

TAX BRIEFING

REVENUE ON-LINE SERVICE (ROS)



Minister for Finance, Mr. Charlie McCreevy T.D. and Chairman of the Revenue Commissioners, Mr. Dermot Quigley at the ROS Contract Signing Ceremony in February 2000.

Introduction

This article outlines recent developments in relation to the Revenue On-line Service (ROS) project and the plans in place to April 2001.

In *Tax Briefing*, Issue 34 (December 1998), we introduced our readers to the Revenue On-Line Service (ROS). That article set out the thinking at that stage, the benefits for both customer and Revenue, the legal and technical issues involved, and our plans for 1999 in relation to the provision of a service which would allow for the 'electronic filing of returns and declarations and other electronic information exchange' (Revenue's Statement of Strategy 1997-1999).

Since then, developments have taken place at a pace which reflects the current speed of change in the world of communications technology.

Request for Information (RFI)

A Request for Information was published in March 1999. It described the proposed ROS system and sought confirmation that it could

be delivered. By the end of April 1999, thirty one responses were received from service providers world-wide which confirmed the feasibility of ROS.

Legislation

The 1999 *Finance Act* included enabling legislation for the electronic filing of tax returns. The new legislation was inserted into *Section 917 TCA 1997*. Apart from setting out the legal basis for electronic returns the Act also allows Revenue become a Certification Authority, if necessary, for issuing digital signatures which will be used to sign electronic returns.

Request for Tender (RFT)

In July 1999, a Request for Tender issued seeking a developer for the ROS system. This followed an intensive research and consultation process, including an assessment of the information obtained through the RFI process. A tenderer was sought who would provide through ROS:

- ▼ An ability for customers and tax practitioners to file a significant number of returns over the Internet
- ▼ Access over the Internet to specified tax information of customers held on Revenue files
- ▼ Access for tax practitioners to specified tax information of their clients held on Revenue files
- ▼ A facility to send information and correspondence to ROS users over the Internet
- ▼ A faster and more immediate service to enable tax returns and declarations to be filed from work or from home, day or night and, eventually, providing customers

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KEY DATES

March

- 1 PAYE**
Bulk Issue of TFA certs. and Employer TDC's
- 14 PAYE/PRSI**
P30 monthly return and payment for month ended 5 March
- 14 DWT**
Return and payment of DWT for month ended 29 February
- 19 VAT**
VAT 3 return and payment for period January/February
- 1-28 Corporation Tax**
Preliminary Tax for APs ending between 1-30 September
- 1-31 Corporation Tax**
Returns for APs ending between 1-30 June
- 1-31 Corporation Tax**
Returns of Third Party Information for APs ending between 1-30 June

April

- 14 PAYE/PRSI**
P30 monthly return and payment for month ended 5 April
- 14 DWT**
Return and payment of DWT for month ended 31 March
- 1-28 Corporation Tax**
Preliminary Tax for APs ending between 1-31 October
- 1-30 Corporation Tax**
Returns for APs ending between 1-31 July
- 1-30 Corporation Tax**
Returns of Third Party Information for APs ending between 1-31 July
- 30 Income Tax**
Payment of any balance of income tax for pre-preceding tax year

May

- 14 PAYE/PRSI**
P30 monthly return and payment for month ended 5 May
- 14 DWT**
Return and payment of DWT for month ended 30 April
- 19 VAT**
VAT 3 return and payment for period March/April
- 21 PAYE/PRSI**
P35 for year ended 5 April
- 21 PAYE/PRSI**
Issue P60's to each employee
- 1-28 Corporation Tax**
Preliminary Tax for APs ending between 1-30 November
- 1-31 Corporation Tax**
Returns for APs ending between 1-31 August
- 1-31 Corporation Tax**
Returns of Third Party Information for APs ending between 1-31 August



REVENUE ON-LINE SERVICE



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and practitioners with round the clock access to Revenue

- ▼ A quality system where the security of Revenue and customer information can be absolutely assured
- ▼ In Phase 1, the electronic filing of VAT and payroll returns by September 2000 and access to the relevant statements of account
- ▼ In Phase 2, the electronic filing of Income and Corporation tax returns by April 2001 and access to relevant customer information.

Contract Award

Eighteen responses to the Request for Tender, involving some 25 international service providers, were received by the closing date, 27 September 1999. The responses were intensively evaluated during October and November and on 15 December 1999, the contract for delivery of Phases 1 and 2 of ROS was awarded to Andersen Consulting. A team from Andersen Consulting joined the Revenue team on 5 January 2000 and development work has been continuing apace since then.

Contract Signing

On 4 February 2000 the contract between Revenue and Andersen Consulting was digitally signed by Mr. Dermot Quigley, Chairman of the Revenue Commissioners and Mr. Seán Shine, Partner in Andersen Consulting. The Minister for Finance, Mr. Charlie McCreevy T.D. attended the signing, indicating the Government's continued commitment to the Information Society and the development of Ireland as a hub for eCommerce. Revenue Commissioners Mr. Frank Daly and Ms. Josephine Feehily were also in attendance. Representatives of tax practitioners from the Institute of Taxation, the Consultative Committee for Accountancy Bodies in Ireland, (CCABI), the CPA, ICAI

and ACCA and representatives of business organisations were also present. The signing ceremony was also attended by staff representatives. The ceremony included a demonstration of the ROS system for filing a VAT 3 and a P30.

Consultation

Speaking at the signing ceremony, Mr. Quigley said that *"the Revenue On-Line Service will be one of the most significant customer service developments to take place in Revenue in recent years."* Welcoming the representatives from the tax and accountancy bodies he added that: *"tax practitioners will have a crucial role to play in the success of ROS. I am happy that consultation between the ROS team and tax practitioners and their representatives is an ongoing feature of the development of ROS. This process will intensify over the coming months as we crystallise the issues involved in filing the self-assessment tax returns. Important decisions still have to be made about, for example, accounts information to be included in the electronic return. I understand that your members have agreed to participate with us also in testing ROS and we appreciate your involvement. ROS is for the use of our customers, not ourselves, and your input is vital."*

Audit

Mr. Quigley also took the opportunity to repeat assurances he had given previously. He stated, *"Firstly, the security of the system is a top priority with us so as to protect taxpayer confidentiality. Secondly, electronically filed returns will be no more likely to be audited than paper returns. I am very aware that this is a serious concern for you and we will, therefore, be putting processes in place to ensure that this concern is addressed."*

This process of consultation with strategic partners has been identified as key to the success of ROS and it will intensify in the coming months as detailed discussions are entered into in relation to the electronic filing of Forms 11 and Forms CT1.

Partnership Process

Mr. Quigley also welcomed staff representatives to the signing and noted that partnership was also crucial here to maximising the benefits of ROS within Revenue. Although ROS is intended for the use of Revenue's customers, its success will have implications within the organisation. *"Consultation with our staff and their representatives, both through the Partnership process which we are developing in Revenue and, where appropriate, through direct union contact, has been key to the success of many Revenue initiatives in recent years. ROS will continue this tradition"*, he said.

Public Key Infrastructure (PKI)

Tax returns submitted through ROS will be signed by the sender's digital signature. Digital signatures will be issued by a certification authority. Revenue issued a Request for Tender in January 2000 for the provision of this service. The closing date for receipt of replies was 3 March 2000. The intention is to have a service provider in place by mid-April 2000.

eGovernment

ROS is part of a wider government agenda to bring about an information society in Ireland. The Public Service has a major role to play in this by the provision of excellent and relevant electronic Government services, and ROS, with its electronic exchange of information and access to data, will be such a service.

Speaking at the signing ceremony on 4 February 2000 the Minister for Finance, Mr. Charlie McCreevy, said that ROS *"represents a major step forward in the plans for the provision of Electronic Government, and a further development in the Public Private Partnership process"*.

He went on to say that *"this Government has already identified the vast potential offered by the Information Society. One of our principal aims is to make Ireland a key international centre*

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REVENUE ON-LINE SERVICE



for electronic commerce. We have made great strides in putting in place the necessary regulatory framework and physical infrastructure for this."

Referring further to the legislative changes the Minister said that *"the legislation enabling the electronic filing of returns was enacted as part of the 1999 Finance Act. As a result, a tax return made electronically will have the same status as a return made on paper. ... It will not surprise me if this legislation turns out to have a profound effect on tax administration comparable to the introduction of Self Assessment in 1988."*

On the question of the consultative process the Minister acknowledged the *"intensive consultation process with tax practitioners individually and through their representative Groups, such as the CCABI and the Institute of Taxation"* as an *"integral part of the design process."*

Revenue has traditionally been to the forefront in the implementation of both customer service and technology initiatives. Since paper forms have a key role to play in all administrative processes, and nowhere more so than in taxation, the lead being shown by the Revenue Commissioners through ROS, in disposing of the need for paper tax returns will provide an impetus for other Government Departments to follow suit. Electronic Government will lead to a public service that performs better and is closer to the citizen, the ultimate consumer.

Information Society Commission

The Information Society Commission was established by the Government to oversee the strategy for the creation of an information society in Ireland. One of its primary objectives has been to raise awareness amongst the general public and industry of the opportunities and benefits offered by information and communications technology. The Revenue Commissioners form an ideal conduit for interacting with the majority of citizens. ROS is,

therefore, recognised by the Information Society Commission as a flagship project of their Action Plan that was launched in January 1999.

Project Board and Project Team

Revenue's commitment to and support for ROS is demonstrated by the appointment of a Project Board at senior level to oversee and take decisions relating to the project, and by the appointment of a full-time team drawn from all relevant areas of the organisation. Since October 1999 the team has been based in new accommodation in Trident House in Blackrock.

Implementation of ROS

The electronic filing of tax returns and access to Revenue records through ROS will be implemented in phases. The content of the first two phases is as follows.

Phase 1 - by September 2000

- ▼ Provision of a secure, easy to use, fully featured ROS Internet site running on a Revenue host
- ▼ Access to ROS using a digital certificate linked to the customer's Revenue identification number
- ▼ Filing of the following tax return forms:
 - VAT 3
 - VAT RTD (Return of Trading Details)
 - Employer tax form P30
 - Employer form P45 (part 1) including batch filing of these forms.
- ▼ Facility for Revenue to electronically post output to individual customers
- ▼ Facility for customers to request and receive an existing pre-formatted Statement of Account from the Revenue computer system
- ▼ Access control system

- ▼ Public Key Infrastructure and data encryption support.

Phase 2 - by April 2001

- ▼ Batch filing by tax practitioners of the following tax return forms, including tax returns completed using third party software:
 - Income Tax Form 11
 - Corporation Tax Form CT1
- ▼ Filing by customers and tax practitioners of the following tax return forms provided on the ROS site:
 - Income Tax Form 11
 - Corporation Tax Form CT1
- ▼ Batch filing by employers and payroll companies of employer tax forms P35/P35L completed using third party payroll software
- ▼ Provision of a Customer Information Service (CIS) whereby customers and tax practitioners can access their customer data held on the Revenue files.

Subsequent phases

- The filing of other tax return forms and enhancements to the CIS will be provided in subsequent phases of ROS.

Further Information

Tax Briefing will carry further articles about ROS in future issues. These articles will address topics such as how to register to use ROS, security, including digital signatures and encryption, submitting a Form 11 or CT1 - what will be required, and other topics.

The ROS team are at Trident House, Blackrock, Co. Dublin, at 01 - 209 0400. The Strategy Manager is John Leamy and he can be contacted at 01 - 209 0401 or at eMail: jleamy.revonline@revenue.irlgov.ie for further information. ■



INTEGRATED TAXATION PROCESSING

VAT

About ITP

VAT will be incorporated into Integrated Taxation Processing (ITP) in April 2000. **Tax Briefing**, Issue 35 (March 1999), set the context for ITP which forms part of Revenue's significant investment in improving our computer systems.

ITP will drive our main collection activities and contain our record of payments and returns across all taxes for each customer. It provides a common system across all taxes for issuing of returns, reception of returns and payments and for processing repayments and refunds.

ITP went live in April 1999 with PAYE/PRSI (Employers). This has improved the speed of our response to queries from customers, our refund processing and statements of account. However, the full benefits of ITP will be realised only when VAT and further taxes are added.

Easier and more flexible access to a wide range of data for all taxes will allow us improve our customer services as well as our compliance management. In addition to providing benefits to our customers the objective is to free up staff to pursue other priorities by improving the efficiencies of our systems.

Collection of Income Tax, Corporation Tax, Capital Gains Tax and Dividend Withholding Tax will be added to ITP in 2001 with other taxes and features following at regular intervals.

Benefits of ITP for customers and practitioners

- ▼ The facility to offset credits arising from repayments or refunds against other outstanding liability more quickly
- ▼ Improved response to telephone queries

- ▼ Faster repayment and refund processing
- ▼ Periodic statements of account (It is intended that in time, these will replace individual payment receipts)
- ▼ Speedier tracing of payments and returns
- ▼ Simplified participation in Direct Debit.

New Technologies

ITP is designed to support emerging technologies such as the facility to file tax returns and payments electronically and to request on-line statements using the Internet. The Revenue On-line System (ROS) which will allow for electronic filing of returns and payments of tax is scheduled to be introduced for PAYE/PRSI and VAT returns in September 2000. ■

REVIEW PROCEDURES

External Reviewers

Revenue set out its review procedures in relation to audit and other matters in Statement of Practice SP-GEN/2/99, issued in May 1999. The procedures came into effect from July 1999.

The procedures provide two alternatives:

- Joint Review by External Reviewer and by Director of Customer Services (Office of the Chief Inspector of Taxes)

or

- Review by the Director of Customer Services acting alone.

The External Reviewers are:

Ms. Edwina Dunn

Ms Dunn is a solicitor specialising in the commercial, competition and European Law areas. She was formerly a partner in Mc Cann Fitzgerald, Solicitors and has contributed to a wide range of

international publications on commercial law issues.

Mr. William Horgan

Mr. Horgan is an accountant and business consultant with wide experience of tax law and practice. He was previously a partner in Arthur Andersen, Chartered Accountants and was a Council member of the Institute of Taxation.

Ms. Ita Mangan

Ms. Mangan is a lawyer with specialist knowledge of welfare law and citizens' rights. She was a member of the Expert Working Group on Tax and Social Welfare and is currently a legal and social affairs consultant.

The Director of Customer Services is **Mr. Joe Lynch**, Principal Inspector of Taxes in the Office of the Chief Inspector of Taxes.

Applications for review may be made to :

Review Unit
Office of the Chief Inspector of Taxes
Setanta Centre
Nassau Street
Dublin 2.

Telephone: 01 - 671 6777
Fax: 01 - 671 6668

When applying for a review, practitioners should say whether they wish to avail of the Joint Review or the review by the Director of Customer Services acting alone.

Copies of the Statement of Practice SP-GEN/2/99, which explains the Internal Review Procedures in more detail, are available from the *Revenue Forms & Leaflets Service* at 01 - 878 0100 or from any tax office. ■



Central Telephone Information Office

CTIO

The Central Telephone Information office (CTIO) was set up primarily to provide a better telephone service to individual taxpayers. In recent times this service is increasingly being used by tax practitioners seeking assistance on complex technical tax issues, to the detriment of the service being provided to individual taxpayers - particularly at busy times.

We wish to advise practitioners that, with effect from **21 February 2000**, Revenue commenced its PAYE Bulk Issue of Notices of Tax-Free Allowances for 2000/01. The number of taxpayers affected by the bulk issue amounts to 1.8 million. To enable Revenue to provide a meaningful service to these customers, it has been necessary to confine the CTIO service to individual taxpayer queries for the foreseeable future.

Tax Practitioners who need to contact a client's Tax District can continue to do so either by telephone or, for the more complex queries, in writing - in accordance with Revenue Guidelines for Practitioners on Making Enquiries to Revenue Offices.

The position of the CTIO service will be reviewed after the peak PAYE period is over. ■

COMPLIANCE CAMPAIGN 2000

Income Tax Returns 1998/99

Return due dates

The due date for the 1998/99 income tax return is 31 January 2000. We ask for your co-operation in ensuring that all your clients who have not submitted their income tax returns for 1998/99 (and for prior years) do so now.

Commencement of Compliance Campaign

The campaign will commence in March 2000 with the issue of a letter to all 1998/99 non-filers seeking that return. This letter (see draft at end of this article) differs from that which issued last year. **Unlike previous years, there will NOT be a reminder one month after this letter has issued.**

We would appreciate if you would notify Revenue when a client moves address, ceases trading etc. This may avoid further unnecessary contact from Revenue.

Tax Practitioners

As in previous years, tax practitioners will be advised by letter of those of their clients who have been asked to submit their 1998/99 tax return.

Targeting of non-filers

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

Contact by tax officials

During the campaign in 2000, persons may be contacted by a tax

official by way of telephone or personal visit and asked to submit **ALL** their outstanding income tax returns. In some instances, the person may be asked to call into the tax office to resolve issues relating to non-compliance.

Persons who have:

- been convicted in respect of non-filing offences
 - or
 - been targeted as part of previous non-compliance campaigns
- may not receive one of these 'contacts' and are likely to be referred immediately to prosecution stage in respect of all outstanding income tax returns.

Criminal Prosecution

Criminal prosecution under *Section 1078 TCA 1997* in respect of a non-filing offence is now a regular feature of our compliance campaigns. [See separate articles in Issue 38 of *Tax Briefing* (December 1999) on non-filer prosecutions.]

Consequences of late filing and non-filing of income tax returns

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

Draft letter to issue to non-compliant persons in March 2000 1998/99 Income Tax Return

Dear Sir/Madam,

Please give this letter your immediate attention.

Contact reason

- My records show that you have not submitted your 1998/99 Income Tax Return [i.e. a return of your income for the year ended 5 April 1999]. This return should have been submitted by 31 January 2000.

What should you do?

- You should immediately either :
 - submit your 1998/99 income tax return,
 - or
 - contact this Office if for any reason you consider you are not obliged to submit an income tax return for the 1998/99 tax year or if you have already submitted it.

Criminal Proceedings

- It is Revenue policy to institute criminal proceedings against those who do not submit their tax returns. These proceedings are taken in the name of the Director of Public Prosecutions and are listed for hearing in your local District Court.

Remember

It is your responsibility to ensure that your tax return is submitted on time even if you have a tax agent.



PUBLIC PRIVATE PARTNERSHIP (PPP)

Projects

Treatment of Bid/Tender Costs and Surplus Land

Introduction

One of the ways in which the public sector can arrange for projects such as roads, public transport, waste management and water services to be undertaken, is by entering into a Public Private Partnership (PPP) arrangement. These arrangements often involve a private sector company (or consortium) agreeing to design, build and, possibly, operate the project in return for annual service charges which are paid by the public sector body. The contracts are usually for quite lengthy periods, typically 25-30 years.

In the National Development plan for 2000-2006 provision has been included for £1.85 billion in PPP funding. The legal contracts which underlie such projects are invariably complex and may give rise to difficult tax issues.

The purpose of this article is to consider the tax implications of two such issues:

- ▼ The question of the deductibility of bid/tender costs
- ▼ The tax treatment of surplus land (or cash) where it is introduced by the public sector body.

Background - Accounting Treatment

Before looking at the tax issues in detail, it is hoped that the following paragraphs, which contain a brief review of the relevant accounting treatment, will provide a useful overview for readers.

The Accounting Standards Board issued "Amendment to FRS5 'Reporting the substance of transactions': Private Finance Initiative and similar contracts" in September 1998, which gives guidance on the accounting treatment to be used when dealing with Private Finance Initiative contracts (UK equivalent of PPP

contracts). The amendment, which inserts "Application Note F" into FRS5 refers to the entity which acquires the services, (e.g. a Government Department) as the "purchaser", and the entity which supplies the services under the PPP contract to the Government Department as the "operator"; the same terminology is used in this article.

The accounting by the operator is governed by Application Note F to FRS5 and the application of FRS5 involves those that prepare and audit financial statements taking a view on the substance of transactions, so that their commercial effects are properly reflected therein. In general, this involves taking a view on whether the property used in providing PPP contracted services is on or off balance sheet. In general, the operator has an interest in the property (e.g. a lease) and in most PPP schemes, significant risk rests with, or is transferred to, the operator. In such circumstances, the property is shown under FRS5 as the physical asset of the operator. However, if the degree of risk transfer is low, the property may be on the balance sheet of the public sector purchaser. In such circumstances, the transaction is often termed "off balance sheet to the operator", but more accurately, what this means is that the operator is viewed for accounting purposes as having a financial asset, reflected in its accounts as a debt due from the purchaser (similar to a finance lease receivable), rather than a physical asset of the property.

This article is only concerned with the position regarding the financial statements of the operator.

NB

Although "Application Note F" of FRS5 specifically applies to UK Private Finance Initiative (PFI) contracts (UK equivalent of PPP contracts), in preparing the financial statements of an operator involved in Irish based PPP projects, the terms of

the "Application Note" would normally be followed by the auditors and accountants of Irish companies.

Deductibility of Bid/Tender Costs

As part of the PPP process, a private sector company or typically, a number of companies who intend to form a consortium, will make a bid or an offer to the public body promoting the development of the project. Consortium members will incur certain expenditure in preparing their bid. Examples of this type of expenditure include architects, engineers, legal and other professional fees, salary and administration costs and financing costs.

A company making a bid/offer will either be successful or unsuccessful when the time comes to award the contract. If the bid succeeds, the members of a consortium generally carry out their commitments in relation to the project through a specially formed Special Purpose Company (SPC).

Costs incurred in making an unsuccessful bid

Where a company incurs expenditure in putting together an unsuccessful bid, provided that the expenditure is revenue in nature and would otherwise have been deductible as an expense of its trade, the bidding company can claim the costs as a deduction against the profits of its trade.

Costs incurred in making a successful bid

Where a bid made by a company succeeds, there is a potential issue as to whether the expenditure has been incurred by the bidding company for the purposes of its trade, given that that company, in conjunction with other members of the consortium, will form an SPC to carry out the terms of the agreement.

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PUBLIC PRIVATE PARTNERSHIP

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In the particular context of PPP projects, a deduction for costs incurred in a successful bid will not be disallowed by reason only of the fact that the project will be undertaken by a separate entity in the form of an SPC. If the expenditure is revenue in nature and would otherwise have been deductible as an expense of its own trade, the consortium company incurring the expenditure can claim a deduction for successful bid costs notwithstanding that the PPP project will be undertaken by an SPC.

It should be noted that this treatment is specific to PPP projects and should not be regarded as having general application.

Tax Treatment of Surplus Land introduced into PPP contracts

Public sector organisations will often wish to minimise the annual service charge (referred to as the unitary charge) to be paid for the supply of services procured under a PPP contract, and where the purchaser has land surplus to its own requirements, it may decide to introduce that land into the PPP contract, in order to reduce the unitary charge.

The purchaser and the operator will generally determine the price of the unitary charge on the basis of a discounted cash flow model, which is produced by using a set of assumptions negotiated by the parties. The introduction of land as a contribution towards the project costs (in order to reduce the unitary charge), and the timing of the realisation of the value of the land, will have an impact on the cash flow of the operator and, therefore, on the price to be charged to the purchaser. The value of the land for tax purposes will be the price agreed between the parties which is specified in the documentation, being in accordance with the facts and intentions of the parties.

As has been previously stated, PPP transactions are by their very nature complex. When considering the correct tax treatment where surplus land of the purchaser is introduced into a particular contract, the terms of the relevant documentation, *providing this accords with the facts*, will be an important indicator. Another important indicator will also be the purpose of the payment from the point of view of the purchaser (as opposed to the purpose of the receipt from the operator's perspective) as evidenced by the documentation itself. For example, land can be introduced into a PPP project by the purchaser, in one of the following ways:

- ▼ The purchaser has land surplus to its requirements and introduces that land as a payment (in money's worth) on account of future unitary receipts
- ▼ The purchaser has previously identified land which is surplus to its requirements, has entered into an agreement for the disposal of that land to a developer and arranges for all or part of the proceeds to be paid directly by the developer to the operator as a payment on account of future unitary receipts
- ▼ Land is introduced by the purchaser as a payment in money's worth in order to reduce the capital cost of the project to the operator
- ▼ The proceeds arising from the disposal of land are introduced by the purchaser in order to reduce the capital cost of the project to the operator.

The following examples consider the accounting and tax treatment to be applied in straightforward circumstances.

Example 1

The *Department of Environment & Local Government* (the purchaser) enters into a PPP contract with an operator and has identified surplus

land with a current market value of £10 million - assumed to be the fair value for accounting purposes - which it wishes to be introduced as a payment on account of future unitary receipts, and the documentation makes this clear.

Accounting Treatment

Under FRS5, the accounting treatment will follow the substance of the transaction and (assuming initially that the physical asset - a waste management facility - is on the balance sheet of the operator) the total capital cost of the project will be debited to fixed assets in the operator's balance sheet and depreciated in the normal way. The contribution of land is, therefore, recorded by the operator as an asset at its fair value of £10m (as part of project assets or separately from them according to whether the land is used in the project). The credit entry is to "deferred income". (The contribution has to be recorded as "deferred income" rather than being used to reduce the project cost because of certain accounting rules in the *Companies (Amendment) Act 1986*.) The "deferred income" is released to profit and loss account over the period to which the contribution relates. In general, this would be the whole of the contract period.

Alternatively, where the waste management facility is off the operator's balance sheet - the operator, therefore, has a financial asset - the *Companies Act* rules referred to above do not apply. The operator will set up a financial asset equal to the total amount of its investment. The operator would treat receipts from the purchaser as being partly interest and finance charges earned and partly collection of principal and the fair value of a contribution (i.e. the £10 million) would be treated in much the same way - credited to the financial asset - and would, therefore, affect the pattern in which interest is earned on the amount of the principal that is outstanding from time to time.

Revenue

Tax Treatment

Although the accounting treatment under FRS5 is an important consideration for tax purposes, particularly when determining the time at which receipts are to be taxed, it cannot determine whether the relevant item falls to be treated as income or capital. Here, the documentation (being in accordance with the facts and the intentions of both parties) shows that the introduction of the land is to reduce the future payments made by the purchaser to the operator and is, in effect, a prepayment of the unitary charge. The release of the contribution to the operator's profit and loss account will be chargeable to tax as income of the operator's trade and it is likely that the timing of the income for taxation purposes will follow the accounts treatment. Where the land is not immediately sold then its market value at the date of signing the PPP contract will, for tax purposes, be taken as the value of the prepayment of the unitary charge and the cost of the land to the operator.

Example 2

The *Department of Environment & Local Government* introduces land valued at £10m. into a PPP contract, to be used as a contribution to the construction costs and the documentation makes this clear.

Accounting Treatment

The accounting treatment is no different to that in Example 1 above, irrespective of how the land or cash proceeds are to be utilised.

Tax Treatment

As previously stated, whilst the accounting treatment is useful, it cannot determine the correct tax treatment. As with Example 1, providing the documentation reflects the facts and intentions of both parties, the tax treatment will accord with it and the contribution will fall to be treated as a contribution towards the capital costs of

construction. Once that has been so established:

- The operator is treated as having received a capital contribution resulting in a reduction in the base cost of the asset e.g. the waste management facility, for capital gains tax purposes, in accordance with *Section 565 TCA 1997*. Revenue considers that where exceptionally the grant is not made from public funds (per *Section 565*), a reduction in the base cost of the asset is still required for tax purposes, since it is considered that the operator has not incurred the expenditure for the purposes of *Section 552 TCA 1997*;
- If the agreement specifies the particular costs to be met by the contribution, this will be followed when deciding whether any reduction in expenditure qualifying for capital allowances is required under *Section 317 TCA 1997* unless, exceptionally, the facts require a different approach;
- If there is a partial contribution - for example, towards the cost of a building with many different elements - then the grant will be apportioned across the various categories of expenditure (e.g. buildings, plant etc.) unless the parties have agreed how the contribution is to be allocated, in which case that allocation will be followed, unless the facts dictate otherwise.

Example 3

The *Department of Environment & Local Government* has previously realised proceeds from the disposal of surplus land and wishes to contribute all or part of those proceeds to the PPP operator, as a payment on account of future unitary receipts and the documentation makes this clear.

Accounting and Tax Treatment

The accounting and tax treatment will be exactly the same as in Example 1, reflecting the reality of the situation that cash has effectively passed from the purchaser to the

operator on day 1 of the contract, in order to be spread over the period of the contract reducing the purchaser's future annual unitary charge payments.

Example 4

The *Department of Environment & Local Government* has previously realised proceeds from the disposal of surplus land and wishes to contribute all or part of those proceeds to the PPP operator, as a contribution to the construction costs of the project and the documentation makes this clear.

Accounting and Tax Treatment

The accounting and tax treatment will be exactly the same as in Example 2.

Example 5

The *Department of Environment & Local Government* enters into a PPP contract with an operator and has identified surplus land with a current market value of £10 million - assumed to be the fair value for accounting purposes - (or previously realised proceeds of £10 million from the disposal of surplus land) and wishes to contribute all or part of those proceeds to the PPP operator. The documentation is silent on how the land (or proceeds) are to be used.

Accounting and Tax Treatment

In such cases, particular care needs to be taken to ensure both the tax and accounting treatment reflect the facts of the case. However, if the documentation is silent then the tax treatment would normally follow the accounting treatment, producing the same result as in Example 1.

Further Information

Any questions regarding the terms of this article or other issues in connection with the taxation of PPP transactions can be addressed to Direct Taxes International & Administration Division (Declan Rigney), Blocks 8-10, Dublin Castle, Dublin 2.

Telephone: 01 - 702 4105
Fax: 01 - 679 3314 ■

HOME CARER'S ALLOWANCE

From 6 April 2000



This article is based on the provisions contained in Section 12 Finance Bill 2000.

Introduction

The Home Carer's Allowance is a new tax allowance of up to £3,000 at the standard rate of income tax (22% for 2000/2001). The allowance may be claimed by a married couple where one spouse (the "**Home Carer**") cares for one or more dependent persons. If the Home Carer has some income in his/her own right the allowance may still be claimed (see "conditions" following). Only one allowance is due irrespective of the number of persons being cared for. Relief in respect of a dependent person is granted to only one qualifying claimant.

This article outlines the conditions which must be met to claim the allowance and the interaction between the allowance and the increased standard rate band for dual income married couples.

What are the conditions?

The conditions which must be met are as follows:

- ▼ The married couple must be jointly assessed to tax - it does not apply where married couples are taxed as single persons.
- ▼ The Home Carer must care for one or more dependent persons. A dependent person is:
 - (a) a child for whom Social Welfare Child Benefit is payable - this includes all children under 16 and children in full-time education under 19; or
 - (b) a person aged 65 years or over; or
 - (c) a person who is permanently incapacitated by reason of mental or physical infirmity.

A dependent person does not include a spouse.

- ▼ The dependent person(s) must normally reside with the married couple for the tax year. For rules regarding relatives, see over.

- ▼ The Home Carer's income must not exceed £4,000 for the tax year. Where the income is between £4,000 and £5,000 some measure of relief will still be given.

Does a relative have to reside with the Home Carer?

No. Dependent persons who are relatives can be cared for outside the home, if they reside:

- Next door in a neighbouring residence, or
- On the same property, or
- Within 2 kilometres of the claimant.

There must, however, be a direct communication link (e.g. telephone, alarm system) between the two residences.

A relative includes a relative by marriage or a person for whom the claimant acts as a legal guardian.

How does the income of the Home Carer affect the allowance?

If the Home Carer has income of £4,000 or less in his/her own right for the tax year the full allowance may be claimed. For the purposes of this allowance, **income** is taken as income chargeable to tax such as income from a part-time job, rents, dividends etc., but does **not** include the Carer's Allowance payable by the Department of Social, Community and Family Affairs. Income which is disregarded for tax purposes or which is exempted from the charge to tax is excluded.

If the income of the Home Carer is between £4,000 and £5,000 then the allowance is reduced (see chart below). If the income is £5,000 or more then there is no allowance due. The Home Carer's Allowance is reduced on a £3 for £1 basis where the income of the Home Carer exceeds £4,000, **for example**:

Income of Home Carer	Allowance at Standard Rate (22%)
£4,000	£3,000
£4,100	£2,700 i.e. £3,000 less £100 x 3
£4,250	£2,250 i.e. £3,000 less £250 x 3
£4,500	£1,500 i.e. £3,000 less £500 x 3
£4,750	£750 i.e. £3,000 less £750 x 3
£4,900	£300 i.e. £3,000 less £900 x 3
£5,000	Nil



What happens if the allowance is granted and in the next year the Home Carer's income exceeds the limit?

If the Home Carer's income exceeds £5,000, the allowance will still be due for the year provided that:

- The other conditions for the allowance are met, and
- The allowance was granted for the immediately preceding tax year.

The amount of the allowance is restricted to the amount granted for the immediately preceding tax year.

However, if the couple claim the increased standard rate tax band for dual income couples, the Home Carer's Allowance will not be due.

Example

A married couple are granted the Home Carer's Allowance for 2000/01. In the next year (2001/02) the Home Carer takes up employment in the workplace and earns £7,000.

The allowance will still be due for 2001/02, provided that the increased standard rate tax band for dual income couples is not claimed.

Can married couples claim both the Home Carer's Allowance and the increased standard rate tax band for dual income couples?

No. But they can claim whichever of the two is more beneficial. In practice, the tax office will grant the more beneficial treatment.

Note: The standard rate tax band for dual income married couples is £28,000 subject to an increase of up to £6,000. The increase is limited to the lower of £6,000 or the amount of the income of the spouse with the smaller income - this increase is not transferable between spouses.

Example 1

Home Carer has no income.
Home Carer's Allowance of £3,000 is due.

Example 2

Home Carer has a Social Welfare pension of £4,500.
Spouse has income of £23,000.
Home Carer's Allowance of £1,500 (i.e. £3,000 less £500 x 3) is due.

The increased standard rate tax band is not relevant as the combined incomes are below £28,000.

Example 3

Home Carer has rental income of £4,500.
Spouse has income of £24,000.

Calculate whether the Home Carer's Allowance or the increased standard rate tax band is more beneficial.

Home Carer's Allowance computation

The allowance is £1,500 (i.e. £3,000 less £500 x 3).
The tax position is:

£28,000 x 22% =	£6,160
£500 x 44% =	£220
Total	£6,380

Less

Home Carer's Allowance	
£1,500 x 22% =	£330
Tax (before relief for Personal Allowances)	£6,050

Increased Rate Band computation

The tax position is:

£28,500 x 22% =	£6,270
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Tax (before relief for Personal Allowances)	£6,270
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The Home Carer's Allowance is more beneficial in this example.

Example 4

Home Carer has investment income of £4,500.
Spouse has income of £28,500.

Calculate whether the Home Carer's Allowance or the increased standard rate tax band is more beneficial.

Home Carer's Allowance computation

The allowance is £1,500 (i.e. £3,000 less £500 x 3).
The tax position is:

£28,000 x 22% =	£6,160
£5,000 x 44% =	£2,200
Total	£8,360

Less

Home Carer's Allowance	
£1,500 x 22% =	£330
Tax (before relief for Personal Allowances)	£8,030

Increased Rate Band computation

The tax position is:

(£28,000 + £4,500) x 22% =	£7,150
£500 x 44% =	£220

Tax (before relief for Personal Allowances)	£7,370
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The increased standard rate tax band is more beneficial in this example.

Example 5

Home Carer has a salary of £8,000.
Spouse has income of £30,000.

The Home Carer's Allowance is not due as the Home Carer's income exceeds the limit. ■



FINANCE BILL 2000

Summary

Summary

Tax Briefing - Issue 38 carried a summary of the main highlights of the Budget as announced on 1 December 1999. As a continuation from this, the following is a summary of some of the main items included in Finance Bill 2000.

Income Tax

Tax Relief for Agreed Pay Restructuring

Section 18 amends Section 202 TCA 1997 which exempts from income tax certain lump sum payments paid to employees in respect of pay reductions under agreed pay restructuring schemes. Under Section 202 the pay reduction must be at least 10% of pay and the maximum tax-free lump sum is £10,000. The amendment now proposes to increase the level of exemption as follows:

Reduction in pay	Exemption	Maximum tax-free lump sum
Between 10% and 15%	£6,000 plus £200*	£10,000
Between 15% and 20%	£6,000 plus £500*	£16,000
More than 20%	£8,000 plus £600*	£20,000
*for each year of service		

The revised exemptions take effect in respect of agreements approved on or after 21 July 1999. The expiry date of the scheme is being extended to 5 April 2003.

Postgraduate Fees

Section 21 provides tax relief for postgraduate fees paid in publicly funded colleges here and in the EU as well as in private colleges in Ireland. This new relief, which will apply at the standard rate of tax, will be available to full-time and part-time postgraduate students and will include distance education courses offered by publicly funded colleges in other EU Member States.

The relief will be allowed in respect of fees paid by the individual in respect of his/her own course and also in respect of fees paid for a dependant (that is, a spouse or child of the individual or a person in respect of whom the individual is or was a legal guardian).

Approved courses must be at least one year's duration and cannot exceed four years and they must lead to a postgraduate award based on either a thesis or an examination. Persons taking the courses must already have a primary degree or an equivalent qualification. Private colleges in the State and the postgraduate courses offered by them will be approved by the Minister for Education and Science and the level of postgraduate fees qualifying for tax relief will be determined by that Minister with the consent of the Minister for Finance.

Information Leaflet IT 31 on Tuition Fees has been updated to take account of the changes. It will be available by end March 2000.

Pension Changes

Section 23 amends Part 30 TCA 1997 which deals with the tax treatment of approved retirement funds (ARFs) and approved minimum retirement funds (AMRFs). These amendments make a number of changes to the operation of the provisions introduced in *Finance Act 1999*.

The changes now proposed are as follows:

- The category of directors who can exercise the new options is being extended to directors who control more than 5% of the shares in their company.
- Individuals whose pension date has passed but who have not yet invested in an annuity, can now, subject to meeting all other criteria, avail of the new options up to the date on which the rules of their pension scheme require

that the fund must be used to purchase an annuity.

- The new arrangements are being extended to the part of an employee's pension fund which has been built up from additional voluntary contributions (AVCs). All employees who make such contributions will be entitled to avail of the new options as regards the part of their pension fund which has been built up from such contributions.
- The definition of qualifying fund managers (QFMs) is being amended to include certain investment intermediaries whose activities are regulated by the Central Bank and to banks, insurance companies and investment intermediaries who are permitted to carry on business here under various EU directives. This provision will replace the existing provision which allows for Ministerial approval of a QFM.
- The taxation arrangements for income and gains arising within an ARF/AMRF are being changed. In future, such income and gains will be exempt from tax as long as they are held within an ARF/AMRF. However, any payments out of the fund, whether of capital, income or gains, will be chargeable to tax under the PAYE system in the same way as a payment of a normal pension. PAYE will also apply to any part of the pension fund, other than the normal tax-free lump sum, which is paid direct to the pensioner instead of being invested in an ARF/AMRF.

In addition, a number of changes are being made to the tax treatment applicable to an ARF/AMRF following the death of the beneficiary to ensure consistency in the tax rules being applied.

The change at paragraph (b) above applies from 6 April 1999. All other changes apply from 6 April 2000.



Dividend Withholding Tax

Sections 26 to 29 make a number of changes to the scheme of dividend withholding tax (DWT) as set out in Chapter 8A of Part 6 of and Schedule 2A to, the TCA 1997. The changes, which in general will take effect from 6 April 2000, are briefly as follows:

- ▼ Distributions which are not liable to tax in the hands of the recipients (e.g. certain patent dividends, dividends out of profits or gains from stallion fees, stud greyhound services etc.) will be exempt from DWT. Returns of such distributions will still have to be made to Revenue by the paying agents or the company concerned.
- ▼ Certain sports bodies not liable to tax will be exempt from DWT on dividends received.
- ▼ Special Portfolio Investment Accounts operated by designated stockbrokers will be exempt from DWT and subject only to the special 20% DIRT rate as a final liability.
- ▼ Companies resident in another EU Member State or tax treaty country which are not controlled by Irish residents will be exempt from DWT subject to appropriate certification.
- ▼ Non-resident companies which are wholly-owned by quoted companies will be exempt from DWT subject to appropriate certification.
- ▼ Parent companies in other EU Member States will be exempt from DWT when receiving dividends from unlimited companies in Ireland.
- ▼ For certain non-residents paying DWT on distributions from Irish resident companies, the charge to tax on such distributions will be confined to the standard rate of income tax, thus, in effect, making DWT a final liability tax on such distributions.
- ▼ The reporting requirements for qualifying intermediaries (QIs) will be modified. The requirement for QIs and authorised withholding agents to furnish auditors reports on their compliance with the system is being relaxed, and the need for Revenue to certify certain auditors' and trustees' certificates will be abolished. In particular the requirements in the case of American Depositary Receipts will be further streamlined.
- ▼ The Bill makes it clear, as announced when DWT was introduced, that dividends paid by Credit Unions are treated as interest for tax purposes and are not subject to DWT.
- ▼ The period of retention of declarations and notifications given under the DWT legislation (the legislation currently provides for a retention period of 6 years for a QI and an authorised withholding agent (AWA) and is silent in relation to paying companies) will be the longer of 6 years and:
 - in the case of a QI and an AWA, the period ending 3 years after it has ceased to receive distributions on behalf of the person who made the declaration or gave the notification, and
 - in the case of a paying company, the period ending 3 years after it has ceased to pay distributions to the person who made the declaration or gave the notification.
- ▼ Stockbrokers will be required to deduct DWT in all cases of payment to the correct owners where dividends were originally paid to the wrong person and the tax was not previously deducted.

Income Tax & Corporation Tax

Capital Allowances for Business Cars

Section 31 increases the car value threshold from £16,000 to **£16,500**. The new threshold will apply to capital allowances for new cars and allowable expenses for all cars used in the course of a business. The change takes effect from 1 December 1999. The threshold for second-hand cars remains at £10,000.

Double Rent Allowance - Temple Bar Area

Section 33 amends Section 333 TCA 1997 which provides for a double rent allowance in respect of rent paid for certain business premises in the Temple Bar Area. The relief is available only where a **bona fide** commercial lease is granted in the qualifying period or within the period of two years commencing on the day after the end of that period.

This section provides that in order for a lease to be a qualifying lease it must be granted by 31 December 1999.

Capital Allowances and Rental Income

Section 35 amends Section 305 TCA 1997 to provide a legal basis for setting excess allowances arising in charging rental income, against non-rental income. The section also allows an individual on joint assessment to set excess capital allowances against the income of a spouse, where the individual's own income is insufficient. The section clarifies that the excess to be set off is to be calculated after deducting any unused allowances for previous years from the relevant income, while respecting the £25,000 limit on the offset of excess capital allowances in the case of passive investors.

The section amends Section 300 to clarify that capital allowances for

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expenditure incurred on fixtures and fittings in rented residential accommodation are to be set against rental income. It also amends *Section 406* to clarify the current position which ensures that these allowances may not be set against non-rental income, either for income tax or corporation tax purposes. An amendment to apply the corporation tax restriction in company group situations is made in *Sections 405 and 406*.

Access to Heritage Houses

Section 42 amends *Section 482 TCA 1997* which provides tax relief for expenditure incurred on the repair, maintenance or restoration of a building or gardens which are intrinsically of significant scientific, historic or aesthetic interest. Among the requirements necessary to avail of the relief, the Revenue Commissioners must make a determination that reasonable access to the building or gardens is afforded to the public. Specifically this means the premises must be open for at least 60 days per year of which at least 40 must be in the period May to September, inclusive. It is now being provided that at least 10 of these 40 days must be at weekends.

The change applies to new determinations made after the passing of *Finance Act 2000*. In the case of existing determinations it will apply in relation to expenditure incurred in chargeable periods ending on or after 1 October 2000.

Savings-Related Share Option Schemes

Section 44 makes two changes to the savings-related share option scheme provisions in *Sections 519A and 519B* of and *Schedule 12A to the TCA 1997*.

Firstly, it is being provided that where a company uses a dedicated trust or subsidiary company as part of an SAYE scheme to hold "scheme shares" that trust or company will not be liable to capital gains tax on

any disposal of such shares to employees under the terms of the scheme. Arising from this, the "base cost" to the employees for capital gains tax purposes of the scheme shares is being set at the price actually paid by them and the company will not be entitled to a corporation tax deduction in respect of any expenses incurred by it in enabling the trust/subsidiary company to acquire scheme shares.

Secondly, "pensionable age" for the purposes of the scheme is being changed from 66 years to any age between 60 and 66.

Residential Development Land

Section 45 provides for a 20% tax rate for income tax and corporation tax to be applied to trading income from dealing in residential development land and to certain capital gains on disposal of such land which are treated as income for tax purposes. It does this by inserting two new sections into the *TCA 1997*.

Income tax

The new *Section 644A* introduces the 20% rate for profits and gains of an individual from dealing in residential development land. Where those profits or gains form part of other profits or gains arising, there is provision for a suitable apportionment for the purposes of this new lower rate of tax. No offset for personal allowances or credits etc., is available in the case of the 20% rate but the taxpayer may opt, for any year of assessment, for the profits or gains to be taxed in the normal way but without the benefits of the 20% rate.

The section applies in respect of profits or gains arising after 1 December 1999.

Corporation Tax

The new *Section 644B* provides for an effective 20% rate to be applied to income of a company from dealing in residential development land. For the financial year 2000, income from

dealing in residential land may be taxed at the 20% rate even where the land has been fully developed. For subsequent accounting periods trading income from dealing in fully developed land will be taxed at the standard corporation tax rate.

Farm Pollution Control

Section 50 amends *Section 659 TCA 1997* which provides for a special capital allowances scheme for farm pollution control. This scheme, which was introduced in *Finance Act 1997*, applies for three years, from 6 April 1997 to 5 April 2000. It provides for a special year 1 allowance of 50% of expenditure up to a total expenditure limit of £20,000. This limit was subsequently increased to £30,000 with effect from 6 April 1998.

This section continues the scheme for a further three years to 5 April 2003 and increases the expenditure limit to £40,000.

Childcare Facilities - Accelerated Capital Allowances

Section 52 provides for accelerated capital allowances at the rate of 100% in the first year on childcare facilities which meet the required standards for such facilities, as provided under the *Childcare Act 1991*. This relief will be available to all childcare facilities whether provided by employers or commercial childcare operators. The relief will be available to both owners of the facilities and investors who wish to invest by way of leasing arrangements. There will be a clawback of the allowances, in the form of a balancing charge, if the premises cease to be used as a childcare facility within 10 years. This change will take effect in relation to expenditure incurred on and from 1 December 1999. These new accelerated allowances are subject to clearance by the EU Commission.



Corporation Tax

Corporation Tax Rates

Section 60 amends in three respects *Section 21A TCA 1997* which was inserted by the *Finance Act 1999*.

- The first amendment concerns income from dealing in fully developed land. *Section 21A* provided that certain income of a company is to be charged to tax at a rate of 25%. The income to be charged includes income from dealing in and developing land other than construction operations. If a trade consists of both dealing in land and construction operations the profits are to be apportioned between these operations. Profits from dealing in land are taxed at the 25% rate while construction profits are taxed at the standard corporation tax rate. This section permits profits from dealing in land which has been fully developed by the company to be included in trading income taxable at the standard corporation tax rate.
- The second amendment ensures that the amount of a company's trading income which is to be charged at the 25% rate will be net of any charges on income (e.g. royalties) paid wholly and exclusively for the purposes of the trade concerned.
- The third amendment ensures that certain trading profits of insurance companies are not subject to the 25% of corporation tax, but rather at the standard corporation tax rate.

Trading Income

Section 61 provides for a corporation tax rate of 12.5 % to apply from 1 January 2000 to the trading income (other than such income as is taxable at the 10% or 25% rates) of a company where that trading income does not exceed £50,000 per annum. Marginal relief applies where trading income is between £50,000 and £75,000. In the case of an accounting period of less than 12 months

duration the £50,000 and £75,000 limits are proportionately reduced. These limits are also reduced where a company has one or more associated companies.

Capital Gains Tax

CGT Retirement Relief

Section 68 increases, as respects disposals made on or after 1 December 1999, from £250,000 to **£375,000** the amount which a person may receive from the disposal of qualifying business assets following "retirement" and qualify for exemption from capital gains tax under *Section 598 TCA 1997*. Where the proceeds of the disposal exceed £375,000 the section also ensures that marginal relief will apply to limit the tax chargeable to one-half of the difference between the amount of the proceeds and £375,000.

CGT Tax Clearance Procedure

Section 70 amends *Section 980 TCA 1997*. *Section 980* obliges the purchaser of certain specified assets to withhold 15% of the consideration representing an amount of capital gains tax and to pay it over to Revenue where the consideration for an asset exceeds £150,000. *Section 70* makes two changes:

Firstly, it increases the threshold amount from £150,000 to **£300,000**. Accordingly, as respects disposals made on or after the date of the passing of the *Finance Act 2000*, the section will not apply unless the consideration for an asset exceeds £300,000.

Secondly, in the case of newly constructed houses, *Section 70* amends *Section 980*, as respects disposals made on or after the date of the passing of the *Finance Act 2000*, to allow:

- current certificates of authorisation issued to the vendor under *Section 1095 TCA 1997*
- current tax clearance certificates issued to the vendor under *Sections 1094 and 1095 TCA 1997*

- if a person does not have any of these certificates, a current tax clearance certificate issued to the vendor for the particular purposes of *Section 980 TCA 1997*,

to be produced by vendors to purchasers as sufficient authority to allow the purchaser not to deduct withholding tax. These certificates, unlike the existing certificate issued under *Section 980*, may be used by vendors for the sale of any number of new houses during the currency of the relevant certificate. The option is retained for a person to use the existing clearance procedure for the sale of an asset if desired.

Value-Added Tax

VAT - Holiday Homes

Section 91 deals with the tax treatment of persons who choose to become taxable in respect of the letting out of holiday accommodation and later cancel their registration. Only persons whose turnover from these lettings is below £20,000 p.a. are affected by this amendment. The purpose of the amendment is to prevent people from using the election and cancellation rules in such a way as to obtain a holiday home almost VAT free.

The section inserts a new *subsection (5A)* into *Section 8 of the VAT Act* to provide that where such people opt to register for VAT in respect of the letting out of holiday accommodation they must in certain circumstances pay a cancellation amount to Revenue when they cancel their election to register. The cancellation amount is calculated on the basis of the amount of VAT deductible on the property used for the holiday lettings and the length of time for which the property was let before the cancellation. No cancellation amount is payable if the length of time involved exceeds 10 years.

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VAT Rates

Section 92 amends Section 11 of the VAT Act which deals with rates of tax. Subsection (1)(f) is being amended to confirm the Budget increase in the rate of VAT on the supply of livestock, live greyhounds and the hire of horses from 4% to 4.2%.

The section has effect from 1 March 2000.

Farmers Flat Rate

Section 94 amends Section 12A of the VAT Act to confirm the Budget adjustment in the farmers' flat-rate addition from 4% to 4.2%.

The section has effect from 1 March 2000.

Stamp Duty

Section 107 gives effect to the Budget announcement to extend the stamp duty relief on transfers of land to young trained farmers for a further 3 years until 31 December 2002.

Section 112 increases from £6,000 to **£15,000** the annual rent threshold below which a lease of a dwelling house or apartment for any indefinite term or any term not exceeding 35 years is exempt from stamp duty. The increased threshold applies to leases executed on or after 1 December 1999.

Residential Property Tax

Section 113 increases the threshold below which a residential property tax clearance certificate is not required from £200,000 to **£300,000**. The revised threshold will apply to sales occurring on or after 5 April 2000.

Section 114 removes from the clearance certificate scheme residential property which was previously acquired after 5 April 1996 (being the last valuation date on which tax was payable). This section applies to sales of residential property completed after 10 February 2000.

Capital Acquisitions Tax

Assets situated outside the State
Sections 116, 117 and 118 give effect to the Budget proposal to change the basis on which Gift Tax and Inheritance Tax is charged on assets situated outside the State.

At present, the charge depends on the domicile of the donor at the relevant date. This general domicile rule is being replaced by a residence rule so that in future foreign assets will only be charged to tax where either the donor or the beneficiary is resident or ordinarily resident in the State at the relevant date. A foreign domiciled person will not be considered to be resident or ordinarily resident in the State for this purpose until 1 December 2004 and then only if he or she has been resident in the State for the 5 consecutive tax years preceding the relevant date. Trusts already existing on 1 December 1999 remain subject to the old rules. The new residence rules apply to gifts or inheritances taken on or after 1 December 1999.

Class Thresholds and Rates of Tax

Section 124 amends the Second Schedule to the *Capital Acquisitions Tax Act 1976* and gives effect to the changes being made in relation to class thresholds, rates of tax and the method of aggregation to be used in relation to gifts or inheritances taken on or after 1 December 1999. The changes are as follows:

- ▼ The class thresholds are being replaced by group thresholds which are increased to the following amounts: Group 1 to £300,000, Group 2 to £30,000 and Group 3 to £15,000. The new thresholds will be indexed from 1 January 2001.
- ▼ A single 20% rate of tax replaces the existing multiple structure. As a consequence of this change, the 25% reduction in the rate for gifts as compared to inheritances will no longer apply.
- ▼ Prior gifts or inheritances received by the same beneficiary under the same

group threshold since 2 December 1988 will aggregate with a current acquisition for the purpose of arriving at the rate of tax on the current acquisition.

Agricultural Relief

Section 127 will enable agricultural property to qualify for business relief (where the relevant criteria are met) in circumstances where it fails to qualify for agricultural relief. In order to qualify for agricultural relief not less than 80% of the beneficiary's assets must consist of agricultural property (after the taking of the gift or inheritance in question). This change applies to gifts or inheritances taken on or after 10 February 2000.

Probate Tax Exemption Threshold

Section 126 increases the probate tax exemption threshold from £11,250 to £40,000 effective from 1 December 1999. The new threshold will be indexed from 1 January 2001. ■

PRSI & Health Contribution changes effective from 6 April 2000

In addition to the changes announced in Budget 2000, the Minister for Social, Community and Family Affairs announced further changes to PRSI and Health Contribution for employees.

From 6 April 2000 employees who earn £226 or less per week are exempt from paying PRSI. Where the earnings exceed £226 per week the employee's first £100 per week is free of PRSI (£20 per week for employees on a modified PRSI rate). Employees earning £280 or less per week are exempt from the Health Contribution of 2%. The employer contribution continues to be payable as announced in Budget 2000.

Self-Employed persons are exempt from PRSI on the first £1,040 of annual income and are exempt from Health Contribution of 2% where the annual income is less than £14,560 in 2000/01. ■

DEVELOPMENT LAND

CGT Treatment



Disposals of Development Land - Capital Gains Tax treatment

Introduction

The capital gains tax treatment applying to disposals of development land is contained in *Section 69 Finance Bill 2000*. That section gives effect to the Budget 2000 announcement that a 20% rate of capital gains tax should apply to the disposal of non-residential development land. A 20% rate already applies to disposals of certain residential development land. The 20% rate is also now to apply to those categories of residential development land which were specifically excluded up to now.

Position from 1 December 1999

There will now be a general 20% capital gains tax rate for **all** disposals of development land from 1 December 1999 to 5 April 2002. A rate of 60% takes effect for disposals to which that rate will apply as and from 6 April 2002. The new rules come into force as respects disposals made on or after 1 December 1999.

Section 69 Finance Bill 2000 amends *Section 649A Taxes Consolidation Act 1997* to provide for the new rules from 1 December 1999 and it also preserves the pre 1 December 1999 rules. Accordingly, the new *subsection (1) of Section 649A* sets out the three rates of capital gains tax on disposals of development land which apply from 3 December 1997 through to 6 April 2002 and thereafter. The new

subsection (2) of Section 649A sets out the different categories of residential development land which attracted the 20% rate in the period from 3 December 1997 to the introduction of the general 20% rate from 1 December 1999.

Period up to 30 November 1999

The reduced rate of capital gains tax applies to certain disposals of development land in the period to 30 November 1999. Three categories of disposal of development land qualify for the 20% rate of CGT. The legislative basis for the reduced rate is contained in *Section 649A (2) and (3) Taxes Consolidation Act 1997*.

The three categories are:

- ▼ Land required for the purposes of the Housing Acts 1996 to 1998 disposed of to:
 - A housing authority (as defined) in the period 23 April, 1998 to 30 November 1999
 - The National Building Agency Limited or voluntary housing bodies in the period 10 March 1999 to 30 November 1999.
- ▼ Land the whole of which has, at the time of disposal, **unexpired** planning permission for **residential development** disposed of in the period 23 April 1998 to 30 November 1999.
- ▼ Land the whole of which is, at the time of disposal, zoned for **use solely or primarily for residential purposes** in accordance with a development objective set out in the development plan of the relevant planning authority disposed of in the period 10 March 1999 to 30 November 1999.

Disposals of development land, other than the 3 categories above, in the period to 30 November 1999 attracted the higher CGT rate of 40%.

Housing Authorities etc.

The first category is straightforward. The 20% rate applies where a

certificate is given by either a housing authority or the National Building Agency Ltd that the land concerned is land needed for the purposes of the Housing Acts 1966 to 1998.

Planning Permission for Residential Development

The second category requires extant planning permission for residential development for the whole of the land at the time of the disposal.

“residential development” is defined in *Section 649A(3)* as including any development which is ancillary to the development **and** which is necessary for the proper planning and development of the area in question.

Zoning for Residential Purposes

The third category attracting the 20% rate of capital gains tax is land the whole of which at the time of its disposal is zoned solely or primarily for residential purposes.

“residential purposes” is not defined in the legislation. Consequently, it must take its normal meaning. Any purpose which can be regarded as having as its objective the provision of a building which is capable of being used as a residence would on this basis qualify.

The phrase **“solely or primarily”** must be read in the context of “for use solely or primarily for residential purposes” “in accordance with a development objective (as indicated in the development plan of the planning authority concerned)”.

The approach taken is that unless the development objective in question was unambiguously “solely or primarily for residential purposes” the legislation precluded the 20% rate of CGT applying. ■



P35 END OF YEAR RETURNS

Filing Date 21 May 2000

Introduction

All registered employers will by March 2000 have received their P35 return for completion. The closing date for receipt of returns is **21 May 2000**. The closing date was extended last year from 30 April and was done following consultation with employers' representatives and practitioners to ease the burden on employers and practitioners in completing returns. There was a very positive response to the new closing date with almost 90% of all employment details received by 21 May.

P35 Helpline

The P35 Helpline is available again this year to assist employers and practitioners in dealing with any queries or problems that they may have completing the returns. The Helpline number is 1890 254565 (ext. 63811) and calls are charged at local call rates.

Employers with Computer Payrolls

The vast majority of employers with computer payrolls are now forwarding their employee details on diskette. Employers with computer payrolls who have not previously returned on disk have been written to pointing out that the P35L computer stationery is no longer being printed. These employers have been requested to return their employee details on disk in future. Feedback has been very positive.

Returning on diskette is a very attractive option for employers and the benefits include:

- Employee tax-free allowance details are issued to employers on diskette in subsequent years
- Form filling becomes almost non-existent
- The time required to make the return is greatly reduced.

We are again asking those employers with computer payrolls who have not

yet started returning on diskette to do so. Further information on the diskette system can be obtained from John Grace, P35 Section, Nenagh at 1890 254565 (ext 63172).

Employers with Manual Payrolls

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

In addition, the system whereby practitioners can return employee details using a pre-formatted diskette provided by Revenue has proved to be extremely popular. The feedback from those practitioners who have used the system has been very positive with the following aspects being highlighted as the main benefits:

- ▼ The facility to print P60's
- ▼ The facility to print P35 Summary Reports for reference purposes, if required
- ▼ The provision whereby multiple employers' returns can be made on one diskette
- ▼ The fact that basic validation rules have been built into the system thereby detecting errors at input stage and thus reducing later queries from Revenue
- ▼ The inclusion of a Help facility
- ▼ The 'rollover' feature which enables all relevant data from the previous year to be automatically pre-filled on return for current year
- ▼ The P35 Declaration becomes the only form for manual completion.

Further improvements to the software package for practitioners include a more comprehensive option to cater for all PRSI classes, an enhanced help facility and generally more user friendly option menus. The system also caters for customers wishing to submit EURO returns.

In view of the success of the diskette package, it is again being made

available this year. The package, which will be issued to practitioners over the coming weeks, will contain the diskette itself, an explanatory leaflet and a business reply envelope. The software will also be available from Revenue's Web Site:

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

Further information on the above system can be obtained by 'phoning Ann Slevin or Ciaran Hanley, P35 Section, Nenagh at 067-44158/44144 (LoCall 1890 254565 ext. 63158/63144).

Employers with no Employees

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

General

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

- **Ensuring that the forms and giro are only used for the employer to whom they are issued. This is because each form is pre-coded with details that are unique to that employer.**
- Returning the original forms. The technology used by Revenue to process returns is designed to operate with original forms. The forms should be completed clearly and legibly in accordance with the instructions provided. Photocopies should not be used. Additional stationery is available from the P35 Returns Unit by calling the Helpline number listed above.
- Ensuring that each employee's RSI No. is included. The employee RSI No. is of the utmost importance in ensuring that employees can claim their social welfare benefits. If in

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exceptional cases, the employee's RSI No. is not available, the employee's name, address, and date of birth must be included on the return. In the absence of this information employees will face huge difficulties in claiming their benefits.

- Fully completing each form.

Penalties

A new penalty structure was put in place in 1999. However, the additional three weeks available for completion of the P35 Return ensured that most employers and

agents had adequate time to complete and return their P35's on time and did not risk being penalised. On 21 May almost 90% of all employment details had been received. Employers who fail to return on time are liable to a penalty of £500 and this penalty increases by £500 per month that the return remains outstanding subject to a maximum of £2,000. These penalty provisions were vigorously applied in the case of non-compliant employers in 1999.

Those employers who fail to meet their P35 obligations are now very

much in a minority. Revenue maintains a comprehensive record of those employers who fail to make their return on time and will be corresponding with these employers in relation to their failure to meet their obligations. With a deadline of 21 May there is no justification for employers failing to make their return on time. Any employer who fails to return on time faces a real risk of being penalised. In addition, the names of all non-compliant employers who have penalties imposed by the Courts are published.■

TOPICAL QUESTIONS	Schedule E
<p>Fringe Benefits - What are the Employers' Reporting Obligations?</p> <p>Each year Revenue issue Forms P11D - Return of non-cash Emoluments etc. to about 10,000 employers. The approach taken is to send the forms to employers who have not received the return in recent years. Employers who receive the forms must return details of their employees'/directors' fringe benefits within the time limit mentioned on the form. The legislation at <i>Section 897 TCA 1997</i> sets out the details which are required. It includes company cars, preferential loans, scholarship payments and payments in kind made to employees/directors. The scope is fairly wide ranging.</p> <p>In practice, the Form P11D lists the relevant taxable benefits which must be returned. The notes to the form explain the nature of the various benefits and the amounts to be returned. In completing the form, if the employer has difficulty in determining the cost or other details of the benefit, then best estimates can be used provided this is clearly marked as such. Also, the employer's accounting year ending in the tax year may be taken as the equivalent of the year to 5 April - except for cars and preferential loans, the details of</p>	<p>which must be returned on the 5 April basis.</p> <p>There are penalties for failure to make a return or the making of an incorrect return.</p> <p>Examination Awards - tax treatment?</p> <p>A cash award made to an employee in recognition of passing an examination, or acquiring a qualification, which bears some relationship to his/her duties, is regarded as not assessable, provided that the award is of such amount that can, reasonably, be regarded as a reimbursement of expenses likely to have been incurred in studying, and sitting for the examination.</p> <p>Special increments of salary awarded on passing an examination etc. are chargeable, as part of the employee's remuneration, in the normal way.</p> <p>Long Service Awards - what are the rules?</p> <p>Where awards are made to directors or employees as testimonials to mark long service, such awards are normally taxable. Where, however, an award takes the form of tangible articles of reasonable cost, tax is not charged provided:</p> <ul style="list-style-type: none"> ▼ The cost to the employer does not exceed £15 for each year of service ▼ The award is in respect of a period of service of not less than 20 years ▼ No similar award has been made to the recipient within the previous 10 years. <p>Removal/Relocation Expenses - tax treatment</p> <p>Where an employee moves within the employer organisation or takes up employment with a new employer then certain removal/relocation expenses can be paid free of tax. The terms, conditions and procedures are set out in Tax Briefing, Issue 31 (April 1998). Prior Revenue "approval" is not required in respect of the removal/relocation expenses covered by the article.</p> <p>Staff Suggestion Scheme Awards - tax treatment</p> <p>Awards made under a formal staff suggestion scheme to employees for suggestions which are outside the scope of the employee's normal duties can be made free of tax provided a number of conditions are met - these are set out in Tax Briefing, Issue 32 (June 1998). The tax office must be advised in advance of the existence of the scheme and given confirmation that the conditions are met.■</p>



VALUE-ADDED TAX

UPDATE

REVENUE NEWS

VAT Regulations

The following VAT regulations have recently been made:

- ▼ Value-Added Tax (Agricultural Machinery) (Documentation) Regulations 1999
[S.I. No. 443 of 1999]

These regulations cover the operation of *Section 12C VAT Act 1972* which deals with the Special Scheme for Agricultural Machinery.

- ▼ Value-Added Tax (Records of Transactions in Investment Gold) Regulations 1999
[S.I. No. 439 of 1999]
- ▼ Value-Added Tax (Refund of Tax to Persons making Exempt Supplies of Investment Gold) Regulations 1999
[S.I. No. 441 of 1999]
- ▼ Value-Added Tax (Waiver of Exemption on Supplies of, and Supplies relating to, Investment Gold) Regulations 1999.
[S.I. No. 440 of 1999]

These regulations cover the operation of the various provisions on the treatment of Investment Gold enacted in the *VAT Act 1972* by the *Finance Act 1999*.

Copies of the Regulations are available from:

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

Telephone: 01-661 3111 ■

Rate of VAT on Commissioned Framed Photographs

Under the provisions of *Paragraph (xxii)(a) of the Sixth Schedule to the VAT Act* the 12.5% rate applies to: ".....supplies of photographic prints (other than goods produced by means of a photocopying process), mounted or unmounted, **but unframed**..... which record particular persons, objects or events supplied under an agreement to photograph those persons, objects or events."

The prevailing practice is to treat the low rate of VAT (12.5%) (subject to the two thirds rule) as applying to commissioned framed photographic portraits when sold as a package, for a single price. This treatment was adopted following discussions at the time with representatives of the photographers profession and was granted due to the fact that commissioned portraits are normally sold in a frame.

The matter has come up for review and it has been decided to continue to apply this treatment and therefore the appropriate rate of VAT applicable to the supply of commissioned framed photographic portraits remains at 12.5%, subject to the two thirds rule. ■

Change of Address

Retirement Benefits District has moved to:

Shelbourne House,
Shelbourne Road,
Dublin 4.

Telephone: 01 - 631 8920
Fax: 01 - 631 8927

New and Updated Leaflets

Leaflet IT 1 - Allowances, Reliefs & Tax Rates 1999/2000 & 2000/2001 - February 2000

Leaflet IT 35 - Blind Persons Allowances & Reliefs - February 2000

Leaflet IT 31 - Tuition Fees - Available from end March 2000

Leaflet IT 45 - Allowances for Over 65's - February 2000

Leaflet IT 46 - Dependent Relative Allowance - February 2000

Leaflet IT 47 - Incapacitated Person - Allowance for Employing a Carer - February 2000

Leaflet IT 66 - Home Carer's Allowance - February 2000

Leaflet SD 8 - Stamp Duty - New Stamping System

These leaflets are available from the Revenue Forms & Leaflets Service at 01 - 878 0100 or on our website at www.revenue.ie

Notice to Employers 2000/2001

A notice has issued to all employers on the operation of PAYE for 2000/2001. The pack also includes details of the PRSI contribution rates for 2000/2001. Copies of the pack are available from any tax office or from the Revenue Forms & Leaflets Service at 01-878 0100. ■

Please note our E-mail address taxbriefing@revenue.irlgov.ie.

Comments from readers on tax matters would be welcome - if there are particular tax topics, which you would like to see covered in a future issue of *Tax Briefing*, please E-mail a note or 'phone 01-6716777.