Limerick	Abbeyfeale Croom Rathkeale	Castleconnell Kilmallock
Louth	Carlingford Dunleer	Ardee Castlebellingham
Mayo	Ballinrobe Claremorris Newport	Belmullet Foxford
Meath	Oldcastle Kells	Duleek Trim
Monaghan	Clones Ballybay	Castleblayney
Offaly	Clara Edenderry	Ferbane Banagher
Roscommon	Roscommon	
Sligo	Rosses Point	Bellaghy-Charlestown
Tipperary N.R.	Nenagh Borrisokane	Templemore Littleton
Tipperary S.R.	Cashel Cahir	Killenaule Fethard
Waterford	Cappoquin Kilmacthomas	Portlaw Tallow
Westmeath	Kilbeggan Moate	Castlepollard
Wexford	Ferns Taghmon	Bunclody Gorey
Wicklow	Dunlavin Carnew Tinahely	Rathdrum Baltinglass

PLANT IN LEASED BUILDINGS

Wear & Tear Allowance

Manner of granting wear and tear allowance in respect of plant in a building which is leased and situated within the State

Introduction

Premises are often let fully fitted out. The fit out will involve expenditure on plant. These lettings give rise to queries in relation to the manner of charging the income from the letting of the plant to tax, the entitlement to allowances in respect of the expenditure incurred by the lessor on plant, and the manner of making the allowances.

Before we consider those issues the manner in which the income from the letting of the plant is assessed needs to be clarified.

Case V

Where a composite payment made under a lease relates partly to premises and partly to items of plant the full payment is regarded as rent for the purposes of tax and is chargeable under Schedule D Case V (*Section 96 TCA 1997*). This applies whether or not the plant is integral to the building.

Case IV or Case 1

Where the plant is let under a separate lease a separate tax charge is made in respect of the income from the letting of plant. Income from leasing in the course of a trade is chargeable under Schedule D Case 1. It is a question of fact whether a trade of leasing is being carried on in any particular situation.

Income from leasing plant which is not chargeable under Case 1 or Case V is chargeable under Case IV.

Plant which is integral to a building and which qualifies for industrial building allowance

The manner of making an allowance in respect of expenditure incurred on plant located in a building which qualifies for industrial building allowances may differ depending on

whether the plant is integral to the building or not.

Plant which is integral to a building is plant which is not normally removed by the owner if the property is sold.

The Revenue Commissioners are prepared to allow taxpayers, who incur capital expenditure on the provision of plant which is an integral part of an industrial building or a commercial building which qualifies for industrial building allowances, the option of electing to claim capital allowances on such expenditure either as part of the cost of the construction of the building (industrial building allowance) or as plant.

If expenditure incurred on the provision of plant is treated as part of the cost of the construction of the building the ringfencing provisions of *Section 403(5)* will not apply. As a consequence the cost of that plant is effectively available for offset against all other income, subject to the £25,000 cap provided for in *Section 409A*.

Plant which is leased with a commercial building which does not qualify for Industrial Buildings Allowance

Section 298(1) TCA 1997 provides that where plant is let on such terms that the burden of wear and tear of the plant falls directly on the lessor, the lessor is entitled to a wear and tear allowance. The lease of the premises therefore must not only refer to the plant but must provide in express terms that the burden of wear and tear of the plant falls on the lessor.

Capital allowances in respect of plant which is not included in an industrial building allowance claim may be claimed under this section.

The allowances are available where the plant is in use by the lessee for the purposes of a trade, profession, employment or office of profit.

Section 305(1)(a) TCA 1997 provides that where an allowance is to be made to a person which is to be given by means of discharge or repayment of tax, and is to be available primarily against a specified class of income, the amount of the allowance is to be deducted from or set off against the person's income of that class.

In strictness, the specified class is the income from the letting of plant and machinery (*Section 300(2)*). However, to avoid unnecessary apportioning the specified class, in the case of plant situated within the State, may be regarded as income from the letting of the premises. Accordingly, the allowance made under *Section 298* may be deducted from or set off against such income.

Section 305(1)(b) TCA 1997 provides that where wear and tear allowances are greater than income from the letting of the premises the excess allowances may be offset against all other income. But *Section 305(1)(b)* does not apply to allowances for expenditure incurred on plant after 25 January 1984 (*Section 403(5)*). The wear and tear allowances in respect of expenditure incurred after that date are ringfenced. As indicated above, in the case of plant which is let with a building, the ring-fence may be applied by reference to the income from the letting of that building.

Plant which is leased with residential premises

A wear and tear allowance is available in respect of capital expenditure incurred on the provision of plant in a house which is let furnished and the income from which is chargeable under Case V Schedule D (*Section 284(6)*).

The allowance is made in charging a person's income under Case V (*Section 300(4)*). Accordingly, the allowance may be deducted or set off against all rental income chargeable under Case V.

Multi-tenanted building

The common areas of commercial centres and office blocks are generally retained by the landlord. These areas contain items of plant such as escalators, lifts, ventilation heating and sprinkler systems. The landlord charges the tenant for the use of such plant by way of a service charge.

Where the building qualifies for industrial building allowances such plant will generally be included in the industrial building allowances claim as being integral to the building. Otherwise, Revenue regard such plant as coming within *Section 298* if the burden of wear and tear is borne by the landlord and the building is in use for the purpose of a trade or profession.

Order of set off of wear and tear allowances and industrial building allowances

Section 278 TCA 1997 provides that industrial building allowances are available primarily against income chargeable under Case V of Schedule D. As mentioned above, the allowance made under *Section 298* may be deducted from or set off against income from the letting of the premises and which is chargeable under Case V. The order of set off of the allowances is at the discretion of the claimant.

This article applies to machinery as it does to plant. Reference to industrial building allowances includes a reference to industrial building writing down allowances. **Z**

Investment Undertakings

Introduction

Section 58 Finance Act 2000 introduces 7 new sections and a Schedule into the TCA 1997 to make provision for a new tax regime for collective funds which are referred to in the Act as "investment undertakings".

Prior to this amendment there were two tax regimes for collective funds - one in the IFSC which is a "transparent" regime, that is, there is no tax charged at the level of the fund, and the other regime in the domestic market under which an annual tax is charged on the income and gains of the fund.

Overview of new tax regime

From 1 April 2000 for **new** domestic funds and **existing** IFSC funds there is one tax regime - a tax regime which allows the fund to grow without an annual tax. Tax will only be payable when a payment is made out of the fund to a person who is resident or ordinarily resident in the State, subject to certain exceptions. The responsibility for paying the tax rests with the fund which must make a return to the Collector-General twice yearly. **Existing domestic funds** are treated as before - they will be liable to an annual tax on their income and gains.

Whether or not an investor is entitled to receive a payment from the fund gross is governed by a declaration procedure. Such declarations can be made by non-residents and by certain

resident entities such as life assurance companies, charities and certain entities in the IFSC.

When tax is deducted from a payment made to an individual, the individual will have no further tax to pay. Where the payment is to an investment company or a financial trading company the net amount received will be grossed up and brought into the computation of profit and credit will be given for the tax deducted. **Z**

SAVINGS-RELATED SHARE OPTION SCHEMES

SAYE

Sections 519A - 519C and Schedules 12A and 12B TCA 1997

Introduction

Section 68 Finance Act 1999 introduced Savings-Related Share Option Schemes. Normally, in accordance with the provisions of section 128 TCA 1997, income tax is chargeable on any gain realised by an individual on the exercise of a share option acquired in the capacity of an employee or director. However, where a share option is exercised in accordance with a Revenue approved Savings-Related Share Option Scheme, no income tax charge will arise except where the option is exercised within 3 years of having been obtained (in certain circumstances, i.e. death, cessation of employment due to ill-health, injury, retirement or redundancy, no income tax charge will arise notwithstanding that the share option is exercised within 3 years of having been obtained).

Under the terms of a Savings-Related Share Option Scheme, employees and directors are granted options to purchase shares at a pre-determined price (which cannot be less than 75% of the market value of the shares at the date of grant). They then make monthly contributions (maximum £250 per month and minimum £10 per month) to a **certified contractual savings scheme** with a **qualifying institution** for a period of three or five years (in the case of five year contracts the savings may be left on deposit for a further two years). The monthly contributions are deducted from the employee's or director's net pay through the payroll system and paid over by the employer to the relevant bank. The monthly contributions must be sufficient to secure, as nearly as possible, repayment (savings plus interest or bonus where relevant) of an amount equal to the amount required to pay for the shares the individual has the option to acquire.

At the end of the savings period the employee or director can decide whether or not to exercise his or her option to purchase the shares.

Certified Contractual Savings Scheme

A Contractual Savings Scheme (which can only be used in conjunction with an approved Savings-Related Share Option scheme) will be certified by Revenue having regard to specifications laid down by the Minister for Finance in July 1999. Full details of the specifications are available on the Department of Finance website <http://www.irlgov.ie>.

The specifications provide that a **qualifying institution** may pay a bonus on savings held for the full term of the relevant savings period on the following basis;

Period of contract	Maximum Bonus payable
3 year savings contract	Up to 2 monthly contributions
5 year savings contract	Up to 6 monthly contributions
7 year contract*	Up to 12.5 monthly contributions

*(savings for a period of 5 years left on deposit for a further 2 years)

Where an employee or director withdraws early from a savings contract, the **qualifying institution** may pay interest of up to 2% per annum provided a minimum period of 12 months has elapsed since the starting date of the contract. (The employee or director cannot exercise his or her option in this case).

Any interest or bonus received under a certified contractual savings scheme will be exempt from income tax, and will not be subject to Deposit Interest Retention Tax (DIRT). This remains the case where the employee or director decides at the end of the savings period not to exercise his or her option.

Qualifying Institutions

The following qualifying institutions operate certified contractual savings schemes:

- n Agricultural Credit Corporation
- n Allied Irish Banks
- n Anglo Irish Banks
- n Bank of Ireland
- n Barclays Bank

Corporation Tax Deduction

Any costs incurred by a company on or after 6 April 1999, in establishing an approved savings-related share option scheme will be allowable as a deduction in computing the company's profits for corporation tax purposes. The deduction is allowable for the accounting period in which the expenditure is incurred, except where the scheme is approved more than nine months after the end of that period. In such circumstances the deduction is allowable for the accounting period in which approval is granted.

It is possible for a company to set up a dedicated trust or subsidiary company to purchase sufficient shares to satisfy the options granted under a Savings-Related Share Option Scheme. In such circumstances the company will **not** be entitled to a corporation tax deduction for any subscription made by it to the trust or subsidiary to acquire the shares.

Group Schemes

Where a company who is establishing a Savings-Related Share Option Scheme has control over another company or companies, the scheme may be extended to include all or any of the companies over which it has control. However such a scheme or any scheme established by a company who is a member of a group of companies must not have the effect of conferring benefits wholly or mainly on directors of companies in the group or on those employees of companies in the group who are in receipt of the higher or highest levels of remuneration.

Requirements for approval

A number of conditions must be satisfied before a Savings-Related Share Option Scheme will receive Revenue approval.

The conditions can be classified as follows:

- n General
- n Relating to the participants
- n Relating to the shares
- n Relating to the exercise of options.

General conditions

The scheme must be open to all employees on similar terms and must allow employees to obtain options to acquire 'qualifying shares'. The fact that the options to be obtained by the persons participating in a scheme vary according to the levels of their remuneration, the length of their service or similar factors will not be regarded as meaning that they are not eligible to participate in the scheme on similar terms. The options must not be transferable, except in the case of death, when the options can pass into the estate of the deceased.

The scheme must not contain features which are neither essential nor reasonably incidental to the purpose of providing for employees' and directors' benefits in the nature of options to acquire shares. It must not contain any features which would have the effect of discouraging employees from participating in the scheme.

Shares must be paid for with monies not exceeding the amount of the repayments paid to an employee or director under a certified contractual savings scheme. An employee or director cannot use funds from any other source to purchase the shares.

Repayments under the certified contractual savings scheme may be taken as including or not including a bonus, but the question of what is to be included must be determined at the time the options under the scheme are obtained.

Conditions relating to participants

Participation in the scheme **must** be open at any time to every person who is then:

- t an employee or a full-time director (a director who is required to devote substantially the whole of his time to the service of the company) of the company which has established the scheme or, in the case of a **group scheme**, a participating company, and
- t has been such an employee or director at all times during a qualifying period not exceeding three years ending at that time, and is chargeable to tax under Schedule E in respect of his/her office or employment.

Other employees or directors may be nominated by the company to participate in the scheme.

While all qualifying directors and employees must be eligible to participate in the scheme, participation is voluntary and there is nothing to prevent such persons choosing not to participate.

The scheme must not allow an employee or director to participate, if at that time, or at any time within the previous twelve months such individual had a material interest (owns 15% or more of the ordinary share capital) in a close company which is either the company whose shares may be acquired pursuant to the exercise of the options, or a company having control of that company, or a company which is a member of a consortium which owns that company.

Conditions relating to shares

- n The shares being used for the purposes of the scheme must form part of the ordinary share capital of:
 - (a) the company which established the scheme, or
 - (b) a company which has control of the company establishing the scheme, or
 - (c) a company which either is, or has control of, a company which is a member of a consortium which owns either the company which established the scheme or a company having control of that company, and beneficially owns not less than 15 per cent of the ordinary share capital of the company so owned.
- n The shares must be:
 - (a) shares of a class quoted on a recognised stock exchange, or
 - (b) shares in a company not under the control of another company, or
 - (c) shares in a company which is under the control of a company (other than a close company or a company which would be a close company if resident in the state) whose shares are quoted on a recognised stock exchange.

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SAYE SCHEMES

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- n In addition, the shares must be fully paid up, not redeemable, and not subject to any restriction other than restrictions which attach to all shares of the same class. The only exception is that shares may be subject to a restriction imposed by the company's Articles of Association requiring all shares held by directors or employees of the company or of any other company of which it has control to dispose of their shares when they cease to be directors or employees or subsequently when shares are acquired as a result of options exercised after employees and directors have left the company or by personal representatives.

Where such a restriction applies, the disposal must be by way of sale for money and on terms specified in the Articles of Association. The same terms for disposal must apply to all shares of the same class.

In deciding if scheme shares which are acquired by any participant are subject to any restriction, any contract, agreement, arrangement or condition (with the exception of any provision in such contract etc., which is similar in purpose and effect to the Model Code set out in the Listing Rules of the Irish Stock Exchange) will be regarded as a restriction, if it:

- (a) restricts freedom to dispose of
 - n the shares
 - n any interest in the shares, or
 - n the proceeds from the sale of the shares
- (b) restricts freedom to exercise any right conferred by the shares
- (c) would cause any disadvantage to the participant, or any 'connected person', (as defined in *section 10 TCA 1997*) if shares were disposed of or any option conferred by them was exercised.
- n Except where the shares are in a company whose ordinary share capital consists of one class only, the majority of the issued shares of the same class must be held by persons other than:
 - (a) persons who acquired their shares in pursuance of an option conferred on them or an opportunity afforded to them as a director or employee of the company setting up the scheme, or any other company, and not as a result of an offer to the public, or
 - (b) trustees holding shares on behalf of persons who acquired their beneficial interests in the shares in pursuance of such an option or opportunity as is mentioned above, or
 - (c) in the case where the shares are unquoted but are shares of a company which is under the control of a company (other than a close company) whose

own shares are quoted, persons other than companies which have control of the first-mentioned company or companies of which the first-mentioned company is an associated company.

Conditions relating to exercise of rights

A scheme must provide for the shares to be paid for with moneys not exceeding the amount of repayments made (savings plus bonus) and any interest paid under a certified contractual savings scheme.

Subject to the exceptions in the following paragraphs, the options obtained under the scheme must not be capable of being exercised before the bonus date, (i.e. the date on which repayments under the certified contractual savings scheme are due to be paid - end of 3 years, 5 years or 7 years as appropriate) and not later than 6 months after the bonus date. At the time the options are obtained, the employee or director must decide whether or not repayments to be used to buy the shares will include any bonus payable on his or her savings. No other funds from any other source can be used to purchase the shares.

Exceptions

- n Where an employee or director who obtained options to acquire shares dies before the bonus date, the scheme must provide for the exercise of such options within the twelve months following the date of death. If the death occurs within the six months after the bonus date, the scheme must provide for the exercise of such options within the twelve months following the bonus date.
- n Where an employee or director who has obtained options to acquire shares ceases to hold the office or employment due to:
 - n injury
 - n disability
 - n redundancy (within the meaning of Redundancy Payments Act, 1967 to 1991)
 - n retirement on reaching the 'specified age' (an age between 60 and 66 years of age)
 the scheme must provide for the exercise of such options within six months following the date of cessation.
- n Where an employee or director who has obtained options to acquire shares ceases to hold the office or employment in circumstances other than those listed above and the options have been held for more than 3 years prior to the date of cessation, the rules of the scheme may allow them to be exercised within the six months following that date. If the options have been held for less than 3 years the scheme must provide for the options to lapse.

n Where an employee or director continues to work after reaching the 'specified age' he or she may exercise his/her options within six months of reaching the 'specified age'. [The 'specified age' must be stated on the rules of the scheme. Where there is more than one retirement age in operation in a company it may be appropriate to state the lowest age (cannot be less than 60 years) at which an employee or director may retire].

n If any person obtains control of a company, whose shares include scheme shares, as a result of making:

- n a general offer to acquire the whole of the issued ordinary share capital of the company, or
- n a general offer to acquire all the shares in the company which are the same class as the scheme shares,

then options obtained under the scheme to acquire shares in the company may be exercised within six months of the time when the person making the offer has obtained control of the company, and any condition subject to which the offer is made, has been satisfied.

n If, under *section 201 Companies Act 1963*, the court sanctions a compromise or arrangement proposed for the purposes of, or in connection with, a plan for reconstructing a company whose shares are scheme shares, or its amalgamation with any other company or companies, options obtained under the Savings-Related Share Option Scheme to acquire shares in the company may be exercised within six months of the court sanctioning the compromise or arrangement.

n If any person becomes bound or entitled under *section 204 Companies Act 1963*, to acquire shares in a company whose shares are scheme shares, options obtained under the scheme to acquire shares in the company may be exercised at any time that person remains so bound or entitled.

n If a company whose shares are scheme shares passes a resolution for voluntary winding up, options obtained under a scheme to acquire shares in the company may be exercised within six months of the passing of the resolution.

n If an employee or director ceases to hold his or her office or employment because:

- n that office or employment is in a company of which the company which established the Savings-Related Share Option Scheme ceases to have control, or
- n that office or employment relates to a business or part of a business which is transferred to a person who is neither an 'associated company' (as defined in *paragraph 1(1) of Schedule 12A TCA 1997*) of the company which established the scheme nor a company of which the company which established the scheme has control, then options obtained under the scheme may be exercised within six months of cessation.

n If at the bonus date, an employee or director who has obtained options under the scheme ceases employment with the company who granted the share option but continues to be employed by:

- n an 'associated company' of that company, or
- n a company of which that company has control, then those options may be exercised within six months of the bonus date.

Take-Overs and Mergers

A scheme may contain provisions to permit an option holder to exchange options in circumstances where another company obtains control of the company whose shares are being used in the approved scheme, or the company becomes bound or entitled under *section 204 Companies Act 1963*, to acquire such shares, or the company obtains control of a company whose shares are scheme shares in pursuance of a compromise or arrangement sanctioned by the court under *section 201 Companies Act 1963*.

The new options, relating to shares in the new controlling company, (which satisfy the requirements of *paragraphs 11 to 15, Schedule 12A TCA 1997*), must be capable of being exercised in the same manner as the old options. The value and aggregate subscription price of the new options on acquisition must be exactly the same as the value and aggregate subscription price of the old option on disposal. The new options will be regarded as having been granted at the time the old options were granted.

Application for Approval

A company proposing to establish a Savings-Related Share Option Scheme may wish to obtain an opinion on a scheme in advance of a formal application for approval. The Revenue Commissioners will comment on draft documents and, if necessary, discuss points of difficulty.

The following information should be provided in relation to an application for approval of a scheme:

- n A copy of the rules of the scheme (a certified copy of the rules will be required for formal approval)
- n A copy of the Memorandum and Articles of Association of the company whose shares are being used for the purposes of the scheme
- n A declaration that the shares to be used in the scheme satisfy the requirements of *paragraphs 11 - 15 of Schedule 12A TCA 1997*, with a statement as to how the requirements of how *paragraphs 11 and 12* are met. The declaration should be on company headed paper and be signed by the Company Secretary of the company whose shares are to be used
- n Where the company applying for approval is a member of a group of companies, confirmation will be required that the scheme does not and would not have the effect of conferring benefits wholly or mainly on directors of

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companies in the group or on those employees of companies in the group who are in receipt of higher or the highest levels of remuneration

- n Copies of all documents that will be issued to participants in the scheme i.e. Letter of Invitation, Application Form, Option Certificate, Notice of Exercise of Option, Employee Booklet etc.
- n A copy of the Certified Contractual Savings Scheme application form together with a copy of the letter of certification issued by the Revenue Commissioners approving the savings institutions product (obtainable from the relevant bank)
- n A copy of the company resolution establishing the scheme
- n In the case of a group scheme, a copy of the company resolution

nominating the participating companies

- n The name and address of the person to whom the annual Return of Information issued by Revenue should be addressed
- n The income tax and corporation tax reference numbers for the company and any participating companies
- n Where a trust or a subsidiary company is to be used to purchase and retain the shares for the scheme, a copy of the Trust document or Memorandum and Articles of the company as appropriate.

If a company's application for approval is refused, there is a right of appeal to the Appeal Commissioners. Notice of appeal must be given in writing to the Revenue Commissioners, within thirty days of the date on which the company is

notified of the Revenue Commissioners decision.

All applications for approval of Savings-Related Share Option Schemes should be sent to:

*Office of the Chief Inspector of Taxes,
Employee Share Scheme Section,
Setanta Centre,
Nassau Street,
Dublin 2.*

Telephone: 01 - 671 6777

A copy of **specimen scheme rules** are also available on request from the above Section or from our website at www.revenue.ie

Capital Gains Tax (CGT)

The normal CGT rules will apply to the disposal of shares acquired by an employee or director under an approved Savings-Related Share Option Scheme. The base cost will be the price paid by the employee or director for the shares. **Z**

NON-RESIDENT LANDLORDS

Taxation of Rental Income



Introduction

This article deals with the procedures when rents are payable to a person whose usual place of abode is outside the State. There is often confusion between the treatment where rent is paid direct to the non-resident landlord and where rent is paid direct to an Irish collection agent.

Rent paid direct to a non-resident landlord

Tenant

Where rents are paid directly to a person whose usual place of abode is outside the State, the tenant is obliged to deduct income tax at the standard rate from the payment (*Section 1041 TCA 1997*). The tenant gives the landlord a certificate of the tax deducted on form R185. The tenant should account to Revenue for this tax. **Payment into a bank account in the name of the landlord is regarded as payment directly to the landlord.**

Strictly, the tenant should make a return immediately after the tax was deducted and pay over the tax deducted. In practice, an annual return made with the tenant's return

of income for the tax year together with a remittance for the tax deducted will suffice. Where payment is not received, the tenant will be asked to remit the tax deducted and in the absence of receipt of a remittance a notice of assessment will issue. In PAYE cases, recovery of the tax deducted can be dealt with by adjustment of the tenant's tax-free allowances i.e. by coding in an underpayment of the amount of tax deducted.

The obligation to deduct tax on payment of rents does not make the tenant a chargeable person (*Section 950 TCA 1997*).

Payments of this nature are not charges on income i.e. taxed or other income cannot be regarded as covering these payments.

Landlord

The landlord is a chargeable person and is chargeable to Income Tax, PRSI and Health Contribution Levy. The landlord is chargeable on the gross rents less any expenses which are usually allowed in arriving at the rental profit. The landlord may also be entitled to a proportion of personal reliefs and to aggregation relief. Credit for the actual tax deducted from rents by the tenant will be granted.

Where the landlord is a non-resident company, it will be chargeable to income tax, rather than Corporation Tax, unless it carries on a trade in the State through a branch or agency. If it carries on such a trade, it will be chargeable to Corporation Tax in respect of all of the profits attributable to the branch or agency.

Rent paid to an Irish agent of a non-resident landlord

Tenant

Where rent is paid to an Irish agent of a non-resident landlord the tenant is entitled to pay the rent without deduction of income tax. Where the tenant wishes to claim rent relief in respect of the rent paid, he or she must include the name and address of the landlord in the claim on Form Rent1/Rent2.

Landlord and Agent

Where rents payable to a non-resident landlord are paid to a person whose usual place of abode is in the State, for example to an Irish based estate agent, acting on behalf of a non-resident landlord, the tenant is not obliged or entitled to deduct income tax. The non-resident landlord is chargeable in the name of the Irish agent. The Irish agent is not entitled to deduct tax from the rent on payment to the landlord but would normally retain sufficient of the rents to satisfy the tax payable on the rents. The agent should not issue an R185 to the landlord.

The landlord is assessable in the name of the Irish agent (*Section 1034 TCA 1997*). While the assessment is in the name of the Irish agent, the tax to be charged is the amount which would be charged if the non-resident landlord was assessed in his or her own right. Accordingly, relief will be given for any personal allowances to which the non-resident landlord is entitled and tax will be charged at the marginal rate of income tax. **Z**

REVENUE ON-LINE SERVICE



ROS is now Live

As we told our readers in the last issue of **Tax Briefing** ROS went live on 29th September last. At the time of going to press:

- u 3,046 customers have applied to join ROS
- u 1,200 customers have retrieved their digital certificates and
- u A total of £55.8 million has been paid through ROS.

The uptake has been far higher than we anticipated and we have exceeded our first year's targets in the first eight weeks.

We would like to thank all those who have joined and encourage those of you who haven't to do so. Don't forget our ROS Help Desk is available at 1890 201 106 and you can arrange for training or demonstrations of ROS by booking our mobile training unit - Computer Gym - simply phone 01-2762824.

Next Phases of ROS

The purpose of this article is to bring you up to date on several developments in the planning for Phases 2 and 3 of ROS. These have been decided following consideration of the responses to the Consultative Document which issued last July.

This article does not reply specifically to all the issues raised during the consultative process though they have been logged and will be considered as the development of Phases 2 and 3 takes place. Rather it sets out how we intend to handle the

provision of accounts information and relevant computations by Income Tax and Corporation Tax filers.

Consultative Document

At the outset we would like to thank those of you who took the time to respond to the Consultative Document. It has taken us longer than we had anticipated to assemble the data from the responses received and to give due consideration to all the views expressed. Unfortunately, a consensus did not emerge on many of the issues either from a tax practitioner or software company perspective. We will, therefore, have to evaluate the responses to the issues not addressed in this article, taking account of the deadlines for delivery of Phases 2 and 3, the ability of the technology to provide solutions on the lines suggested, and the ease of use of those solutions by ROS customers.

Consultation and information exchange has been crucial to the success of ROS so far and we will be continuing with that process as the planning and development of Phases 2 and 3 takes place.

Phases 2 and 3

ROS has been designed to roll-out in tandem with developments in Revenue's main processing system. Because of a rescheduling in the release of some of these developments we have had to revise the ROS timetable. Phases 2 and 3 have now been decided as follows:

Phase 2 - April 2001

- n P35 and P35L
- n On-line access to VAT and employer tax details
- n VIES/Intrastat - access to VAT numbers
- n Phase I enhancements

ROS

Phase 3 - October 2001

- n Self-Assessment tax return for individuals - Form 11
- n Self-Assessment tax return for companies - Form CTI
- n Calculation facilities for both
- n Capture of financial accounts information
- n Third party returns
- n On-line access to Income Tax and Corporation Tax details
- n Phase 2 enhancements

Revenue's proposals on financial accounts information

In relation to the capture of accounts information Revenue is proposing that:

- (a) Cases with an annual turnover of less than £150,000 will be asked to complete a menu of approximately 50 items (with most cases in this category completing between 20 and 30 items)
- (b) Cases above that turnover threshold will be asked to complete a menu of approximately 110 items (with most cases in this category completing between 60 and 80 items; and
- (c) Cases/groups with an annual turnover of more than £10 million will still be required to file a paper copy of the financial statements.

The turnover thresholds and the number of menu items for each of the two categories a) and b) above will be reviewed in the light of experience.

ROS will endeavour to provide a very limited profiling of cases in Phase 3 to ensure that, for example, a farmer is not presented with the same list of menu items as a doctor. It is intended that this profiling of

cases will be developed and expanded in future releases of ROS. This will result in fewer accounts items being presented for completion.

We have decided to increase the threshold limit from £120,000 to £150,000 to allow many more cases into the smaller menu category.

Attachments

We also decided we will not proceed with the option to allow the filing of accounts as an attachment. The size of the accounts attachment files would be too big to make this option technically viable. It would have the potential to cause major bottleneck problems for tax practitioners and internet service providers, particularly during busy periods. There is also, of course, a greater risk of virus attack from attachment files.

Agent and non-agent cases

In response to strong representations on the issue, there will be no distinction made between how ROS deals with agent and non-agent cases.

Requirements from paper filers

This issue generated a lot of debate internally because of the need to balance the requirements of Revenue's audit with its customer service functions. We have concluded that in order to ensure parity of treatment between customers the same information will be required from manual and ROS filers alike. The information acquired from both electronic and paper returns will be interrogated in a uniform way in Revenue.

The responses to the Consultative Document from tax agents and representative bodies were very clear that e-filers and paper filers should be treated equally.

Therefore paper filers will be given two options. They can either:

- (a) Manually complete a menu attachment to the paper Form 11/CT1, which would be

on all fours with the electronic menu; (this would be instead of the full set of financial statements which are submitted at present); or

- (b) Provide the full set of financial statements, as at present, *provided that* the Trading, Profit and Loss, Capital Account and Balance Sheet items follows a standard sequence and categorisation; i.e. broadly the same sequence and categorisations as in the menu.

The menu attachment or the standard format of the financial statements, as the case may be, will also be differentiated on the basis of turnover i.e. less than or more than £150,000, as for e-filers.

Businesses with a turnover of less than £150,000, and all farmers, whether or not either of those categories is represented by a tax agent, will still have the option of submitting a paper business profile form (BP1) or farm profile form (AG12), as the case may be.

Screening paper returns for audit

Revenue will electronically capture the accounts information included with paper returns by scanning the menu attachment and by either key-punching or scanning the relevant data from the financial statements in the case of option (b) outlined above. This will ensure equality of treatment because data captured from all filers, manual or electronic, can then be electronically screened by Revenue using the same interrogation tools.

When will electronic risk-rating commence?

Because agents who wish to continue filing paper returns will need some time to reformat their printed version of financial statements into a standard order and layout, it is proposed that the new requirements for paper filers will not commence at least until the short tax 'year' 2001.

For Income Tax paper filers this means that the first return to be affected by the new requirements will be the one due by 31 October 2002. To ensure symmetry with Corporation Tax, the same cut-off date will apply for it.

The first e-filed Forms 11 under ROS will be for the tax year 2000/2001 i.e. the return due by 31 January 2002. E-filed accounts data (on the menu basis) submitted before October 2002 will not be electronically interrogated by Revenue. Screening of the menu items will be on a manual basis, to ensure parity with paper filers. All accounts data submitted after October 2002, whether electronic or paper, will then be subject to the same electronic interrogation and risk rating.

Computations

Computations for Income Tax and Corporation Tax are an integral part of the tax return and we will, therefore, require that they are included with ROS and paper returns.

However, as regards Capital Allowances computations, we will only require bottom line figures without computations for both returns.

Incentives

The Revenue Board and the ROS Project Board have carefully considered the representations that have been made on the question of giving incentives to customers and tax agents to use ROS. The conclusion reached is that no cash or tax based incentives will be given. We are confident that ROS will to a large extent sell itself. It will be one of the most sophisticated services of its kind being offered by any tax administration and will reduce compliance costs considerably. It will provide 24 hour access to Revenue, eliminate bottlenecks in the system and provide on-line access to

(Continued on page 38)

ROS

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Revenue data. Future phases will bring with them additional benefits and facilities for all our customers. We view ROS as the way we intend to conduct all our business electronically as we move into the 21st century. It provides opportunities and benefits for both customers and Revenue.

Simplification

As part of the consultative process we have received various proposals on the simplification of the tax code. Revenue broadly welcomes these suggestions and is actively pursuing some of them with the Department of Finance. Other simplification proposals will be accommodated in the release of Phase 3 of ROS next October.

Detailed Consultation

As mentioned earlier consultation with strategic partners has been an ongoing feature of the ROS development. Over the next three months we will embark on a detailed consultation process with tax practitioners and representative bodies to agree definitions for the various accounts items and, in particular, which items should be included on the menus. We will also be consulting with software providers to discuss how their accounts and tax preparation products might be developed so that the menu items can be identified and posted directly to the ROS returns.

Conclusion

ROS is being developed fundamentally as a customer service. Bearing in mind the limitations of the technology and the need to balance the requirements of Revenue's different functions, it is still essential that ROS be as user-friendly as possible. Your comments, criticisms and suggestions are, therefore, very important to us in developing ROS and are considered very seriously and taken on board as far as possible. **Z**

Digitally Signed Transmissions

Enabling legislation in respect of ROS was included in the *Finance Act 1999*. The legislation provides for the approval of persons to transmit data in an approved manner i.e. using ROS.

Significant aspects of it are:

- n** Allowing an approved or authorised person electronically transmit the information required on a return on behalf of a taxpayer without the need for the taxpayer's signature. Once this is done the person obliged to make the return is deemed to have satisfied his/her legal obligation to do so.
- n** Doing away with the need to submit supporting documentation or declarations
- n** Recognising electronic transmissions for legal purposes.

It is important to emphasise that the obligation to make a return and all the legal requirements to furnish accurate information still rests with the person who is legally required to make the return and not the person who electronically transmits the information, (unless this is the person who is obliged to make the return in the first instance).

The transmission to Revenue via ROS is not an electronically signed return. **Z**

VAT

Value Added Tax (Cancellation of Election of Registration in respect of Sixth Schedule Accommodation) Regulations 2000 (SI 253 of 2000)

These regulations govern the operation of *Section 8(5A) VAT Act 1972* whereby a person who elects to register for VAT in respect of the letting out of holiday accommodation covered by *Par (xiii) of the Sixth Schedule to the VAT Act* may be required to pay a cancellation amount on cancellation of that registration.

The new Regulation has effect from 1 September 2000.

Value Added Tax (Apportionment) Regulations 2000 (SI 254 of 2000)

These regulations govern the operation of *Section 12(4) VAT Act 1972* which deals with the proportion of tax deductible by a person for a taxable period in relation to his or her acquisition of dual use inputs for their business. The Regulation also provides for a review of the amount of such deductible tax claimed by a trader.

The new Regulation has effect from 1 September 2000.

Copies of these regulations can be obtained from:

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

Telephone: 01 - 6613111

New Regulations

Value Added Tax (Estimation of Tax payable and Assessment of Tax Payable or Refundable) Regulations 2000 (SI 295 of 2000)

These regulations govern the operation of *Section 22 and 23 VAT Act 1972* and provide for the making of estimates of tax payable for any period and for the making of assessments of tax payable or refundable for any period, by an officer of the Revenue Commissioners.

The new Regulation, which has effect from 25 September 2000 also confirms that all estimates and assessments raised under the previous Regulation remain valid. **z**

VAT



Introduction

This article details the VAT rates applicable to motor vehicle repair services and also covers the application of the two thirds rule in transactions involving the repair of motor vehicles.

The 12.5% rate applies in the following instances:

- t** General motor repairs, including repairs to agricultural machinery, but excluding the supply in the course of such repairs of tyres, tyre cases, interchangeable tyre threads, inner tubes, tyre flaps, for wheels of all kinds, batteries, accessories and attachments.
- t** Repair of existing accessories and attachments already fitted in vehicles
- t** Supply and fitting of sunroofs in used vehicles.

The 21% (20% from 1 January 2001) rate applies in the following instances:

- t** The exclusions listed above, and accessories and attachments supplied new in the course of the repair of a vehicle such as

Motor Vehicles

spoilers, roof racks, tow bars, radios, car alarms and floor mats.

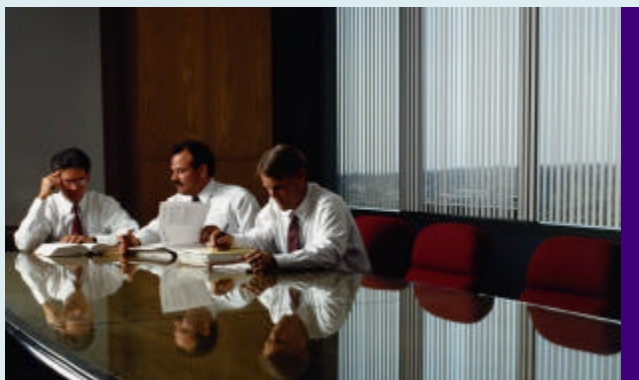
This list is not exhaustive.

- t** The supply of any goods e.g. accessories or attachments as part of the supply of a new vehicle
- t** All other services such as towing, storage, and recovery of vehicles.

Two Thirds Rule

Normally where a repair service is being provided and the cost of the goods supplied as part of that repair service exceeds two thirds of the total contract price (exclusive of VAT) for the service, the VAT rate applicable would be the higher rate, 21% (20% from 1 January 2001). However, in the case of bona fide transactions in the motor vehicle repair industry the two thirds rule will **not** be applied. **z**

VAT COMMITTEE



Introduction

The VAT Committee was set up under Article 29 of the Sixth VAT Directive (77/388/EEC dated 17 May 1997) to examine questions which concern the application of VAT in Member States, thus serving as a forum for an exchange of views in order to reach guidelines on uniform application and common practice as regards Community VAT provisions.

The Committee is made up of representatives of each Member State of the European Union (currently fifteen) and is chaired by a representative of the Commission.

Guidelines on Community VAT provisions

Because guidelines from the Committee are not legally binding, these are not published by the Committee. Under Article 12 of VAT Committee - Rules of Procedure, (adopted during the 55th Meeting of the Committee on 10 and 11 June 1998 and further amended during the 59th Meeting on 29 November 1999) the Committee decided that *"agreed guidelines on specific matters may be published by a Member State, on the exclusive responsibility of that Member State"*.

Commencing with this Issue, publication of agreed guidelines will be a regular feature in **Tax Briefing**.

While most guidelines are unanimously agreed, there will be cases of minority dissent. This will be indicated as appropriate. Also, unless otherwise stated, where unanimous agreement is not reached, it may be taken that Ireland's position is reflected in the majority agreement. This confirms that our existing practice accords with that agreed by the VAT Committee or by a majority thereof.

Seven Meetings of the Committee have been held since and including Meeting No. 55.

Guidelines are not necessarily agreed on a chronological basis. This is reflected in the list published here which

Publication of Guidelines

outlines guidelines which have been agreed to date, from Meetings 56; 57; 58; 60 and 61. No guidelines have been agreed as yet from Meetings 55 and 59.

Meeting No. 56 - 13/14 October 1998

Article 28c B (a) - Sixth VAT Directive Scope of exemption

The Committee agreed that the exemptions without a right to deduct input VAT mentioned under Article 13 of the Sixth VAT Directive continue to apply when the goods are dispatched or transported from the Member State of the supplier to another Member State and are subject to an intra-Community acquisition according to Article 28a in the Member State of arrival.

The intra-Community acquisition will be exempted according to Article 28c B (a) of the Sixth VAT Directive. There was some dissent from this view.

Article 9 (2) (e) - Concept of agent

The Committee agreed that Article 9.2 (e), seventh indent of the Sixth VAT Directive covers supplies by agents who act both in the name and for the account of the buyer and in the name and for the account of the supplier of services referred to in Article 9.2 (e).

Article 9 (1) and (2) (e), last indent The hiring out of movable tangible property, with the exception of all forms of transport

The Committee agreed that trailers and semi-trailers should be considered means of transport for the application of Article 9 (2) (e), eighth indent of the Sixth VAT Directive.

Meeting No. 57 - 16/17 December 1998

Article 8.1 (c) of the Sixth VAT Directive

VAT rules applicable to sales of goods on board international means of transport following the abolition of tax-free sales

As regards supplies on-board aircraft of goods to be carried away, the Committee unanimously agreed that, where the *"part of a transport of passengers effected in the Community"* referred to in Article 8 (1) (c) includes stopovers between its point of departure and its point of arrival, this transport shall be regarded as a single journey on condition that, except in the case of force majeure, the means of transport used and the flight number remains the same throughout the journey and that each stopover is of a short duration.

New EC legislation - Matters concerning the implementation of recently adopted Community VAT provisions

Council Directive 98/80/EC of 12 October 1998

Questions linked to the application of Council Directive 98/80/EC of 12 October 1998 (Special Scheme for Investment Gold)

Definitions (Point A of Article 26b)

All the delegations agreed that, for the application of the definition in Article 26bA (i), the weights accepted by the bullion markets include at least the following weights:

Unit	Weights traded
KG	12.5/1
Gram	500/250/100/50/20/10/5/2.5/2/(1)
Ounce (1oz = 31.1035g)	100/10/5/1/½ /¼
Tael (1 tael = 1.913oz.) ¹	10/5/1
Tola (10 tolas = 3.75oz) ²	10

¹ Tael = a traditional Chinese unit of weight. The nominal fineness of a Hong Kong tael bar is 990 but in Taiwan 5 and 10 tael bars can be 999,9 fine.

² Tola = a traditional Indian unit of weight for gold. The most popular sized bar is 10 tola, 999 fineness.

All delegations agree to use the market value of gold coins and of the gold contained in them on 1 April of each year, to check compliance with the condition mentioned in the fourth indent of Article 26bA (ii).

Special arrangements applicable to investment gold transactions (Point B of Article 26b)

A large majority of delegations agreed that the exemption of Article 26bB, first paragraph is restricted to supplies of goods and does not cover transactions qualifying as supplies of services. Accordingly, Article 8 (1) determines the place of supply of investment gold exempted under Article 26bB.

When investment gold represented by certificates for allocated or unallocated gold is physically located in another Member State than the Member State where the certificate is handed over to the buyer almost all delegations consider that Article 22 (9) (a), third indent allows Member States to release the supplier from his obligations in the Member State where the gold is physically located, provided that he is carrying out in that Member State none of the transactions referred to in Article 22 (4) (c).

Meeting No. 58 - 23 June 1999

Article 8.1 (a) and 28b F of the Sixth VAT Directive Contracts concluded between two taxable persons in the Community without any supply of goods by the customer

The Committee agreed that the supply of a machine, even if it is assembled following specific requirements of the customer, should be considered as a supply of a good. What the constituting elements of the produced machine

are, has no influence on the qualification of the machine as a tangible good.

The place of taxation of this transaction is determined by Article 8.1 (a) when the goods are dispatched or transported or by Article 8.1 (b) if the goods are not dispatched or transported.

When the supplier produces the machine and installs or assembles this machine at the location requested by his client, the operation should be qualified as a supply of goods with installation or assembly, whereby the place of taxation is where the goods are installed or assembled according to Article 8.1 (a) of the Sixth VAT Directive.

However, the operation is considered to be a supply of a service if the supplier would only assemble the different parts of the machine provided to him by his customer. In this case, the place of taxation is covered by Article 9.2 (c) or Article 28b F of the Sixth VAT Directive.

Meeting No. 60 - 20/21 March 2000

Article 8 of the Sixth VAT Directive Scope of the definition "goods installed or assembled"

All delegations unanimously agreed that for tiling, papering and parqueting, the place of supply is where the immovable property is situated. Some Member States arrive at this result because they consider these operations as a supply of a service, to be taxed in accordance with the provisions of Article 9.2 (a) of the Sixth VAT Directive at the place where the immovable property is situated. However, other Member States make use of the option provided for under Article 5.5 of the Sixth VAT Directive, and consider these operations to be supplies of goods. In this case some Member States consider these operations to be supplies of goods with installation or assembly by or on behalf of the supplier, falling within the scope of Article 8.1 (a) of the Sixth VAT Directive, while other Member States consider this to be a supply of goods that takes place at the time the work is finished and therefore falling within the scope of Article 8.1 (b) of the Sixth VAT Directive.

For intra-Community operations, the differences in the Member States' interpretations (supply of goods or supply of services) lead to differences regarding the obligation to submit the recapitulative statement provided for in Article 22.6.

All delegations unanimously agree that the supply of a good, whereby the supplier also carries out certain services, such as the plugging in of a machine or connecting a water pipe to an existing tap and the drainpipe to the outlet, should be considered one single supply of a good without installation or assembly and that these accessory services should be considered as activities of minor importance. This remains, nevertheless, an analysis on an ad hoc basis, case by case.

(Continued on page 42)

VAT COMMITTEE GUIDELINES

Continued from page 41

Article 15 (2)

Exemption from VAT for persons domiciled or resident outside the European Community

The great majority of the delegations take the view that 'personal luggage' should be understood to mean the whole of the luggage which a traveller is in a position to submit to the customs authorities on his/her departure, as well as that which he/she has presented in advance to the customs authorities, subject to proof that such luggage was registered as accompanied luggage, at the time of his/her departure, with the company which is responsible for conveying him/her.

Articles 13, 15, 26b and 28c of the Sixth VAT Directive **Scope of the exemptions**

The Member States agree almost unanimously that the exemption mentioned under Article 13 of the Sixth VAT Directive prevails over the exemptions mentioned under Articles 15 and 28c of the Sixth VAT Directive. This implies that supplies of goods that are mentioned under Article 13 of the Sixth VAT Directive are exempted on the basis of this Article, even if they are exported (Article 15) or supplied to a client registered for VAT in another Member State than the Member State of departure, and the goods leave the territory of the Member State of departure to the Member States of arrival (Article 28c). The consequence is that for these supplies

there is no right to deduct the relevant input VAT for the supplier.

Following the same line of reasoning, a large majority of delegations agree that the exemption of Article 26b, B of the Sixth VAT Directive, that introduces a special exemption for supplies, intra-Community acquisitions and imports of investment gold, prevails over the exemptions of Article 15 and 28c of the Sixth VAT Directive except in the case of the exemption provided for in Article 15.11 regarding supplies of gold to Central Banks. If, on the other hand, the supplier of investment gold opts for the taxation of his supplies, following the provision of Article 26b, C of the Sixth VAT Directive, then the special exemption of Article 26b, B is no longer applicable, and the other exemptions of Articles 15 and 28c of the Sixth VAT Directive are applicable if the conditions mentioned therein are fulfilled.

Meeting No 61 - 27 June 2000

Article 9 of the Sixth VAT Directive

Place of taxation of translators' and interpreters' services

All delegations agree that translation services are among the services covered by Article 9 (2) (e).

The great majority of delegations agree that interpretation services are also among the services covered by Article 9 (2) (e).

Article 4(5) and Article 9 **Services provided to public sector hospitals**

In exercising the option provided for in Article 4 (5), a Member State may decide to regard activities which, according to the general principles, fall within the scope of VAT but are exempt under Article 13 (such as hospitalisation and medical care provided by bodies governed by public law) as being outside the scope of VAT.

All delegations take the view that this option affects the decision on the place of taxation of certain expenditure incurred by such bodies in public law. Consequently, research service provided by a taxable person established in a Member State to a hospital governed by public law in another Member State are to be taxed either in the Member State in which the public hospital is established (according to the general principles), or in the Member State in which the service provider is established (if the Member State in which the public hospital is established has waived the first option). **Z**

COMPANY INCORPORATION

Economic Activity

Introduction

Section 43 Companies (Amendment) (No. 2) Act 1999 states that a company incorporated in the State must have at least one director resident in the State and, in the absence of this prerequisite, must provide for a bond in the sum of £20,000. *Section 44* of that Act provides that a bond is not required if the company holds a certificate from the Registrar of Companies stating that the company has a real and continuous link with one or more economic activities that are being carried on in the State. The Registrar will only grant such a certificate on receipt of proof of such a link. A statement from the Revenue Commissioners that the Revenue Commissioners have reasonable grounds to believe that the company has such a link shall be deemed to be such proof.

Applications for Statements under Section 44

An application for a statement under *Section 44 (5)* should be addressed to:

Inspector of Taxes,
Companies Division,
Dublin Information and Registration
District,
Arus Brugha,
9-10 Upper O'Connell Street,
Dublin 1.

Telephone: 01-8746821

The application letter should include details of the nature and duration of the link and the nature of the economic activities being carried on in the State.

Requirements for issue of a Statement

In most, if not all, instances Revenue will only be able to give a statement under *Section 44 (5)* on a post-event basis. The economic activity would need to be in train before we could give a statement and we would base a statement on evidence available. An exception to this could arise, say, in the case of a proposed trading activity to be carried on by a company in circumstances where the Inspector was satisfied that agreement had been reached with a State enterprise or development agency in relation to the activities to be carried in the State.

In terms of a definition of the phrase "a real and continuous link with one or more economic activities that are being carried on in the State", as it is not defined in the Statute it is to be given its ordinary meaning. Whether or not such a link exists is a question of fact to be determined in the light of the facts and circumstances of each case.

The ordinary meaning of the words "economic activity being carried on in the State" comprehends some active participation in income generation and that test would not be satisfied by opening a deposit account, for

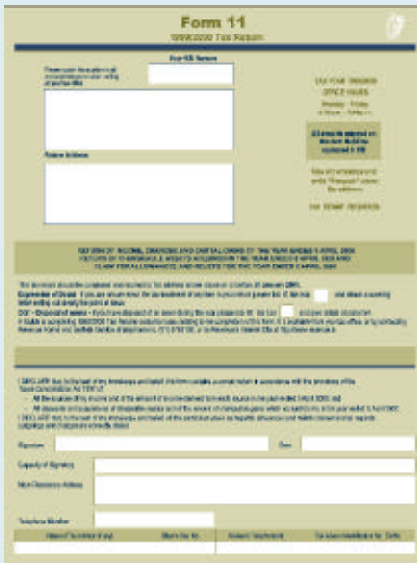
example. Neither would we regard a dormant Irish registered company holding but not exploiting assets as carrying on an economic activity in the State. In relation to holding companies, provided the companies' subsidiaries were carrying on economic activity in the State and there was evidence of a real and continuous link, the holding company would be able to receive a Revenue statement for the Registrar. However holding companies without such a link to economic activity being carried on in the State would not be in a position to qualify for such a statement even if the company were liable to Irish tax on foreign source income.

Equally we would look at each subsidiary of a holding company on its own merits, the fact that one of the subsidiaries of a holding company was carrying on an economic activity would not suffice as a link to an economic activity on the part of its economically inactive fellow subsidiary.

In order to issue the statement referred to in *Subsection (5) of Section 44*, Revenue must have "reasonable grounds to believe that the company has a real and continuous link...etc.". This belief must be based on evidence available to us. If the Inspector is not reasonably satisfied then Revenue will not be in a position to issue a *Section 44 (5)* statement. **Z**

COMPLETION OF TAX RETURNS

1999/2000



Introduction

Return filing and processing is coming to a peak at this time of year as the deadline for submission of the 1999/2000 income tax returns is **31 January 2001**. Based on our experience of returns submitted to date we now offer the following tips to ensure more accurate completion of returns. It is hoped that the tips outlined will help practitioners to help us 'get it right first time'. By getting it right first time, taxpayers, practitioners and Revenue will all benefit from the cost savings and improved service standards achieved. We would also like to take the opportunity to encourage early filing of returns in advance of the 31 January deadline but not, of course, at the expense of accuracy.

Income Tax Returns 1999/00 - FORM 11

Page 1

RSI No. (now PPS No.): This must contain 7 numbers plus a letter. The number will be pre-printed where the form is issued by Revenue but care is required in other circumstances.

Declaration: This must always be signed either by the client or his/her agent. Returns signed with the name of the accountancy firm or stamped with the firm name are not

acceptable - the return must be signed by the appropriate individual in the firm. The declaration should include the main residence address of the taxpayer and his/her telephone number.

Tax Adviser's Identification No.

(TAIN): This should always be entered, particularly when lodging the first return for a new client or when ceasing to act.

Page 2

Panel 1 - Income from Trade etc.

- u An accurate description of the trade etc. should be entered.
- u Full business address, if different to the taxpayer's home, should be given.
- u Accounts together with computations of profit (loss), capital allowances and balancing charges should be attached.
- u An income figure or "nil", as appropriate, must always be entered on the return. Terms such as 'see computation' or 'per computation' are not acceptable. The correct figures should be entered on the return itself. The adjusted net profit for the accounting period should not include the capital allowance deduction. There is a separate heading for this entry.
- u Two different sources of income should not be entered in the one panel. If there is more than one source, panel 2 should be completed even if a breakdown is given in attached schedules.
- u In cases of **cessation** or change of accounting date, this should be highlighted together with any statutory revisions for the previous year. Adjustments for prior years due to cessation, or for opting out of income averaging should be calculated and highlighted by the practitioner when submitting the return.
- u Partnership Income: The reference number of the partnership must be given. Each

partner's return should be submitted individually and should not be inserted inside the partnership return.

Set-off of Losses or Capital Allowances

- u Trading losses must be shown by "nil" in the appropriate place and not shown in brackets () in the profit space.
- u Losses should be claimed in panel 1, indicating clearly by completing and ticking the boxes provided, how the loss is to be utilised, i.e. set-off against other income or carried forward. Where losses are to be created or augmented with capital allowances, the appropriate boxes should be ticked. Very often, these boxes are left blank and confusion arises over the level of taxable profit.
- u In farming cases, fourth year losses should be indicated, where appropriate.
- u Capital allowances for Urban Renewal, Rural Renewal and Seaside Resort Relief should be included at panel 5. They should not be entered under capital allowances in panel 1.

Panel 3 - Professional Services Withholding Tax

The gross amount must be entered even where interim refunds have been made. Original Forms F45/F43 must be submitted with the return unless already submitted as part of an interim refund claim. A summary schedule of the F45s/F43s may be helpful in some cases.

Page 3

Panel 5 - Income from Land and Property in the State

- u Capital Allowances relating to rental income must be entered on the return. Where excess capital allowances are for set-off against other income this should be clearly stated in a covering letter.

- Where exemption for rent received by farmers is claimed the net rents should be included on the return.

Panels 7-10 - Income from which Irish Tax was deducted

- DIRT - The name of the financial institution and details of the gross amount received must be shown.
- Ordinary deposit interest and special savings accounts must be shown separately at panels 7 and 8 respectively. Special savings accounts need only be shown if the client is entitled to a refund of DIRT.
- Pension payments received under Retirement Annuity Contracts from which standard rate tax is deducted should be entered in panel 9 and not in panel 15.

Panel 12 - Distributions of Companies Resident in the State

- This refers to Irish Distributions only. If UK dividends are included here the credit given will be incorrect. Norwich Union distributions are UK distributions and should be entered at panel 25.
- The gross distribution should be shown at panel 12(a) - there is no requirement to show the withholding tax deducted - in some cases this is entered in error at 12(b).
- Dividend counterfoils are now often stated in both euro and punts. If the return is being completed in IR£ care should be taken to ensure that euro figures are not entered by mistake and conversely if a euro return is being completed.

Page 4

Panels 13 to 18 - Employments etc.

- All employment details and PAYE tax deducted should be entered on the return and the Form P60/P45, as appropriate, should be attached.
- Social Welfare payments - the type of payment e.g. old age pension, widow's pension etc. should be indicated and the gross amount should be shown. In relation to

Unemployment Benefit and Disability Benefit the taxable amount must also be entered i.e. amounts less relevant exemptions.

- Pension payments received under Retirement Annuity Contracts should only be entered at panel 15 if subject to PAYE, otherwise the figure should be entered at panel 9.

Panel 20 - Benefit-in-kind on

Company Cars

Details of annual total mileage and business mileage should be supplied.

Panel 22 - UK Dividends

The net amount of the dividend should be included on the return for 1999/2000. In previous years the gross dividend was required.

Page 6

Panel 32 - Retirement Annuities

- The **Date of Birth** must be entered where the claimant or his/her spouse were born before 6 April 1970. In the absence of these details the relief will be restricted to 15% of net relevant earnings.
- The source of non-pensionable earnings should be shown to enable the correct limits to be verified.
- Claims for additional premiums paid should be made by the return filing date. RAC certificates should be attached, where available, at time of return filing. Where the certificates are not available, the claim can be included on the return and any repayment arising will be processed. This does not remove the obligation to have the necessary documentation to support the claim. Verifications will be carried out as a control measure (see **Tax Briefing** - Issue 29). Any claims which are not ultimately supported by correct documentation will be subject to the interest/penalty provisions.

Panel 33 - Interest Paid

- The lender's name and the amount of interest paid must be entered in all cases and not terms such as 'see previous return' or 'see certificate'. Revenue does not have access to such interest payments for all lending institutions and the absence of these figures may cause delays in processing the return.
- The date on which the loan was taken out needs to be entered and if the loan is in its first five years this should be indicated.

Page 7

Panel 35 - Personal Allowance

Personal status details should be recorded clearly. The date of marriage is required where the parties were married during the tax year. The spouse's full name and pre-marriage PPS No. should be entered and the assessable spouse should be nominated.

The spouse's income should **not** be included on the return in the **year of marriage**.

If separate assessment has been claimed this fact should be highlighted on the return or in a covering letter and the PPS numbers for both spouses should be stated. The deadline for claiming separate assessment i.e. 6 July in the year of assessment, should be noted.

Panel 36 - Age Allowance

If age allowance is claimed the Date of Birth must be entered.

Panel 39 - Increased Exemption/Dependent

Children/Bereavement Allowance

Full details regarding qualifying children must be entered i.e. name, date of birth, income etc. - phrases such as 'see previous returns' are not acceptable. Claims for increased exemption cannot be processed in the absence of this information.

Panel 41 - Medical Expenses

The amount claimed must be shown on the return and completed Form Med 1 and Med 2 should be attached, as appropriate.

(Continued on page 46)

COMPLETION OF TAX RETURNS

Continued from page 45

Panel 42 - Medical Insurance

The amount paid for medical insurance in the preceding tax year should be entered and not the actual figure.

Panel 44 - Relief for Investment in Corporate Trades

Fully completed forms RICT or Film 3 should be attached, where available, at the date of return filing. If certificates are not available the claim can still be made and any repayment arising will be processed. As a control measure verifications will be undertaken to ensure that amounts claimed are supported by documentation (see **Tax Briefing** - Issue 29). Failure to substantiate claims with the appropriate documentation will attract additional tax, interest and penalties. This control measure does not remove the obligation to have the necessary documentation available to support the claims for relief.

Panel 45 - College Fees/Rent Allowance

Receipts should be included as indicated on the return.

Page 8

Panel 49 - Directors

Director's percentage shareholding in each company must be entered.

Panel 53 - Medical Card Details

The medical card holder section should be ticked, where appropriate.

Panel 54 - Capital Gains Tax

- ❑ A computation of the chargeable gain must always be attached to the return even where the amount of the chargeable gain is shown on the return.
- ❑ Where roll-over relief is claimed a capital gains tax computation on disposal of the old asset must be submitted together with acquisition details of the new asset i.e. date acquired, nature and cost of asset.
- ❑ Where retirement relief is claimed under *section 598 TCA 1997* full details must be supplied.

Voluntary Self-Assessment

- ❑ P8/R8 figure should be shown where the VSA option is used.
- ❑ Direct payments should not be taken into account when calculating the P8/R8 figure.
- ❑ In PAYE cases account should be taken of any underpayment which has been coded in/collected in the tax year under review.

General

Return not completed in full

The return is used as an input document by our processors and a return that is not fully and accurately completed, is not capable of being processed. The form must be completed in full. Figures must be entered on the face of the return or, if appropriate, 'nil' entered - do not leave any sections blank. Entries such as, 'see schedule', 'see attached', 'as before', and, 'details to follow' are not acceptable and returns completed on this basis may not constitute a valid return. This also applies to the Capital Gains Tax section.

Supporting documents not included with Returns

P 60's, receipts for College Fees, Forms Med 1 and Med 2, documentation in support of Resort Relief etc., should be included with the return. The absence of complete details and the submission of supporting documentation on a piecemeal basis creates unnecessary delays and results in multiple amendments being made for the one case. A return is considered full and complete when it contains all the relevant information. Instalment filing of documents and amendments may mean that the return as originally submitted does not constitute a valid return and may be regarded as late for surcharge purposes.

Surcharge

The return filing date for the 1999/2000 return is 31 January 2001.

Corporation Tax Returns - FORM CT1

Page 1

Form CT1 should not be completed for a period in excess of twelve months.

Panel A4 should be completed if relevant i.e. number of associated companies.

Tax Adviser Identification Number (TAIN) should be entered in all cases.

Page 2

Panel 1 - Trading Results

The figure to be entered in panel 1 is the profit per accounts as adjusted before capital allowances. In some cases the net profit or the adjusted profit less capital allowances is being entered in error. If the profit/loss arises from an excepted trade the appropriate box in this panel should be ticked.

Panel 2 - Capital Allowances

Wear and tear on cars should be entered at S1 and not S3.

Panel 4 - Trading Losses

Practitioners, wishing to avail of the provisions of *section 396(2) TCA 1997* to offset trading losses of the current accounting period against other income of the same or the previous accounting period, frequently enter the amount being claimed in panel 4 at code S6 on the Form CT1. This panel should only be used for claims to set trading losses forward against trading profits of the current period under the provisions of *section 396(1)*. Claims under the provisions of *section 396(2)* should be included in panel 11 at code H1.

Panel 6 - Interest arising in the State

Interest received is sometimes entered at the wrong code. Deposit interest subject to DIRT is often input at code D3 (Case III Income) instead of code D6. If an entry is made at code D6 an entry should also be made in panel 17, code T6 i.e. income tax borne on income received.

Panel 9 - Capital Gains

The net gain should be entered at codes G8 and G9 i.e. total gains less allowable losses. In some cases the actual capital gains tax due or a regressed figure is entered here in error.

Development land gains should be entered at panel 22.

Page 3

Panel 11 - Deductions

Amount of losses claimed under *section 396(2) TCA 97* must be shown on the return. Where a company wishes to offset losses against other income a claim should be made by stating the amount to be offset in panel 11 at codes H1 or H3.

Where a company wishes to carry back the losses this should be stated in the computations for the period in which the losses arise. When losses are claimed under *section 396 TCA 1997* against an earlier accounting period, an amended computation of liability for the earlier period should be submitted, as the claim for losses can affect the income charged at the reduced rate/reduced rate credit and the manufacturing relief already granted for that earlier period.

Where group relief is claimed it should be entered at code H7.

Losses, excess capital allowances and group relief must be restricted when the form CT1 is not submitted on time.

Where manufacturing losses are being carried back against an earlier accounting period, revised computations including a revised manufacturing relief claim for the period to which the losses are being carried back to should be submitted.

Panel 12 - Income chargeable at the Reduced Rate

Accounting periods ended 31/12/99 and prior

In many cases income chargeable at the reduced rate is not shown on the Form CT1 or an incorrect figure or "nil" is shown when the reduced rate is actually claimed in the computation. It is important to note that it is the **income** to be charged at the reduced rate rather than the tax that is to be entered at RR.

In many cases an RR figure is input in respect of manufacturing income and chargeable gains. The reduced rate does not apply to these sources of income. For accounting periods ending on or after 1 January 2000 the new small companies relief may apply (code R5). This relief applies only to trade profits.

Where an accounting period spans 1999 and 2000 only the income to 31 December 1999 to be taxed at the reduced rate should be entered in panel 12. Small companies relief for the portion of the accounting period from 1 January 2000, if applicable, is claimable at panel 13 (code R5).

Panel 13 - Reliefs

Manufacturing relief computations must be enclosed with the return.

In manufacturing relief cases code R3 is often left blank or an incorrect formula is used to calculate same. It is not sufficient to state on Form CT1 "see computation" (which only shows the income taxable at 10%). A claim for manufacturing relief must be computed and claimed by entering at code R3 in panel 13.

As outlined above, errors are being made in the calculation of manufacturing relief due to the application of the reduced rate credit to manufacturing income or to the use of a composite rate of corporation tax. The reduced rate does not apply to manufacturing income.

Care should be taken in the split of manufacturing profits where the

accounting period spans a rate change date which is usually the 1st of January.

Accounting periods ending in 2000

When computing corporation tax liability for an accounting period ending in year 2000, the Case 1 income chargeable in 2000 where it is less than £50,000 must be taxed at 24% not 12.5% and a claim for small companies relief made in panel 13 of the Form CT1 code R5. The income qualifying for small companies relief should not be included in the amount taxable at reduced rate (Panel 12). This reduced rate does not apply to any income post 31 December 1999.

Panel 16 - Amounts payable under deduction of income tax

Repaid director's loan account is sometimes entered without brackets leading to the input of a charge.

Panel 17 - Credits

Credit for DIRT should be entered at T6.

The gross withholding tax deducted for the accounting period should be shown at T5 i.e. not the net amount after refunds and set-offs.

Dividend withholding tax is sometimes claimed as a credit in error - this is not available as a deduction for CT.

Panel 20- Current and Loan Accounts

The amount should be entered even when a closing balance (DR) is shown in panel 20. Terms such as "see notes to accounts" are not acceptable.

Panel 24 - Director's Emoluments, Benefits etc.

Columns should not be left blank. "None" should be entered if the column is not applicable.

Panels 25-27 - Groups/Associated Companies

The general existence of Group/Associated companies is often indicated in the accounts but then omitted from the return. **Z**

TOPICAL QUESTIONS

Schedule E

What tax treatment applies in relation to the provision of home leave travel for expatriate employees?

A number of international companies have expatriate employees working in Ireland on short-term assignments for 2/3 years. The individuals are generally posted here to assist with start-up and development of new operations here.

Where an employer bears or reimburses the cost of one trip per year to the home location for the expatriate and his / her family, no assessment will be made on the employee in respect of the benefit involved.

Industrial Buildings Allowance, Construction Expenditure

If buildings are purchased new and unused from a developer rather than constructed by the taxpayer, are professional fees and stamp duty included in the construction expenditure for the purposes of the formula in Section 279?

The provisions of the Tax Acts relating to the making of industrial buildings allowances proceed on the basis that relief is given for capital expenditure incurred by the claimant on the construction of a building. More commonly, and particularly in the case of cottages developed under the Seaside Resort Scheme, buildings are purchased new and unused from a developer rather than constructed by the taxpayer.

It is therefore necessary to compute an amount which is treated as construction expenditure. The amount which is so deemed is an apportionment of the amount paid by a person on the purchase of the relevant interest in the building (Section 279 TCA 1997). It is

Revenue's view that the amount paid on the purchase does not include the cost of professional fees and stamp duty. Accordingly, such costs should not be included in "B" in the formula in Section 279.

Capital Gain Tax

In company reorganisations and take-overs, what is the CGT treatment in relation to "paper for paper" transactions?

Relief is provided where shares in a company are disposed of by way of exchange for other shares in the same company; for example, where the shareholder surrenders his/her existing shares in exchange for other new shares. Nothing passes but the shares ("paper for paper").

The central rule is that the mere exchange of one block of shares for another on a capital reorganisation by the company is not treated for CGT purposes as a disposal of the old shares or an acquisition of the new shares. Instead, the new holding is treated as if it had been acquired at the same time and cost as the original holding was acquired, and a gain or loss on the old shares is not regarded as accruing until the new holding is disposed of in whole or in part. If any cash payment is received as part of the reorganisation it is treated as a **part disposal** of the shares; if any cash is paid it is treated as additional cost price (or enhancement expenditure).

The foregoing applies to transactions within a single company. Similar rules apply to a share for share exchange in a take-over situation where the acquiring company obtains control.

What is the CGT treatment of capital sums derived from shares ("part disposal")?

Capital sums derived from shares, with or without any actual disposal of the shares taking place, represent a part disposal of the shares. The following example illustrates how the gain is calculated:

Jim owns 1,000 shares in XY LTD, which he acquired for £2,500. Some time later, there was a rights offer of 1 new share for every 4 held, at a discount of market value. Jim did not take up the additional shares and instead sold his rights to acquire the new shares for £1,200 to a third party. The market value of the shares after the issue was £4 each.

Jim is treated as having made a part disposal out of his holding of 1,000 shares. Jim has 1,000 shares in a company which cost him £2,500. He has received a capital payment out of these shares of £1,200. The capital gain is computed by reference to the capital sum of £1,200 less a proportion of the cost of the shares. The proportion is calculated by reference to the capital sum received and the value of the shares after the payment (i.e. 1,000 x £4 or, £4,000) as follows:

$$\begin{array}{rcl} \text{£2,500} \times & \frac{\text{£1,200}}{\text{£1,200} + 4,000} & = \text{£577} \end{array}$$

The CGT is therefore on £623 (£1,200 - £577, before indexation, if due). In the event of a future disposal of the shares the balance of the cost to be allowed is £1,923 (£2,500 - £577).

Further examples of part disposals include capital distributions by companies including capital distributions on a winding up or where a cash payment is received as part of a "paper for paper" transaction.

Capital Acquisitions Tax

Business Relief

Section 127 (1)(e) and 127 (6) Finance Act 1994

Does Business Relief apply to property which was rented to a company by the donor, who is simultaneously transferring shares in that company and the rented property to the beneficiary?

The charging of rent by the donor on the property passing is not a reason to deny Business Relief, providing that the property and the shares passing simultaneously qualify for Business Relief in all other respects.

What are the CAT taxes and what are the essential differences between them?

Capital Acquisitions Tax comprises four separate but integrated taxes, namely, Gift Tax, Inheritance Tax, Discretionary Trust Tax and Probate Tax. Probate Tax is abolished in respect of deaths occurring on or after 6 December 2000.

t Gift Tax and Inheritance Tax

Gift Tax is a tax on the property and other assets that a person receives [otherwise than on a death].

Inheritance Tax is a tax on the property and other assets that a person receives on a death. Virtually all assets are taxable assets for the purposes of Gift and Inheritance Tax - houses, lands, businesses, bank accounts, stocks and shares, insurance policies, cash, personal possessions etc. There are, however, a number of exemptions and reliefs, such as, the gift or inheritance of the family home where certain conditions are satisfied, business property relief etc.

All gifts or inheritances between spouses are exempt from CAT. The tax-free thresholds for other persons depend on the relationship between the person receiving the gift or inheritance [the beneficiary] and

the person making the gift or inheritance [the donor]. Amounts in excess of the tax-free thresholds are chargeable to CAT.

When is gift and inheritance payable?

Self-assessment applies and a return must be made where the taxable value of the gift or inheritance exceeds 80% of the tax-free threshold. To avoid interest charges any CAT liability must be paid within 4 months of the Valuation Date (basically the date on which the beneficiary actually receives the gift or inheritance).

t Discretionary Trust Tax

A discretionary trust can be defined as a trust containing property of any kind which is held by people called trustees for the benefit of certain named individuals (the beneficiaries). The trustees can normally appoint the trust property to a beneficiary at their discretion.

There are two rates of tax charged on discretionary trusts: an initial once-off charge of 6% of the market value of the trust assets and thereafter an annual charge of 1% of the market value of the trust assets. Certain discretionary trusts are exempt from the tax e.g. discretionary trusts created exclusively for public or charitable purposes in the State or Northern Ireland.

The 6% charge

The 6% charge arises at the latest of the following dates:

- n The date of death of the donor or
- n The date the youngest principal object of the trust attains 21 years of age or
- n The date the property becomes subject to the discretionary trust.

A principal object is defined as the donor's spouse, child or child of a predeceased child.

The 1% charge

The 1% charge is an annual charge and always arises on 5 April.

When is Discretionary Trust Tax payable?

Self-assessment applies and a return must be made and the tax paid within 4 months of the Valuation Date (basically the date on which the charge to tax arose).

t Probate Tax

To obtain a grant of probate or administration to the estate of a deceased person the personal representative of the deceased must present an Inland Revenue Affidavit to the Revenue Commissioners. The Affidavit sets out the assets and liabilities of the deceased at the date of death. Where the net value of the estate of the deceased exceeds a relevant threshold a 2% charge to tax arises on the net value of the estate. This tax is called Probate Tax. The relevant threshold is £40,000. The personal representative is primarily liable for payment of the probate tax.

Various reliefs and exemptions apply e.g. the tax on property passing absolutely to a spouse is abated to nil.

When is Probate Tax payable ?

The tax is payable at the time the Inland Revenue Affidavit is presented to the Revenue Commissioners. A Probate Tax Self-Assessment return (Form PT1) must be completed and submitted along with the Inland Revenue Affidavit. If payment is received within 9 months from the date of death a discount of 1% of the tax is granted for each month or part of a month before the expiration of the 9 months. Interest at 1% per month or part of a month is chargeable if after 9 months from the date of death payment has not been received.

Note: Probate Tax is abolished in respect of deaths occurring on or after 6 December 2000. **Z**

REVENUE NEWS

Update

New Leaflets

Budget Summary 2001



A leaflet outlining the main Budget 2001 highlights was published on 6 December 2000.

Copies of these leaflets are available from any tax office, from the *Revenue Forms & Leaflets Service* at 01-8780100 or from our website at www.revenue.ie

IT67 - First Job

A guide for first time entrants to the PAYE Tax System

This is a new leaflet aimed at people starting work for the first time. The leaflet contains a simplified application form for a Tax-Free Allowance Certificate.

Copies of these leaflets are available from any tax office, from the *Revenue Forms & Leaflets Service* at 01-8780100 or from our website at www.revenue.ie

Postgraduate Fees

Tax Briefing, Issue 40 (June 2000) contained an article on postgraduate fees. The Minister for Education and Science has determined that the maximum level of qualifying fees in respect of each course is £2,500 for the academic year 2000/2001. Relief is available at the standard rate of tax.

Tax Briefing - Issue 41 Topical Questions

Please note the following amendment to the question on Lump Sum Termination Payments on page 33. The Health Contribution rate is 2%.

FOI Charges

As and from 1 July 2000 Revenue is charging for hard copies of the Trade Profiles at six pounds [£6.00] per copy. This is the cost for photocopying [and includes cover and plastic spine].

For a copy on a floppy disk the charge is forty pence [£0.40] which will be waived. No charge is incurred if the applicant wishes to receive a copy using internet mail. For further information contact:

*FOI Central Unit,
Office of the Revenue Commissioners,
5th Floor,
Wicklow House,
Dublin 2.*

Telephone: 01-7020850
Fax: 01-6708418
e-mail: info@revenue.ie

Property Incentive Schemes

A useful spreadsheet summarising the tax reliefs available under the various property incentive schemes is now available on our website at www.revenue.ie/services/schemes.xls. The list contains details of 16 different schemes i.e. Urban, Rural, Enterprise Areas, Child Care Facilities etc. and information is provided under the following headings:

- u Relevant Legislation
- u Commencement Orders
- u Qualifying Periods
- u Commercial Reliefs
- u Residential Reliefs
- u Tax Life for calculating residue after sale
- u Balancing Allowance/Charge - number of years after which a balancing adjustment will not be made.

Update - Double Taxation Conventions

Ireland and China

Ratification procedures on a Double Taxation Convention between Ireland and the People's Republic of China have been completed by both sides. The Convention will therefore come into effect on 1 January 2001.

Ireland and Bulgaria

A Double Taxation Convention between Ireland and Bulgaria has been ratified by Dáil Éireann. The Convention is awaiting ratification by the Bulgarian Parliament.

Ireland and Romania

A Double Taxation Convention with Romania which was signed in 1999, and also ratified by Ireland, is awaiting ratification by the Romanian Parliament.

Ireland and India

A Double Taxation Convention between Ireland and the Republic of India was signed on 6 November 2000. This Convention will not come into effect before 2002.

Ireland and Norway

A Double Taxation Convention between Ireland and Norway was signed on 22 November 2000. This Convention will replace Ireland's existing Double Taxation Convention with Norway, which has been in force since 1967 and is one of Ireland's oldest tax conventions. The new Convention will not come into effect before 2002.

Further Information

Printed copies of the Conventions can be obtained from the Government Publications Office, Sun Alliance House, Molesworth Street, Dublin 2. The text of the Conventions are also available on our website at www.revenue.ie **Z**

REVENUE WEBSITE

www.revenue.ie

Introduction

Revenue's internet website has been re-designed. As well as improving the visual image of the site we have also taken this opportunity to add a substantial amount of new material and to introduce some new features. The purpose of the website is to help you by connecting you to the information you need when you need it. Our objective is to present information in a way that makes it as easy as possible for you to find what you are looking for. Your views on whether we have achieved this objective, and indeed your suggestions on any new services that you would like us to provide, would be very much appreciated - e-mail custserv@revenue.ie. The following is a summary of the content of the new site but the best way to find out what it's all about is to log on to www.revenue.ie and see for yourself.

Content of Site

The information and services available on the site are gathered under ten main section headings.

The **Home** section provides general information about Revenue and the site, as well as an on-line user survey form.

As the name suggests, **What's New** provides the latest news from Revenue. The following items are included under this heading:

- ❑ Latest Headlines
- ❑ New Publications
- ❑ Media Releases
- ❑ Budget Information
- ❑ Procurement

The **Services** section provides full information on all taxes administered by Revenue. The following items are included under this heading:

- ❑ Tax Information by Tax Category
- ❑ Tax Information for Individuals, Businesses & Practitioners
- ❑ Customs & Excise
- ❑ Vehicle Registration Tax

- ❑ Electronic Services
- ❑ Freedom of Information
- ❑ Euro Services

Answers to **Frequently Asked Questions (FAQs)** are provided under the following main headings:

- ❑ Lifetime Events
- ❑ Individuals
- ❑ Businesses
- ❑ Vehicle Registration Tax
- ❑ Customs & Excise
- ❑ Calendar of Events

The **Publications** section provides links to a large number of Revenue documents as follows:

- ❑ Information Leaflets and Guides
- ❑ Tax Forms - Tax Returns, Claim Forms, Current and Prior Year forms, EURO and Irish versions. These forms can be printed off, completed and sent to the tax office.
- ❑ Statements of Practice
- ❑ Tax Briefing - Issues 1 to 42
- ❑ Technical Guidelines
- ❑ Lists - Approved Colleges and Courses, Charities, Approved Hospitals etc.
- ❑ Legislation - Bills, Acts, Statutory Instruments and Notes for Guidance
- ❑ New Publications
- ❑ Corporate Publications - Annual Reports, Corporate Plan etc.

The **Contact** section provides contact details for all of Revenue's offices throughout the country. The offices can be located by county.

The **Sitemap** provides a number of ways to locate information on the Revenue site.

Information and documents available in Irish can be found in the **Languages** section. Material in French, German and Spanish is also provided.

About Us provides general information about the Revenue and its services.

Links, as the name suggests, provides links to useful Irish and International web resources.

The following features are accessible from all pages:

Revenue On-Line Service (ROS)



The website provides access to the new ROS system which went live on 29 September. A number of features of ROS can be explored from the ROS home-page without any requirement to register. These include a section on frequently asked questions about ROS which cover issues as basic as 'what is ROS?' to questions about digital certificates. Another feature includes demonstrations on how to use ROS to file returns.

Subscribe to Newsletter

This is a free electronic newsletter service that is designed to inform individuals by e-mail of new additions to the website and about other Revenue-related issues. The topics covered by the newsletter section are:

- ❑ What's New
- ❑ PAYE Tax Credit System
- ❑ Procurement by Revenue
- ❑ Tax Briefing
- ❑ Euro Bulletin

Query Form

This facility allows submission of queries by e-mail. E-mail queries should be directed to the appropriate office -see Contacts section. **Z**

REVENUE WEBSITE

www.revenue.ie

Layout and Design of New Site

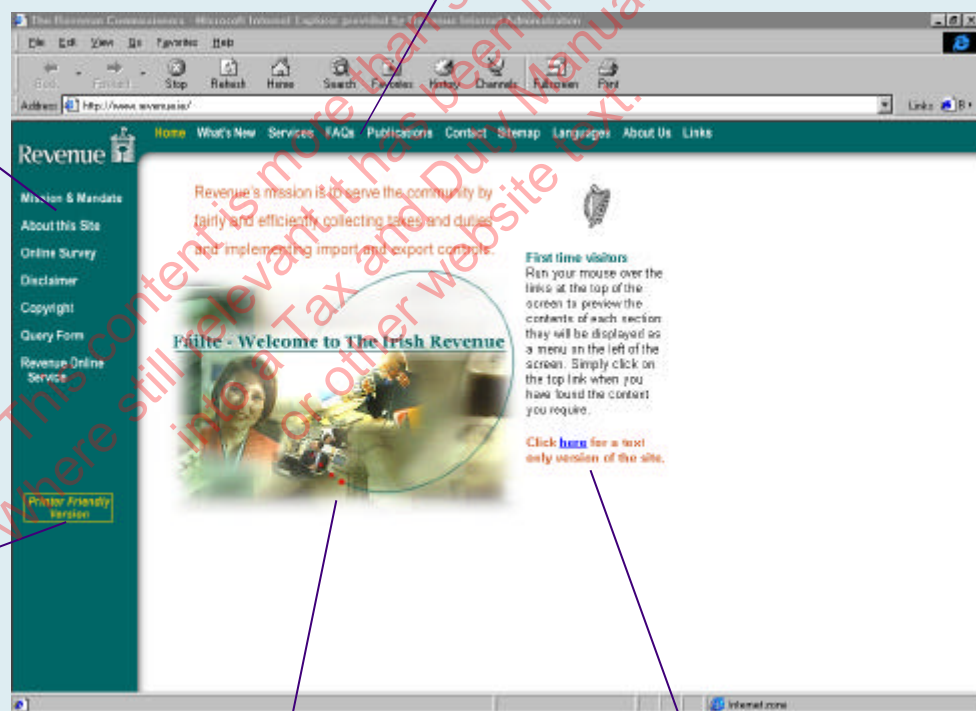
The Revenue site is designed for maximum accessibility. There are graphical and text-only versions of the site. The graphical version uses frames and javascripting to facilitate navigation and help you find the information or service you need. The text-only version of the site can be accessed via a link on the home page. If your browser is not frames-compliant, you will be directed straight to the text-only version when you first enter the site. The screen-shot below shows how the home page of the site is laid out.

2. Left Frame

This frame provides links to the sub-sections, or **local navigation**, within the current site section. When you move the pointer over the names of the links in the top frame, this frame also provides a preview of the sub-sections to be found in the other site sections.

1. Top Frame

This frame, which remains on-screen at all times, provides links to the main site sections. This is the **global navigation**. When you move the pointer over the names of the sections, the left frame will display the names of the sub-sections you will find within each.



3. Printer-Friendly Version

Frames can cause problems when printing. If you wish to print the current page, clicking on this button will cause the navigation frames (top and left) to disappear, leaving only the main information frame on screen. When you have finished printing, use your browser's **Back** button to restore the navigation frames.

4. Main Information Frame

This frame will display the detailed information to be found in each of the sections and sub-sections of the site.

5. Text-Only Version

This link on the home page provides access to the text-only version of the site.