

TAX BRIEFING

RESIDENTIAL DEVELOPMENT LAND



Income from Dealing in Residential Development Land

Introduction

The Finance Act 2000 introduced a 20% rate of tax in respect of income from dealing in **residential development land**. It applies for both income tax and corporation tax purposes. The legislation complements the 20% rate of capital gains tax for disposals of development land, the details of which are outlined in **Tax Briefing** Issue 39 [March 2000].

This article details the income tax and corporation tax treatment which applies to the income of individuals and companies from dealing in residential development land.

Income Tax

For income tax purposes, the legislation [**section 644A Taxes Consolidation Act 1997**] takes effect from **1 December 1999**. The profits of an individual earned after that date from dealing in residential development land will be taxed at the lower rate of 20%. The profits are ringfenced so that no offset for personal allowances and credits is possible. However, the taxpayer has the option of having these profits

charged to income tax in the normal way thus allowing the offset of personal allowances and credits against the profits.

In any year the taxpayer may choose the option which best suits his or her circumstances. For example, in the unusual circumstances that a person dealing in land has not absorbed all of his or her personal allowances against other income, the person might choose to have the income taxed in the ordinary way.

Corporation Tax

For corporation tax purposes, the legislation [**section 644B Taxes Consolidation Act 1997**] takes effect for accounting periods ending on or after **1 January 2000**. Where an accounting period of a company straddles 1 January 2000, the accounting period is split into two periods, one before and the other after that date.

The Finance Act 1999 introduced reducing corporation tax rates for trading income. The standard rate of corporation tax is 24% in 2000 and the rate will reduce by 4% per annum for 2001 and 2002 and by 3.5% for 2003 - giving a rate of 12½% for 2003 and subsequent years. However, the 1999 Finance Act provides that trading income from dealing in land (other than so much of that income as is attributable to construction activities) is to be taxed at 25%.

Section 644B now provides that in the case of income from the disposal by companies of residential development land, the rate of tax will be 20% and not 25%.

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Revenue



KEY DATES

June

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

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

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

1-30 Corporation Tax
Returns for APs ending between 1-30 September

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

30 PAYE
Return Filing Date for forms P11D and SO2

July

5 Income Tax
Deadline for claiming Separate Assessment

5 Income Tax
Deadline for nominating Assessable Spouse

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

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

19 VAT
VAT 3 return and payment for period May/June

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

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

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

August

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

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

1-28 Corporation Tax
Preliminary Tax for APs ending between 1-28 February

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

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



RESIDENTIAL DEVELOPMENT LAND

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Section 644A - Income Tax

A number of definitions are contained in subsection (1) of the new section 644A -

“**construction operations**” in relation to residential development land is defined. The effect of this definition is that development activities up to but not including the laying of foundations are included in the meaning of residential development land for the purposes of determining profits or gains to which the lower income tax rate (20%) applies.

“**residential development**” includes developments which are ancillary to the development and which are necessary for the proper planning and development of the area in question. Such ancillary developments would include shops, schools, churches etc.

“**residential development land**” is land which satisfies one of the following three criteria:

- n Land sold to a housing authority, the National Building Agency Limited or an approved body for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act 1992 provided that the land is specified in a certificate as being required for the purposes of the Housing Acts
- n Land in respect of which planning permission for residential development has been granted, or
- n Land which is zoned residential.

The definition follows exactly the description of residential land for the purposes of the capital gains tax relief.

Scope of the legislation - Income Tax

Section 644A applies to profits or gains which are:

- n arising from dealing in or developing residential development land in the course of a trade consisting of or including dealing in or developing land, assessable under **Case I**, and
- n gains of a capital nature from disposing of residential development land which, by virtue of section 643, are chargeable under **Case IV**.

Apportionment of income and expenses

A just and reasonable apportionment must be made of income and expenses of a trade as between dealing in residential development land and other activities by treating these two businesses as separate trades.

In computing the profits or gains to which the 20% rate of tax is to apply, no account is to be taken of any profits or gains which result from construction operations.

Example

John has been dealing in and developing land for a number of years. The following are his trading results for the year 2000/2001:

	£
Case I trading income	280,000
Expenses	65,000
Case V income chargeable	5,000
Case III income chargeable	3,000

£100,000 of the trading income arises from dealing in and developing residential land after 30 November 1999 and the expenses relating to this income amount to £25,000. John is single.

The position for 2000/2001 is as follows:

Dealing in/developing residential land income

	£
Trading income	100,000
Less expenses	<u>25,000</u>
	75,000
Tax	75,000 @ 20% = £15,000

Other income

	£
Trading income	180,000
Less expenses	<u>40,000</u>
	140,000
Case V	5,000
Case III	<u>3,000</u>
	148,000

Tax	17,000 @ 22% = 3,740
	131,000 @ 44% = <u>57,640</u>
	£61,380

Less tax relief	
Single personal allowance	4,700 @ 22% = <u>1,034</u>
	£60,346

Total income tax due: **£15,000 + £60,346 = £ 75,346**

Election to have profits or gains taxed in the normal way

If a person so elects on or before the return filing date for the year of assessment (31 January after the end of the relevant year of assessment), section 644A shall not apply to those profits or gains for that year of assessment and the person will be taxed in the normal way.

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RESIDENTIAL DEVELOPMENT LAND

Continued from page 3

Section 644B - Corporation Tax

A number of definitions are contained in *subsection (1) of the new section 644B* -

“excepted trade” has the same meaning as in *section 21A TCA 1997*, that is, a trade of dealing in land (excluding construction operations), mining or petroleum activities.

“residential development” and **“residential development land”** have the same meaning as in *section 644A*.

Scope of the legislation - Corporation Tax

The new *section 644B* provides for a 20% rate to apply to income of companies from disposing of residential development land. The 20% rate is achieved by reducing by one-fifth the tax which is charged at the 25% rate on disposals of land in accordance with *section 21A TCA 1997*. This applies whether the land is disposed of in the course of a trade taxable under Case I or the income is taxable under Case IV in accordance with *section 643 TCA 1997*.

The first stage in the process is to determine the corporation tax charged at 25% and to apportion this to income from dealing in residential land. Once the tax attributable to such income is determined it is reduced by one-fifth.

Carrying on an “excepted trade”

Subsection (2) of *section 644B* deals with trading income taxable under Case I and with a situation in which a company carries on an “excepted trade”. An excepted trade is not taxable at the standard corporation tax rate but is taxable at a rate of 25%. One category of excepted trade is a trade of dealing in land - but all construction activities are excluded.

Computational Rules

The computational rules to calculate corporation tax attributable to income from dealing in residential development land are as follows :

Step 1

Apportion CT payable at the 25% rate - as between income of an excepted trade and other income taxable at the 25% rate (e.g. income chargeable Case III, IV or V).

Step 2

CT referable to the excepted trade is apportioned between income from dealing in residential development land and other income of the excepted trade. This is done on the basis of receipts from disposals of residential development land and other receipts of the excepted trade. Receipts from disposing of residential development land and total receipts of the excepted trade do not include any amount attributable to construction operations.

Example

	£	
Case III, IV and V income	140	
Excepted trade*	500	
Less charges	<u>200</u>	<u>300</u>
	440	@ 25% = £110

* Receivable from disposals of residential land	£	2,000
Receivable from disposals of other land	<u>1,000</u>	<u>£3,000</u>

Step 1

CT referable to income of an excepted trade is:

CT charged at 25% x	<u>Income of excepted trade</u>	
	Total charged at 25%	
£110	x	<u>300</u> = £75
		440

Step 2

CT referable to income from dealing in residential development land is:

CT referable to income of an excepted trade	x	<u>Receivable from dealing in residential development land</u>	
		Total receivable from the excepted trade	
£75	x	<u>2,000</u>	= £50
		3,000	

This £50 is reduced by one fifth i.e. £10 to give £40 and an effective rate of 20% on the income from dealing in residential development land

i.e.	£300	x	<u>2,000</u>	x	20% = £40
			3,000		

Reduction of Corporation Tax on certain capital gains

There is a one-fifth reduction in corporation tax charged on certain **capital gains** arising from disposals of residential development land. The gains concerned are gains arising on disposals and transfers of land and property (such as shares) deriving their value from land and which by virtue of *section 643 TCA 1997* are charged to income tax under Case IV of Schedule D. *Section 643* applies to such transactions in land in general.

Section 644B provides that corporation tax is to be reduced only in so far as it relates to gains on **residential** development land.

Revenue

Computational Rules

The computational rules are as follows :

Step 1

Apportion CT charged at 25% between income charged under Case IV by virtue of *section 643* and other income charged at that rate. This is done on the basis of the amount of such Case IV income as compared with the total income taxable at 25%. Once this has been determined step 2 can be applied.

Step 2

Apportion CT referable to income chargeable under Case IV by virtue of *section 643* as between such income as is referable to disposals of residential development land and other income so charged. The apportionment is done on the basis of the amount of gain attributable to the disposal of residential development land as compared with the total of such gains. In doing this calculation of the amount of gain attributable to the disposal of residential development land, any amount referable to construction operations is excluded.

Income charged under Case IV by virtue of *section 643* will never be included in trading income taxable at the standard corporation tax rate. Consequently, it will always be taxed at 25% (subject to the reduction under *section 644B*).

Company may elect to disapply part of *section 21A* to achieve an effective rate of 20%

A company may elect to disapply a part of *section 21A* in the case of income from the sale of residential development land arising in the year 2000 to achieve an effective rate of 20%. *Section 21A* generally provides for income from dealing in land to be treated as income of an excepted trade taxable at the 25% rate. However, it also allows income from dealing in land which has been fully developed by a builder to be included in the builder's trading income which is taxable at the standard rate of corporation tax.

The standard corporation tax rate for 2001 and subsequent years will be equal to or lower than the 20% rate provided for by this section. However, the standard corporation tax rate in 2000 is 24%, higher than the 20% rate provided for by *section 644B*.

Accordingly, under this section companies are given the option in 2000 to disapply that part of *section 21A* which treats income from disposals of certain residential development land as being taxable at the standard rate of corporation tax. Where a company exercises that option, the income concerned will be taxed at the 25% rate with a reduction of one-fifth of the tax concerned to achieve an effective rate of 20%.[Z](#)



CORPORATION TAX

Computing Tax Due

Corporation Tax Computations

The purpose of this article is to demonstrate methods of computing Corporation Tax liabilities following changes in the Finance Act 2000. When a return is submitted the liability is worked out automatically. There is no requirement obliging companies to split profits into different rates. This article gives an insight into the methodology applied in computing tax due. It covers the following areas:

- n Rates of Tax
- n Accounting Periods spanning date of rate change (non-manufacturing companies)
- n Marginal Relief
- n Manufacturing Relief
- n Associate Companies
- n Land Dealing

The area of charges and group relief will be covered in a later issue.

Corporation Tax Rates

These are as follows:

Period 1 Jan. 1999 to 31 Dec. 1999.

First £100,000 @ 25%

Balance @ 28%

Period 1 Jan. 2000 to 31 Dec. 2000

Trade Profits

- (i) Where they do not exceed £50,000 - an effective rate of 12½ %
 - (ii) Where trade profits exceed £50,000 - 24% on the total
- Other profits (Cases III/IV /V, or income from excepted operations) - @ 25%

Marginal Relief applies where trade profits are between £50,000 and £75,000

Where a company qualifies for the Reduced Rate the Case I income will be assessed at the standard rate of 24% and Small Company Relief of 11½ % will be granted. This relief should be claimed at paragraph 13 of form CT1.

Where a company qualifies for the Reduced Rate and has manufacturing profits a further credit of one-fifth is granted in arriving at an effective charge of 10%.

Example 1

Alpha Ltd has the following results for year ending 31 Dec 2000.

	£
Case I	40,000
Case V	20,000
Capital Gain	15,000

Step 1

Adjust Capital Gain

i.e. $15,000 \times 20/25 = £12,000$

Final Assessment

	£
Case I	40,000
Case V	<u>20,000</u>
Income	60,000
Adjusted Chargeable Gain	<u>12,000</u>
Profit	72,000
Tax	
40,000 @ 24% =	9,600
32,000 @ 25% =	<u>8,000</u>
Tax due =	17,600
Small Co. Relief $40,000 \times 11\frac{1}{2}\%$	<u>4,600</u>
	13,000

Example 2

Same figures as above except that the accounting period is for the year to 30 September 2000.

Step 1

Adjust Chargeable Gain

1 Oct 1999 to 31 Dec 1999:

Standard Rate $28 \times 3/12 = 7.00$

1 Jan 2000 to 30 Sept 2000:

Standard Rate $25 \times 9/12 = \underline{18.75}$
25.75

Adjusted Chargeable Gain

20.00
 $15,000 \times 25.75 = £11,650$

Step 2

Split Accounting Period between 3 months to 31 Dec. 1999 and 9 months to 30 Sept. 2000

	12 m/e 30/9/00 £	3 m/e 31/12/99 £	9 m/e 30/9/00 £
Case I	40,000	10,000	30,000
Case V	<u>20,000</u>	<u>5,000</u>	<u>15,000</u>
	60,000	15,000	45,000
Adjusted Chargeable Gain	11,650	2,912	8,738
Profit	71,650	17,912	53,738



3 months 31 Dec 1999		
15,000 @ 25% =	3,750.00	
2,912 @ 28% =	<u>815.36</u>	4,565.36

9 months 30 Sept 2000		
30,000 @ 24% =	7,200.00	
23,738 @ 25% =	<u>5,934.50</u>	<u>13,134.45</u>
Tax due		17,699.81
Small Co. Relief 30,000 x 11½% =		<u>(3,450.00)</u>
		14,249.81

Note

The 12½% rate applies to trade income only.
The maximum could not exceed £50,000 x 9/12 = £37,500.

Example 3

Beta Ltd has the following results for year ending 31 Dec. 2000

	£
Case I	65,000
Case V	20,000
Capital Gain	15,000

In this example the company is not entitled to the effective 12½% rate as the Case I figure exceeds £50,000. As the income is between £50,000 and £75,000 (referred to as the lower and upper limits respectively) the company is entitled to marginal relief.

The Case I income is assessed at 24%. Marginal relief is 23% of the excess of the upper limit of £75,000 over the Case I figure i.e. £10,000 @ 23%.

Final Assessment

	£
Case I	65,000
Case V	<u>20,000</u>
Income	85,000
Adjusted Chargeable Gain	<u>12,000</u> [as per Ex.1]
Profits	97,000

Tax

65,000 @ 24%	15,600
32,000 @ 25%	<u>8,000</u>
Total	23,600

Less Marginal Relief
 [75,000 - 65,000] @ 23%

10,000 @ 23%	<u>2,300</u>
Tax due	21,300

Example 4

Same figures as above except that the accounting period is for the year to 30 Sept. 2000.

Step 1

Compute chargeable gain as in example 2 i.e. £11,650

Step 2

Split accounting periods

	12 m/e 30/9/00 £	3 m/e 31/12/99 £	9 m/e 30/9/00 £
Case I	65,000	16,250	48,750
Case V	<u>20,000</u>	<u>5,000</u>	<u>15,000</u>
Income	85,000	21,250	63,750
Gain	<u>11,650</u>	<u>2,912</u>	<u>8,738</u>
	96,650	24,162	72,488

Step 3

Apportion the upper and lower limits for period post 1 Jan. 2000

50,000 x 9/12 =	£37,500
75,000 x 9/12 =	£56,250

As the Case I figure of £48,750 exceeds the lower limit of £37,500 the 12½% rate will not apply. Marginal Relief is based on the excess of £56,250 [the upper limit] over £48,750 i.e. £7,500 @ 23% = £1,725.

Tax Liability

3 months 31 Dec 1999:		£
21,250 @ 25% =	5,312.50	
2,912 @ 28% =	<u>815.36</u>	6,127.86
9 months 20 Sept 2000:		
48,750 @ 24% =	11,700.00	
23,738 @ 25% =	<u>5,934.50</u>	<u>17,634.50</u>
Total		23,762.36

Less Marginal Relief

7,500 @ 23% =	<u>1,725.00</u>
Final Liability =	22,037.36

Manufacturing Relief

Example 5

Omega Ltd has the following results for year ending 31 Dec. 2000:

	£
Case I	200,000
Case V	<u>40,000</u>
Income	240,000
Adjusted Chargeable Gain	<u>10,000</u>
Profit	250,000

Total sales £1m. Sale of "Goods" £600,000. Therefore, 60% of Case I profit qualifies for Manufacturing Relief.

The Case I profits can be split as follows:

	£
From Sale of Goods	120,000
From Sale of Merchandise	<u>80,000</u>
Total	200,000

As the trading profits from non manufacturing sales exceeds the lower and upper limits the 12½% rate and marginal relief will not apply.

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CORPORATION TAX

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Corporation Tax

	£
200,000 @ 24% =	48,000
50,000 @ 25% =	<u>12,500</u>
	60,500

Manufacturing Relief

48,000 x 120/200 x 7/12 =	<u>16,800</u>
Tax due =	43,700

Note: The fraction of 7/12 is 14/24 giving an effective rate of 10%.

Example 6

The facts are the same except that the Case I Profit is £80,000. This is split as follows:

	£
From Sale of Goods	48,000
From Sale of Merchandise	<u>32,000</u>
Total	80,000

As the non manufacturing Case I of £32,000 is below the lower limit of £50,000 this income is assessed at 12½%

	£	
Case I	80,000	(Note 1)
Case V	<u>40,000</u>	
Income	120,000	
Gain	<u>10,000</u>	
Profit	130,000	

Tax

80,000 @ 24% =	19,200
50,000 @ 25% =	<u>12,500</u>
	31,700
Small Co. Relief	9,200 (Note 2)
Manufacturing Relief	<u>1,200</u> (Note 3)
Net Payable	21,300

Notes

1. All trading income including manufacturing.
2. $80,000 \times (24\% - 12\frac{1}{2}\%) = 9,200$
3. $48,000 \times 12\frac{1}{2}\% \times \frac{1}{5} = 1,200$

Example 7

Same facts as above except that the Case I figure comes to £150,000. This is split as follows:

	£
From Sale of Goods	90,000
From Sale of Merchandise	60,000

As the non manufacturing Case I exceeds the lower limit the company has no income liable at 12½% but the company is entitled to marginal relief.

	£
Case I	150,000
Case V	<u>40,000</u>
	190,000
Chargeable Gain	<u>10,000</u>
Profit	200,000

150,000 @ 24%	36,000
50,000 @ 25%	<u>12,500</u>
	48,500

Manufacturing Relief

$$36,000 \times 90,000/150,000 \times 7/12 = [12,600]$$

Marginal Relief

$[75,000 - 60,000] \times 23\% =$	<u>[3,450]</u>
Tax due	32,450

Associate Companies

The lower and upper limit of £50,000 and £75,000 are apportioned when a company has associates.

Example 8

Alpha and Beta are in a group relationship. Results for year ending 31 Dec. 2000 are as follows:

	Alpha Ltd	Beta Ltd
	£	£
Case I	30,000	16,000
Case V	<u>20,000</u>	<u>10,000</u>
Total	50,000	26,000

The lower and upper limits for each company is as follows:

	£
Lower 50,000 x ½ =	25,000
Upper 75,000 x ½ =	37,500

Tax due is as follows:

Alpha Ltd	£
30,000 @ 24% =	7,200
20,000 @ 25% =	<u>5,000</u>
	12,200

Marginal Relief

$$[37,500 - 30,000] \times 23\% (1,725)$$

Net due =	10,475
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Beta Ltd

16,000 @ 24% =	3,840
10,000 @ 25% =	<u>2,500</u>
	6,340
Small Co. Relief	<u>1,840</u>
Total Tax	14,975



If the liability of group companies taken as a single entity exceeds the actual liabilities a measure of relief may be claimed.

Combined liability of Alpha and Beta:

	£
Case I	46,000
Case V	30,000
Total	76,000

46,000 @ 24%=	11,040
30,000 @ 25%=	<u>7,500</u>
Total	18,540
Less Small Co. Relief	<u>5,290</u>
Tax due	13,250

The tax of £14,975 is reduced to £13,250. The reduction in tax may be allocated in accordance with the wishes of the companies.

Land Dealing

This topic is also covered in a detailed article on pages 1 to 5.

The standard corporation tax rate is 24% for 2000 and will reduce to 12½ % for 2003 and subsequent years. However, the 1999 Act provides that trading income from dealing in land (other than so much of that income that is attributable to construction activities) is regarded as an *excepted trade* and is taxed at 25%. *Section 52 Finance Act 2000* now provides that in the case of income from the disposal by companies of residential development land, the rate of tax will be reduced from 25% to 20%. The low rate will apply from 1 January 2000.

The 20% rate will apply to income of companies from the disposal of **residential** development land. The 20% rate is achieved by reducing the tax charged at 25% by one-fifth. This applies whether the land is disposed of in the course of a trade taxable under Case I or the income is taxable under Case IV in accordance with *Section 643 of the Taxes Consolidation Act*.

The steps are:

1. Determine the corporation tax charged at the 25% rate;
2. Calculate the amount (of the figure at 1) attributable to the excepted trade;
3. Calculate the amount (of the figure at 2) attributable to income from dealing in residential development land.

Example 9

	£
Case III, IV and V Income	100
Excepted trade*	300
Less charges	<u>120</u> <u>180</u>
	280 @ 25% = £70

* Receivable from disposals of residential land	£2,000
Receivable from disposals of other land	<u>£1,000</u>
	£3,000

Step 1.

CT charged at 25% is £70

Step 2.

CT referable to income of an excepted trade is

$$£70 \times 180/280 = £45$$

Step 3.

Corporation Tax attributable to sale of residential development land is

CT on income from excepted trade	x	Receivable from dealing in residential development land	
		Total receivable from the excepted trade	
£45	x	<u>2,000</u>	= £30
		3,000	

This £30 is reduced by one-fifth i.e. £6 to give £24 and an effective rate of 20% on the income from dealing in residential development land

$$\frac{2,000}{3,000} \times 180 \text{ is } £120: £120 @ 20\% \text{ is } £24.$$

Final tax due is £64 i.e. £70 less £6. **z**



COMPANIES REGISTRATION OFFICE

Compliance

Major Drive to obtain 100% Compliance Rate

The **Companies Registration Office (CRO)** began an intensive programme in September 1998 to increase the compliance rate of companies in filing their annual returns under the Companies Act. Under the *Companies Act 1963* every company incorporated in this country is obliged to file an annual return detailing certain minimum information about the company, its shareholders, officers etc.

Section 7 of the Companies Act 1986 required additional information to be provided with the annual return, namely copies of the company's balance sheet, profit and loss account, directors' report and auditor's report. Certain allowances were provided for small and medium sized companies, in so far as they can abridge the financial information, provided that they meet with criteria set out for small and medium sized enterprises set down by EU Directives.

The CRO developed a two pronged approach to enforcement of the compliance issue. There were 749 prosecutions of companies during 1999 for failure to file annual returns in 1997 and 1998. 500 convictions were recorded with fines imposed by the District Court totalling £182,010. The other mechanism employed was to use the strike off process provided for in the Companies Acts.

Under the legislation in force during 1999, it was possible for the CRO to strike a company off the register where it had not filed an annual return for two consecutive years and since the current programme began over 35,000 companies have been struck off the register. The impact of the programme can be judged from the fact that the number of companies due to file an annual return in 1997 was 136,245 and only 49,242 actually filed (36%). By the end of December 1999 the number

due to file had fallen, because of the strike off process, to 98,676 and 56,305 (57%) of those had filed.

The Companies (Amendment)

(No. 2) Act 1999 extended the power of the CRO to strike companies off the register and reduced the number of outstanding returns required from two to one. With the introduction of this power, the target set by the CRO for itself is to get 100% of companies required to do so to file an annual return in 1999 by the end of the year 2000.

The new strike off regime was advertised in the national newspapers and every company which was required to file an annual return in 1999, and which had failed to do so, was issued with an annual return reminder. Approximately a month after the annual return reminder, each company, which has failed to file, will be issued with a notice of strike off i.e. they are being informed that unless they file all outstanding annual returns within a month they would be considered for strike off. One month after the notice, a further notice, this time of impending strike off, will be inserted in *Iris Oifigiúil* giving each company involved one last chance to file the returns. Approximately one month later, unless the returns have been filed, the company will be struck off.

The process started on 28 January 2000 with the issue of 17,000 annual return reminders and thereafter 7,000 reminders a week were issued until by 14 April 2000 all companies had received a reminder. The first formal notice of strike off issued on 24 March and they will continue being issued until the middle of June. The first notice of impending strike off was published in *Iris Oifigiúil* on 28 April 2000 and the first strike offs under the process will occur on 2 June next. A measure of the success of the process so far is that the CRO has received an annual return from 14,000 more companies

this year than at this stage last year - up from 53,000 to 67,000 companies. However there is still a long way to go.

The CRO is continuing prosecuting companies for failure to file returns and later on this year individual company directors of defaulting companies will be targeted and prosecuted.

The 1999 Act also gave the CRO power to strike companies off the register if they fail to provide the Revenue Commissioners with a statement relating to the nature of trade the company is carrying on, date of commencement, business address, accounting date, etc. (as provided in **section 882 of the Taxes Consolidation Act 1997** - inserted by the *Finance Act 1999*). A first list of 3,000 non-complying companies has been issued by the Revenue Commissioners to the CRO and further significantly larger lists will follow shortly. Revenue and CRO officials are in the closing stages of discussions aimed at applying the optimum procedures necessary to ensure that those companies who refuse to comply will be struck off as quickly as possible. [Z](#)



FOREIGN EARNINGS DEDUCTION

FA 2000 Changes



Introduction

The legislation providing for foreign earnings deduction (FED), *section 823 TCA 1997*, has been amended by *Section 47 Finance Act 2000*. Firstly, an upper limit of £25,000 has been put on the amount which can be claimed under the relieving provision, *section 823(3)*, for a year of assessment. Secondly, the section relaxes the requirement that each period of absence from the State must be for a minimum of 14 days at a time in order for each day to count as a 'qualifying day'. The minimum period of absence has been reduced to 11 consecutive days with effect from 29 February 2000. Similarly, the minimum period of absence for seafarers under *Section 823(2A)* has been reduced to 11 consecutive days. This is also effective from 29 February 2000.

Limit of £25,000

The cap of £25,000 on the amount which can be claimed as a foreign earnings deduction for a year of assessment is applicable for the year 2000/2001 et seq. A restriction also applies for the year 1999/2000 and special apportionment rules apply to deal with this. The purpose of the apportionment is to determine the portion of the deduction which arises as a result of including income **accrued or paid** on or after 29 February 2000.

If that portion is less than £25,000 then there is no restriction on the relief. If, however, the portion of the

deduction which arises as a consequence of including income accrued or paid on or after 29 February 2000 is greater than £25,000, then that figure is restricted to £25,000. It should be noted that if an individual has more than one employment which has qualifying days separate computations are required to calculate the deduction in respect of each employment. The cap of £25,000, which was inserted by *section 47 Finance Act 2000*, applies to the aggregate of all such deductions.

Example 1 - 1999/2000

Ann is resident in the State for the tax year 1999/2000 and has 122 qualifying days abroad. Her earnings from her employment for the year are £80,000, £10,000 of which was paid in the period 29/2/2000 to 5/4/2000.

Computation of deduction

$$\frac{122}{365} \times £80,000 = £26,740$$

What is the proportion of the deduction which arises as a result of including income accrued or paid on or after 29 February 2000?

Apportionment Calculation

$$£26,740 \times \frac{10,000}{80,000} = £3,342$$

So £3,342 is the amount of the deduction which arises as a result of including income accrued or paid on or after 29 February. Since this figure is less than £25,000 no restriction applies for 1999/2000.

Ann's FED deduction is £26,740.

Example 2 - 2000/20001.

The same circumstances as above except that the **tax year is 2000/2001**

The calculation of relief is the same as in Example 1 i.e. £26,740. However, the FED deduction is restricted to £25,000 as this is the

maximum which may be allowed in the year 2000/2001.

Example 3 - 1999/2000

Sean is resident in the State in the year 1999/2000 and has 290 qualifying days abroad. His basic salary for the year was £90,000, of which £10,000 was accrued in the period 29 February 2000 to 5/4/2000. He was also paid a bonus of £40,000 on 31 March 2000.

Computation of deduction

$$\frac{290}{365} \times £130,000 = £103,287$$

In this case the income which was accrued or paid on or after 29 February is £50,000. We now need to see what portion of the deduction of £103,287 arises as a result of including this £50,000 in the computation.

$$£103,287 \times \frac{£50,000}{£130,000} = £39,726$$

As the figure of £39,726 is greater than £25,000, this portion of the deduction which arises as a result of including income accrued or paid on or after 29 February is restricted to £25,000.

Sean's FED deduction for 1999/2000 is:

$$\begin{array}{r} \text{Period prior to 29 February:} \\ £103,287 - £39,726 \end{array} \quad \begin{array}{r} \\ £63,561 \end{array}$$

$$\begin{array}{r} \text{Period 29 February to} \\ \text{5 April} \end{array} \quad \begin{array}{r} £25,000 \\ \hline \pounds 88,561 \end{array}$$

So, as a result of the amendment in Finance Act 2000 the FED deduction is £88,561 rather than £103,287.

Example 4 - 2000/20001

If the above circumstances applied to Sean in the year 2000/2001 rather than 1999/2000 then the overall FED deduction would be restricted to £25,000.

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FOREIGN EARNINGS DEDUCTION

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Example of the 'Qualifying Days' amendment

Martin, who is resident in Ireland for 1999/2000, spent the following periods working abroad:

Location	Date of Departure	Date of Return	Number of qualifying days
USA	12/4/99	22/5/99	40
France	6/9/99	3/10/99	47
Germany	8/11/99	19/11/99	-*
France	9/2/2000	23/2/2000	14
Germany	5/3/2000	16/3/2000	11**
Total number of qualifying days			112

* Not 'one of 14 consecutive days'

** Post 29/2/2000 - 'one of 11 consecutive days'

As regards any period that straddles 29 February 2000, **each day** must be looked at separately. In order for a day which is prior to 29 February 2000 to count as a 'qualifying day' it must be one of 14 consecutive days spent abroad. A day which falls on or after 29 February 2000 will be a 'qualifying day' if it is one of 11 consecutive days spent abroad. [Z](#)

EURO

Euro Changeover

The three year transitional period facilitating the introduction of the euro from 1 January 1999 to 1 January 2002 seemed to offer a generous amount of time to prepare and execute changeover plans. At this stage there are only 18 months left to conclude these arrangements. All the indications suggest that, to date, very little progress has been made to ensure a smooth changeover. In Ireland approximately 0.33% of businesses have switched their tax affairs to euro. Elsewhere in the euro zone the experience is broadly similar.

Recent EMU Business Awareness Campaign surveys indicate that as many as 41% of businesses have not even decided when they will switch to the euro. The low level of general awareness about the euro is evident from European Commission surveys. Businesses will be aware that after 31 December 2001, they will not be able to trade in Irish pounds. Although Irish pound notes and coins will continue to have legal tender status until midnight on 9 February 2002, the Irish pound will cease to exist in monetary law from 31 December 2001.

Irrespective of the nature of the business, the euro will have IT and accounting implications. There are concerns that concentrated demand may arise in these sectors if the

majority of businesses leave their changeover preparations to the last minute.

The important message for business is that early planning is essential.

You need to act now to prepare and complete your changeover plans and advise your clients to do likewise. While it seems likely that many firms will only switch to euro from 1 January 2002 i.e. when euro notes and coins are introduced, it is essential that they commence preparatory work immediately. This should focus on matters such as staff training, implications for computer systems, invoicing and billing systems, pricing policies etc. Information on how firms can switch their Revenue business to euro during the transitional period is set out in **'Revenue and the Euro - A Business Guide'**, which is available from

*The Euro Changeover Unit
Collector-General's Office
Sarsfield House
Limerick*

Tel: 1890 200 256
email cg-general@revenue.ie

It is also available on the Revenue website at www.revenue.ie [Z](#)

POSTGRADUATE FEES

Tax Relief 2000/01 et seq.



Introduction

Tax relief for postgraduate fees has been provided for by *Section 50 Finance Act 2000* which inserts a new *Section 475A* into the *TCA 1997*. The relief applies to postgraduate fees paid in respect of full-time and part-time courses in approved colleges in the State and in publicly funded colleges in other EU States. The relief, which will apply for the year of assessment 2000/2001 onwards, will be at the standard rate of tax for fees paid for the relevant academic year. The academic year commences on 1 August in the tax year e.g. for 2000/2001 the academic year commences on 1 August 2000.

The level of fees qualifying for the relief will be determined by the Minister for Education and Science.

Scope of the Relief

To qualify for the relief the postgraduate course must be an **approved course**. An approved course is a postgraduate course leading to a postgraduate award based

on thesis or examination in either:

An **approved college** where the course:

- t is of one to four years duration
- t requires that the individual has a primary degree or equivalent qualification
- t is approved by the Minister for Education and Science

or

A **qualifying college** where the course:

- t is of one to four years duration
- t requires that the individual has a primary degree or equivalent qualification.

Approved College

An approved college is a college or institution in the State which the Minister for Education and Science approves for the purposes of the section. A list of such approved colleges and courses will be forwarded to Revenue by the Department each July in respect of the following academic year. Details of these approved colleges and courses will then be available from local tax offices.

Qualifying College

A qualifying college is any university or similar higher level institution in another EU State, including a college which provides distance education in this State, which is maintained or assisted from public funds.

Who can claim the relief?

A claim can be made in respect of an approved course which is undertaken by the individual or his or her dependant i.e. a spouse or child of the individual or a person in respect of whom the individual is or was a legal guardian.

Procedure to claim the relief

The claim for an academic year can be made when the tuition fees in respect of an approved course have been paid. The amount of the relief cannot exceed the maximum amount which the Minister for Education and Science approves for the purposes of the section. In addition, relief is not available for any part of the fees which are met directly or indirectly by way of grant, scholarship or otherwise.

Additional requirements in respect of an approved course in a qualifying college

In the case of a course in a qualifying college a claim must be accompanied by a written statement from the qualifying college indicating:

- n That the college is a qualifying college i.e. that it is a publicly funded college or institution in an EU Member State
- n The details of the course undertaken by the individual or his or her dependant
- n The duration of the course and
- n The amount of the fees paid. **Z**



REVENUE ON-LINE SERVICE

How to Register

Introduction

ROS is a new service for Revenue customers through which they will be able to, not only file returns, but also access their own (or in the case of practitioners, their clients') personal tax data. It is important, therefore, that we are sure we can recognise them and that they are confident that no one else can access or interfere with their data or transmissions. This security will be provided through a registration process, available from early September, through which customers apply for and receive, on-line, their Digital Certificates. By using this Digital Certificate a customer will be able to access ROS, view his or her personal data, and sign and submit returns

In this article about ROS [previous articles in **Tax Briefing**, Issues 34 (December 1998) and 39 (March 2000)] we describe how customers obtain this Digital Certificate.

Public Key Infrastructure - Description

For our more technically inclined readers we also provide some technical information on Public Key Infrastructure or PKI which is the security involved. Baltimore Technologies, a world leader in the industry has recently been awarded the contract to assist us in delivering and implementing a PKI for ROS.

Although we have tried to keep the technical description as simple as possible, by its nature PKI is quite a complex technology which requires some straying into technical jargon to properly explain it. However, it should be noted that it is not necessary to understand the technology in order to use it. Installation of a Digital Certificate on a PC will happen automatically once an applicant agrees to download it. Establishing a secure link with ROS or signing and submitting a return will take only one to two seconds and will require only the click of a

'mouse' in response to clear directions on the PC screen.

How to Register for ROS

ROS is an internet based service. Since its inception, therefore, Revenue has put security to the top of the ROS agenda to ensure that our customers are confident of the privacy of their information and that what is received by Revenue is what they transmitted. We will have a three step registration process at the end of which our customers will be issued with the Digital Certificate necessary to use ROS. The following sets out the process:

- t Applicants will access the ROS home-page via the Revenue web-site at www.revenue.ie.
- t From the home-page they can click into 'How to become a ROS customer'.
- t On this new page they click on to the first of three steps, 'Apply for a RAN' (ROS Access Number) and they are asked for their VAT and/or PAYE Employer numbers. This is for Phase 1 only; when Phase 2 goes live they can apply using their IT or CT numbers.
- t If the applicant is a practitioner who wishes to use ROS on behalf of clients then he or she will provide the company's Tax Agent Identification Number (TAIN) instead.
- t Applicants then click on 'submit' and the information is sent to ROS which concludes that session.
- t The numbers provided are authenticated and a RAN is sent by land mail to the postal address on the Revenue record associated with the numbers provided. This is to ensure that:
 - n The applicant has input a correct number and
 - n The RAN will only go to the person and address associated with that number, adding another layer of security

- t On receipt of the RAN, applicants again enter the 'How to become a ROS customer' page. This time they apply for a Digital Certificate by clicking on the second step. They are asked to enter the RAN which they have received in the post and 'submit'.

- t The RAN is verified. Revenue notifies the Certification Authority (see below) to issue a Digital Certificate for the applicant. A password is generated at the same time which is sent to the applicant by land mail.

(This item of correspondence will also include a CD ROM. This CD is being issued for the convenience of our customers and it will contain the latest versions and all components of the software that will be required to use ROS easily and securely. The software will also be available from the ROS site but some customers may find it more convenient to load it from a CD.)

- t On receipt of the password, the applicant clicks on the third step to collect the Digital Certificate. When the password is entered and submitted, ROS verifies the password and sends the certificate to the applicant on-line. The certificate will be automatically installed on the applicant's browser after following a few simple instructions.
- t Whenever a ROS customer wants to access ROS to view his or her tax details or to file a return, he or she will identify themselves to ROS with their Digital Certificate and password. The Digital Certificate will also be used in signing a return electronically. The process will only involve clicking the 'mouse' and entering the password.

The registration process is the only part of ROS that will involve paper correspondence from Revenue. It is being done to provide a secure means of identification and the additional

Revenue

layers of security which we believe our customers want before they sign on to ROS. Depending on the postal service, the registration process should take less than five days and, for customers, will involve no more than logging on to their PCs and following each step.

Public Key Infrastructure

In this section of the article we describe the process involved in PKI both from the point of view of the privacy of communications and of the authenticity of the sender and the data sent.

The Functions of PKI

PKI is designed to fulfil the following requirements:

Integrity of data

It is essential that Revenue can be guaranteed that the information transmitted to and from the customer arrives at its destination in an unaltered state i.e. that the information sent is exactly the same as the information received.

Identification and Authentication

Communicating parties using the internet must be able to verify the identities of each other.

Non-repudiation

The sender of a transmission should not be able to deny or repudiate the transmission subsequently. On a paper document a signature generally gives proof of identity and validity to any declaration thereon. The authentication of an electronic transmission for legal purposes will require that it should carry some sort of signature that binds the person making the transmission to what is received at the other end.

Confidentiality or privacy of data

Since personal information is being transmitted over the internet there is fear of unauthorised capture or reading of that information. The confidentiality and privacy of

personal data travelling to and from the customer must be assured.

Terms used in PKI

Registration: Parties who wish to communicate confidentially and securely on the internet identify themselves to a Trusted Third Party known as a Registration Authority. In ROS, Revenue will act as the Registration Authority.

Certification: The Registration Authority satisfies itself as to the identity of the applicant and authorises the Certification Authority (CA) to generate a Digital Certificate and issue it to the applicant. A CA administers and is legally responsible for the authentication of the senders of messages and the issuing of Public and Private Keys to customers.

Digital Certificate: A Digital Certificate uniquely identifies the holder and consists of a 'Key Pair' - a Public Key and a Private Key. These are algorithms which are related mathematically although neither can be derived from the other. Therefore, a customer's Public Key is uniquely equivalent to his or her Private Key.

Public and Private Keys: The Public Key is normally published on an open directory. Hence its name, 'Public Key'. However, in the case of ROS this will not be required, given that the keys will only be used for communications between the user and Revenue.

The Private Key never leaves the possession of the user. If it is lost or compromised, the certificate is revoked, with the precise time of revocation being published in the directory.

Security of Root Key: The Certification Authority uses a 'root key' to generate the key pairs. Because the root key could be used to 'break' the Private Keys, they are held in maximum security facilities with military level physical, personnel and data protection.

Digital Signature: When a sender signs a document digitally, his Private Key algorithm is applied to all the data in the document to produce a 'digest' or mathematical string. This is the 'Digital Signature'.

Encryption: In common with Digital Signature, encryption also operates on a Public Key/Private Key pair system. However, the operation of encryption and decryption operates in a different way to Digital Signature. In the case of Digital Signatures, a customer attaches a Digital Signature using his/her own Private Key. This Digital Signature is then subsequently decoded by the receiver of the message using the customer's Public Key.

Encryption uses the Public and Private Keys in reverse to the way they are used for Digital Signatures. For example, in ROS the customer encrypts their message being sent to Revenue using Revenue's Public Key and sends the message to Revenue. The encrypted message can only be decrypted using the Revenue's Private Key which corresponds to the Revenue Public Key used to encrypt the message by the customer. This ensures the confidentiality of the transmitted message.

How ROS will use PKI

The following example of sending a tax return using ROS will show the steps a customer will take, the automatic processes completed by the ROS system and the follow up action in Revenue.

- Customer accesses ROS, completes a tax return and prepares to transmit it.
- The customer will be asked by the ROS system to attach a Digital Signature.
- The transaction is encrypted by the Revenue Public Key, transmitted to and received by ROS.
- ROS decrypts the transaction using the Revenue Private Key.
- To authenticate the Digital Signature, Revenue retrieves the customer's Public Key from the

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REVENUE ON-LINE SERVICE

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Public Key Directory and decrypts the customer's Digital Signature with that Public Key.

- (f) Revenue will accept the transaction if the Public Key is successful in decrypting the Digital Signature. The customer is notified if the transaction fails at this stage.
- (g) To check the integrity of the transaction contents, Revenue recreates the coded summary that the customer created. Revenue compares the new coded summary with the coded summary in the Digital Signature. If they are identical then the transaction was not altered in any way in transit and the message sent is identical to the message received.
- (h) An acknowledgement that the transaction has been successful is sent electronically back to the customer.
- (i) Revenue then processes the 'return'.

Note: The processes (c) to (h) inclusive are automatic and unseen by ROS customers and will only take 1 - 2 seconds to complete.

Why PKI works

t Integrity

ROS applies the sender's Public Key to the message to produce a comparable digest. If there has been even the most minute change in transit, or the Public Key does not match the Private Key used, the digests will not match. This means that the message/signature i.e. the integrity of the data, has been compromised.

t Identification and Authentication

A Private Key is unique to the person to whom it was issued. The fact that the Public Key matches the Private Key used identifies the sender as the person who purportedly holds the Private Key. It serves the same function as a signature although it is not similar in nature to a hand-written signature.

By means of matching Public and Private Keys a customer authenticates the identity of the ROS server, and has his or her own identity authenticated in turn by ROS. A 'secure session' is then established. Communications are transmitted in encrypted form and information so transmitted can be trusted to arrive privately and unaltered to the specified recipient and no other.

t Non-repudiation

The guaranteed integrity of the data and the uniqueness of the Private Key prevent the sender from subsequently repudiating the data sent.

t Confidentiality or Privacy of Data

Confidentiality is defined as protecting data, either in files on a computer or in transmission between computers, from unauthorised access and disclosure. Confidentiality of data in transit is assured by

cryptography. This is distinct from digital signing, but uses the same principal of the key pair.

Encryption is the process of transforming data into a complex meaningless code which is unintelligible to anyone who does not have the decode 'key'. The data cannot be read without using a decryption process. The strength of the encryption used is described in terms of 'bits' e.g. 40 bit, 56 bit, 128 bit etc. No encryption is unbreakable, however, and these standards are being continuously revised in light of the ability of new powerful computers to break these codes.

The 128 bit encryption standard is currently regarded as providing virtually unbreakable encryption security due to the computing power required to test all permutations in a brute force attack. 128 bit encryption will, therefore, be used in ROS. It improves protection exponentially. When the length of the decryption key is increased by one bit, the amount of effort required to break the code doubles.

Constant security reviews will be an essential feature of ROS (and all sensitive internet applications) to ensure that its security policies keep abreast of current developments.

Summary

ROS PKI will:

- n Identify the ROS server to the customer. When the user signs on to ROS his or her browser will recognise the ROS server's 'identity'. ROS will have its own unique digital identity, or certificate.
- n Identify the customer to the ROS server. The customer's certificate will uniquely identify him/her to the ROS server.
- n Ensure that the data transmitted is not changed en route. Even minute changes to the data transmitted (e.g. the position of a full stop) will produce a different digest, thus showing that the data has been altered. If there is a match, ROS can be confident that the data to which the digest attached is unchanged.
- n Where a document has been digitally signed by the sender and both document and signature are encrypted, all four requirements for ROS data security are met i.e. Integrity, Authentication, Non repudiation and Confidentiality.

It bears repeating that just as most people do not need to know how WINDOWS works to use it, there is no need to understand how PKI operates. All of its processes are unseen and automatic and having examined the issue in detail and, in particular, looked at how internet security is being addressed and developed in other countries, we are satisfied that it will be the means for internet security in the future and that it is the best way to ensure confidentiality of data transmitted to and from ROS. **z**



CAPITAL GAINS TAX

Disposal of Shares

FIFO rules / Bonus and Rights Issues

Introduction

This article considers a number of practical and topical capital gains tax issues which arise in relation to the disposal of shares. It would not be possible to cover all the possible capital gains tax aspects in this article and as such the material is not exhaustive. It is hoped, nonetheless, that readers will find the article of practical benefit.

Calculation of Gain - General

Like any other capital gains tax computation, a chargeable gain on the disposal of company shares is arrived at by deducting the cost of the shares (adjusted for inflation, as appropriate) from the net consideration received for the disposal of the shares.

The calculation is relatively straightforward where a person acquires one block of shares and at a later date, without there having been any changes in the number or type etc. of the shares held, sells all or part of that holding:

Calculation of gain*

Bought 100 Ordinary £1 shares for £2 per share in 1997
Sold 50 Ordinary £1 shares for £3 per share in 1999

Gain is :

Proceeds £150, less cost £100 (50 x £2) = Gain of £50.

* (ignoring indexation, expenses of sale and personal exemption for ease of illustration)

Often, however, there will be increases in the shareholding, either because a person purchases additional shares of the same type or they receive additional shares under bonus or rights issues. There are special capital gains tax rules for these situations.

First In - First Out (or "FIFO" rule)

Where a person holds shares of the same class which have been acquired at different dates, the shares acquired at the earlier time are deemed to be disposed of first. For example:

1995/96 bought	1,000 Ordinary £1 shares in X Ltd. for £1 per share
1997/98 bought	200 Ordinary £1 shares in X Ltd. for £1.50 per share
1998/99 bought	500 Ordinary £1 shares in X Ltd. for £2 per share
1999/00 sold	1,500 Ordinary £1 shares in X Ltd. for £3 per share

Sold 1,500 shares for £4,500 in 1999/2000

Allowable cost - before indexation

FIFO

1,000	@	£1.00	£1,000
200	@	£1.50	£300
<u>300</u>	@	£2.00	£600
1,500			

Remaining shares:

200 £1 Ord. in X Ltd. acquired in 1998/99 costing £2 per share. **See Example 1.**

Disposal of shares within four weeks of acquisition

The FIFO rules are modified in any case where shares of the same class are bought and sold within a period of four weeks. Where shares are sold within four weeks of acquisition the shares sold are identified with the shares acquired within that period. Furthermore, where a loss accrues on the disposal of shares and shares of the same class are acquired within a four week period, the loss is not available for offset against any other gains arising and instead is only available for set off against any gain that might arise on the subsequent disposal of the shares so acquired in the four week period - this provision does not apply where there is a gain on the disposal.

Bonus / Rights Issues

Sometimes the holder of a class of shares will receive additional shares, being either a bonus issue (no additional cost) or a rights issue (for a cost which is usually less than open market value), in respect of their holding. In these situations, despite the fact that the new shares are actually acquired at a later date, **they are deemed to have been acquired at the date the original shares giving rise to the bonus or rights issue were acquired.** Thus, if a person acquired, say, 100 shares in company X Ltd in 1996/97 and in 1998/99 received 50 shares as part of a bonus or rights issue they will be deemed to have held the entire holding of 150 shares from 1996/97.

Furthermore, there is no question of imputing a notional cost or value for the new shares acquired but the actual price paid to acquire the shares under a rights issue is allowed as enhancement expenditure.



CAPITAL GAINS TAX

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Bonus Issue

The effect of the above on a bonus issue is that the original cost is diluted between the original shares and the new shares acquired, for example:

1996/97 acquired	100 Ordinary £ 1 shares in X Ltd. for say £300 (or £3 per share).
1998/99 acquired	50 Ordinary £1 shares in X Ltd. for no cost (bonus issue 1 for 2).

All 150 shares are deemed to have been acquired in 1996/97 for a total cost of £300.

The revised cost per share is £2 (i.e. all 150 shares are deemed to have been acquired in 1996/97 for a total cost of £300 which "dilutes" the allowable cost per share to £2, £300 allowable cost ÷ 150 shares).

See Example 2.

Rights Issue

The treatment for shares acquired under a rights issue is the same as for a bonus issue except that an allowance has to be made for the amount paid to acquire the additional shares. Such payments are treated as enhancement expenditure, so that on the subsequent disposal of any of the shares, part of the cost of the rights issue will be attributed to the shares sold. Thus, using the same figures from the example immediately above, but assuming the additional shares acquired represented a rights issue for which a payment of, say, £150 was made (£3 per share in rights issue) the resulting position would be as follows:

Again, all 150 shares are deemed to have been acquired in 1996/97 for a cost of £300 i.e. cost of £2 per share in 1996/97. They are also deemed to have a further additional cost (enhancement expenditure) of £150 in 1998/99. This enhancement expenditure ('EE') is again divided equally between the total number of shares held (i.e. £150 ÷ 150 shares or £1 per share EE). In simple terms, then, each share is deemed to have been held since 1996/97 and each has an allowable cost of £2 paid in 1996/97 and further enhancement expenditure of £1 paid in 1998/99. *See Example 3.*

Shares of a different class

Occasionally the shares received in a bonus or rights issue will be shares of a different class to the shares held e.g. one new Preference share for every two Ordinary shares held and so on. Where this happens the position is essentially the same as above except that it is necessary to apportion the allowable cost - including enhancement expenditure in the case of rights issues - between the different classes of shares. In the case of quoted shares this apportionment is done on the basis of the first day price of the respective shareholdings after the bonus/rights issue is made (for unquoted shares this apportionment is done by reference to the respective values of the shares at the date of disposal). *See Example 4.*

Example 1 - Liability on shares including FIFO rule

In July 1986 a single individual bought 2,000 ordinary shares in a quoted company at a total cost of £2,000 (i.e. £1.00 per share).

In May 1996 the same person bought a further 3,000 ordinary shares in the same company at a total cost of £4,500 (i.e. £1.50 per share).

In August 1998, 2,500 shares were sold and the proceeds (after expenses of sale) amounted to £5,000.

The individual had no other chargeable gain in the tax year 1998/99.

In May 1999 the remaining 2,500 shares were sold and the proceeds (after expenses of sale) amounted to £6,000.

The individual had no other chargeable gains in the tax year 1999/2000.

Calculation of gain

	1998/1999 £
Proceeds	5,000
Deduct	
2000 shares *	
Cost in 1986/87 adjusted for inflation i.e. £2,000 x 1.352 =	£2,704
500 shares	
Cost in 1996/97 adjusted for inflation i.e. £500 @ £1.50 per share	
£750 x 1.033 =	<u>£775</u>
Chargeable Gain	1,521
Personal exemption	<u>1,000</u>
Taxable	521
Tax due @ 20%	£104.20

* For the purpose of identifying what shares are sold, a "First in - First out" rule applies. This means that the shares acquired in July 1986 are all deemed to have been sold in 1998/99 in this example.

	1999/2000 £
Proceeds	6,000
Deduct	
2,500 shares	
Cost in 1996/97 adjusted for inflation i.e. 2,500 @ £1.50 per share	
£3,750 x 1.050	<u>3,938</u>
Chargeable Gain	2,062
Personal exemption	<u>1,000</u>
Taxable	1,062
Tax due @ 20%	£212.40



Example 2 - Bonus Issue of Shares

An individual has the following share transactions:

January 1985	Purchased 1,000 shares in X Ltd. at £2 each
February 1986	Bonus Issue of 1 for 5
July 1988	Bonus Issue of 2 for 3
October 1990	Purchased further 500 shares in X Ltd. at £4 each
August 1994	Bonus Issue of 1 for 4
May 1999	Sold 2,500 shares for £12,500 (£5 each)

The original shares and bonus shares are treated as the one holding and the original cost is spread over the entire holding.

	January 1985		October 1990	
Shares Purchased	No.	Cost	No.	Cost
	1,000	£2,000	500	£2,000
Bonus Issue Feb. 1986 [1:5]	200	-	-	-
	1,200	£2,000	-	-
Bonus Issue July 1988 [2:3]	800	-	-	-
	2,000	£2,000	500	£2,000
Bonus Issue Aug. 1994 [1:5]	400	-	100	-
	2,400	£2,000	600	£2,000
Disposal 1999/2000 - FIFO rules	2,400	£2,000	100	£334*
Shares retained after disposal (+ remaining cost)	-	-	500	£1,666

Calculation of gain 1999/2000

Sale Proceeds		£12,500
Less		
2,400 shares (all deemed acquired in Jan. '85): £2,000 x 1.525 =	£3,050	
100 shares acquired in Oct. 1990:		
£2,000 x $\frac{100}{600}$		
= £334* x 1.210 =	<u>£404</u>	<u>3,454</u>
Chargeable Gain		9,046
Personal exemption		<u>1,000</u>
Taxable		8,046
Tax Due @ 20%		£1,609.20

Example 3 - Rights Issue of Shares

An individual has the following share transactions:

January 1989	Acquired 100 shares in X Ltd. at £5 per share
February 1993	Rights Issue of 1 for 2 at cost of £4 per share
June 1999	Sold 90 shares at £25 per share

As for bonus shares the original shares and the rights shares are treated as the one holding and the original cost is spread over the entire holding. However, unlike bonus issue the shareholder will pay to take up the additional shares. This outlay is treated as "enhancement expenditure" (EE) and is also spread over the entire holding.

	No.	Original Cost (Jan. '89)	EE (Feb. '93)
Purchase (Jan. 1989)	100	£500	-
Rights Issue; Feb. 1993 [1:2]	50	-	£200
	150	£500	£200
Disposal 1999/2000	90	£300*	£120#
Shares retained after disposal + remaining cost)	60	£200	£80

Calculation of gain 1999/2000

Proceeds			£2,250
Less			
(1) original cost (Jan.1989)	£500	x	$\frac{90}{150}$
	= £300* x 1.303 =		£391
(2) enhancement expenditure (Feb.1993)	£200	x	$\frac{90}{150}$
	= £120# x 1.138 =		£137
			<u>528</u>
Chargeable Gain			£1,722
Personal exemption			<u>1,000</u>
Taxable			722
Tax due @ 20%			£144.40



CAPITAL GAINS TAX

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Example 4 - Rights issue / Shares of a different class

An individual has the following share transactions:

- January 1989 Acquired 1,000 ordinary shares in X Ltd. at £5 per share (X Ltd is a 'quoted' company)
- February 1993 Rights Issue of 1 new Preference for every 2 ordinary held at cost of £4 per share i.e. acquired 500 Preference Shares (market value of the ordinary shares at the time was £20 per share while the market value of the Preference shares was £10 per share)
- June 1999 Sold 400 Preference shares at £15 per share

- n All the shares (Ord. and Pref.) are deemed to have been acquired in Jan. 1989
- n The total allowable cost of the shares is £5,000 (Jan. 1999) + £2,000 enhancement expenditure (Feb. 1993)
- n The allowable cost has to be divided between the Ordinary and Preference shares having regard to the respective values of the shares at the time the new shares were acquired as follows:

Ordinary shares

1,000 shares

Original Cost x $\frac{\text{Market value of Ord. at Feb. '93}}{\text{Market value of Ord. shares + Preference Shares at Feb. '93}}$

i.e. £5,000 x $\frac{£20,000}{£25,000}$ = £4,000

Enhancement Expenditure
£2,000 x $\frac{£20,000}{£25,000}$ = £1,600

Preference shares

500 shares

Original Cost x $\frac{\text{Market value of Pref. at Feb. '93}}{\text{Market value of Ord. + Pref. at Feb. '93}}$

i.e. £5,000 x $\frac{£5,000}{£25,000}$ = **£1,000**

Enhancement Expenditure
£2,000 x $\frac{£5,000}{£25,000}$ = **£400**

Calculation of gain 1999/2000

Proceeds sale of 400 Preference shares £6,000

Less

(1) original cost (Jan. '89)
£1,000 x 400
500

= £800 x 1.303 = £1,043

(2) enhancement
expenditure (Feb. '93)
£400 x 400
500

= £320 x 1.138 = £364

1,407

Chargeable Gain £4,593
Personal exemption 1,000
Taxable 3,593

Tax due @ 20% £718.60

RELEVANT CONTRACTS TAX

New Regulations



New Relevant Contracts Regulations

The Revenue Commissioners have recently made new Regulations governing Relevant Contracts Tax (RCT). The new regulations, known as the Income Tax (Relevant Contracts Tax) Regulations 2000 (S.I. No. 71 of 2000), are effective from 6 April 2000.

RCT Procedures

RCT applies to payments to self-employed subcontractors in the Construction, Meat Processing and Forestry Industries. Principal contractors are obliged to deduct tax at 35% from all payments to subcontractors in these industries unless the principal contractor has received a Relevant Payments Card in respect of a subcontractor. Application for a Relevant Payments Card is made jointly by the principal contractor and the subcontractor to the principal contractor's local Inspector of Taxes. To apply, the subcontractor must hold a current C2 certificate of authorisation.

A principal contractor who deducts tax during a month is obliged to make a return to the Collector-General and remit the tax deducted within 9 days after the end of the income tax month. A principal contractor who has received a monthly return form from the Collector-General is obliged to make a return, whether or not tax has been deducted in the previous month.

Matters covered by the new regulations

As well as consolidating all previous RCT regulations from 1970 onwards and updating those regulations to bring them into line with the *Taxes Consolidation Act 1997*, the new regulations also make a number of significant changes:

- t **Regulation 9** deals with the situation where an individual is nominated to produce a person's C2. The regulations previously allowed for a nominated user of a C2 in the case of a company or partnership. The new regulation allows a C2 holder who is an individual to nominate an employee to produce his or her C2. This will be of assistance to subcontractors who may have to travel long distance to produce their C2 in person to a principal contractor. As an alternative, such subcontractors need not produce their C2 in person where they opt to have all payments made into a nominated bank account and the principal contractor undertakes to make all payments into that account - see **Tax Briefing** Issue 37 (October 1999).
 - t **Regulation 11** provides that the minimum turnover of a subcontractor who is entitled to a C2 which will be valid for 3 years is reduced from £20m to £5m. It is too late at this stage to change C2's issued for 2000/01. Where we become aware that a C2 should be for a period of 3 years, we will amend the C2 and issue a replacement. Existing Relevant Payments Cards will not be affected. If any of your clients consider they are entitled to a three-year C2, they should contact their local Inspector.
 - t **Regulation 13** provides for a new monthly estimate of tax due by a principal contractor in respect of RCT deducted from subcontractors. The new estimate will be raised by the Collector-
- General and will apply where a principal contractor fails to remit tax deducted or fails to make a monthly return to the Collector-General, on form RCT 30, or both. The principal contractor may appeal to the Appeal Commissioners within 30 days of the notice of the estimate or may displace the estimate by making a return for the month and paying the tax due in accordance with that return. Where court proceedings for recovery of tax charged in an estimate have commenced or where the tax charged has been referred to the county sheriff or registrar for collection, the estimate may not be displaced unless the Revenue Commissioners otherwise direct, until the collection action has been completed.
- t **Regulation 14** provides for an annual estimate to be made on principal contractors by the Inspector of Taxes or other nominated officer. The new regulation is similar to the existing regulation 12 but self assessment procedures are now applied to any such estimate. In particular, a principal must make all returns due and pay any tax due in accordance with that return for the period of the estimate before an appeal can be made. The estimate may be amended by the Inspector, in accordance with *Section 955 TCA 1997*. It may be made during a tax year and may also extend to two or more tax years.
 - t **Regulation 15** provides for computer produced estimates in accordance with Regulations 13 or 14. The regulation is similar to *Section 959(2) TCA 1997* which applies in relation to self assessment.
 - t **Regulation 18** deals with the procedures for applying for a Relevant Payments Card. It provides that a principal contractor shall examine a



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t subcontractor's C2 before applying for a Relevant Payments Card and satisfy himself or herself that the person who produces the C2 is the person whose photograph appears on the C2. Both the subcontractor and the principal contractor are obliged to sign the application, in each other's presence.

Where the subcontractor opts to have payments made into a nominated bank account (see above Regulation 9), the subcontractor must insert details of the nominated bank account on the application and sign it. The application is then forwarded to the principal contractor for signature and submission to the tax office.

Where a principal applies for Relevant Payments Cards for subcontractors for whom he or she held a C2 for the previous year -see **Tax Briefing**, Issue 37 (October 1999), the application must include such details as are required by the form or applications RCT 46A.

Note: An application on form 46A may be made only in respect of subcontractors where a contract is ongoing at the end of the preceding tax year. It appears that some principal contractors have been applying for Relevant Payments Cards for all subcontractors who did work for them during the previous year. These applications are incorrect and may be subject to Revenue penalty - see *Section 531(14)(i) TCA 1997*.

t **Regulation 20** extends the time limit for making an annual return of payments to subcontractors (RCT 35) from 10 to 46 days after the end of the tax year.

Further Information

Enquiries regarding the new regulations can made at local tax offices. Copies of the Regulations are available from the Revenue website www.revenue.ie or from the Government Publications Office, Molesworth Street, Dublin 2. The Presentation No. is 8367 and the cost is £3.00. **z**

RESIDENTIAL PROPERTY TAX



Accordingly, the value threshold relating to the Residential Property Tax Clearance Certificate procedure has been increased to £300,000 in accordance with *Section 134 Finance Act 2000*. The new threshold, which relates exclusively to the tax clearance procedure, applies to contracts executed on or after 5 April 2000.

Section 135 Finance Act 2000 provides that where the sale of an estate or interest in residential property is completed after 10 February 2000, the requirement to obtain a Certificate of Clearance will not apply where such estate or interest had been previously acquired after 5 April 1996 by a bona fide purchaser for full consideration in money or money's worth. **z**

Certificate of Clearance

While Residential Property Tax was abolished with effect from 5 April 1997, a Clearance Certificate procedure remains in place in relation to the sale of certain residential properties to assist the Revenue Commissioners to collect outstanding tax.

EMPLOYEES' SUBSISTENCE RATES

Domestic Subsistence Rates effective from 1 January 1999

The schedule of rates based on the current Civil Service Subsistence Rates for absences within the State is set out hereunder:

Class of Allowances	Night Allowances			Day Allowances	
	Normal Rate	Reduced Rate	Detention Rate	10 hours or more	5 hours but less than 10 hours
	£	£	£	£	£
A - Rate	75.57	69.67	37.78	21.43	8.74
B - Rate	67.90	58.08	33.96	21.43	8.74
C - Rate	56.79	46.99	28.43	21.43	8.74
D - Rate	49.13	41.46	24.57	16.18	8.00
E - Rate	40.25	33.37	20.10	16.18	8.00

For details of the rules etc. in relation to the application of these rates refer to **Information Leaflet IT 54, Employees' Subsistence Expenses**. **z**

FRINGE BENEFITS

Tax Treatment



Introduction

The phrase “**fringe benefits**” is normally taken as referring to benefits, which are not in the form of money and which an employee derives from an employment. These are the perquisites and benefits-in-kind which are given to an employee in addition to salary, bonus and commission and which have the effect of increasing the employee’s economic wealth.

This article outlines how these fringe benefits are dealt with under the tax system and the reporting requirements for employers where benefits are provided for their employees. Any reference to employee applies equally to a director.

In particular, the article considers:

- n the **framework of the legislation** that brings benefits within the tax charge, how the legislation evolved over the years and the scope of the tax charge
- n the **categories of benefits** and the valuation rules applying
- n the **exemptions from benefit-in-kind** - an outline of the statutory exemptions
- n **payment of the tax** - the PAYE collection mechanism
- n **employers’ reporting obligations** - the return of fringe benefits on Form P11D

Framework of the legislation

The tax system is one which concentrates on income and to operate successfully it needs to be able to measure that income i.e. money or money’s worth. The tax law sets out the basis of assessment, the persons chargeable and the extent of that tax charge and in the case of fringe benefits it applies valuation rules.

The main Schedule E charging provision in tax law is **section 112 TCA 1997**. It states that income tax under Schedule E applies to every person having or exercising an office or employment of profit and covers all salaries, fees, wages, perquisites or profits whatsoever from an office or employment for the year of assessment. The provision is wide ranging insofar as, in addition to charging the more obvious forms of income like salary, fees and wages it also charges “perquisites or profits whatsoever therefrom”.

Benefits-in-kind were brought into the tax charge over the years through various Finance Acts. Benefit-in-kind legislation is now at **Chapters 3 and 4, Part 5 Taxes Consolidation Act 1997**. The charge to tax on benefits applies to employees with total emoluments including benefits of £1,500 or more for the tax year and to all directors. The benefit-in-kind tax charge on the provision of company cars and preferential loans applies regardless of the level of the employee’s emoluments.

The benefit-in-kind legislation, which was introduced in 1958, charged to tax certain items which either escaped assessment to tax or could not be adequately charged. Up to that point perquisites were chargeable to tax if, say, they were capable of being converted into money by the director or employee i.e. money’s worth, or represented

the discharge of a pecuniary liability by the employer on behalf of the director or employee. The benefit-in-kind legislation charged to tax living and other accommodation, entertainment, domestic or other services, or other benefits or facilities of whatever nature, provided for a director or employee not already caught within the framework of **section 112 TCA 1997**.

Where the employer incurs expense in or in connection with the provision of such benefits and the expense is not otherwise chargeable to income tax as income of the employee or director the charge to tax is under Schedule E on so much of the expense as is not made good to the employer by the employee or director. The benefit-in-kind charge also applies to benefits provided for the spouse, family, servants, dependants or guests of the employee or director.

Further significant changes to benefit-in-kind legislation were made in 1982 in relation to company cars and preferential loans and their valuation for benefit-in-kind purposes. The benefit-in-kind rules for company cars were substantively changed and new benefit-in-kind legislation was introduced for preferential loans. As the various benefits were legislated for over the years they were treated as emoluments and taxed under the Schedule E rules.

What the benefit-in-kind legislation does is regard the benefit as income for tax purposes and it gives a measure or valuation of that income for the purposes of a tax charge.

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TAXATION OF FRINGE BENEFITS

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Categories of Fringe Benefits

The valuation of non-cash benefits for tax purposes varies according to the type of benefit involved. In general,

the amount on which tax is paid as a result of receiving a fringe benefit is the amount it costs the employer to provide it, less any payments made by the employee towards the cost. The benefit is chargeable to tax whether or not the employee wanted the fringe benefit. Certain fringe benefits have special rules for calculating the amount on which tax is paid e.g. company cars, preferential loans and living accommodation.

Benefits can be conveniently placed into three categories.

Discharge of a pecuniary liability of an employee

Where the employer discharges a pecuniary liability of an employee, the amount charged to tax is generally the sum paid out by the employer - see also paragraph titled **Payment of the Tax** on page 26. As mentioned above, these payments have always been taxable as perquisites under the ordinary rules of Schedule E, even before the introduction of benefit-in-kind legislation in 1958.

A typical example of this is an employer who pays the employee's personal bill for, say, medical insurance. If, for example, an employer meets an employee's medical insurance to the extent of £800 that amount is generally charged to tax.

Benefits convertible into cash (or money's worth)

Where an employee gets a benefit which is capable of being turned to pecuniary account **the amount to be charged to tax is the higher of the sum realisable on sale by the employee or the cost incurred by the employer in providing that benefit.** In other words, the taxable value is the higher of the amount it would realise if sold by the employee on the open market

or the expense incurred by the employer in giving the employee the benefit.

Typical examples of this would be, say, supermarket shopping vouchers, television or video etc.

The shopping voucher would display a face value - that face value would normally represent both the amount realisable when the employee presents the voucher at the supermarket checkout and the cost to the employer of providing the voucher. In such a case if the face value of the voucher is £100 [and assuming that this amount also represents the expense incurred by the employer] then that amount is chargeable to tax.

In the case of an employee who is given a television by his/her employer the higher of the two amounts [i.e. amount realisable on sale or expense incurred by employer] is chargeable to tax. Where the employer is a manufacturer of TVs the expense incurred by the employer in providing the employee with a TV would normally be lower than the amount that the TV would realise if sold by the employee on the open market. The higher of the two amounts would then be chargeable to tax.

Benefit not convertible into cash (or money's worth)

Where an employee is provided with a benefit which cannot be converted into money or money's worth **the basis of valuation is the expense incurred by the employer.** These are the "in-house" benefits as distinct from "bought-in" benefits. This would include such benefits as free or subsidised services or facilities. In circumstances where the provision of a benefit is such that it displaces an otherwise fee-paying individual then the income foregone is taken into account as part of the expense incurred by the employer in providing the benefit.

Where an asset which is owned by the employer, such as a house, is provided for the private use of the employee for free or less than full consideration, the benefit-in-kind is calculated on the **annual value of the use of the asset plus the current expenses incurred by the employer in connection with the asset.** Any amounts made good by the employee to the employer are deducted in arriving at the taxable amount.

The benefit-in-kind on private accommodation which is provided rent free or at a reduced rate is calculated as follows:

- n the open market rent of the house [As a general rule of thumb for calculating the market rent a figure of 8% of the current market value of the property is taken. However, if a more accurate figure is available, it will be used.],
plus
- n the annual value of any furnishings / fittings in the house [5% of the cost, when new, of furnishings / fittings is generally taken as their market value.],
plus
- n any incidental expenses (repair, maintenance, insurance etc.) paid by the employer.

Example

An employer provides the use of a house which has an annual market rental value of £12,000. The house is fully furnished and the annual value of the furnishings is £2,000. The employer pays the costs of repairs £500 and gardening £1,000. The employee pays the employer a rent of £5,000 per annum. The taxable benefit-in-kind is:

Market rent	£12,000
plus	
Annual value of furnishings	2,000
plus	
Expenses paid by employer	1,500
	15,500
less	
Rent paid by employee	5,000
Taxable benefit-in-kind	10,500

Revenue

There are also special rules in the case of company cars and preferential loans and the legislation provides a formula for arriving at the taxable value of those benefits.

Company cars: Details of the benefit-in-kind rules in relation to the provision of company cars is outlined in **Tax Briefing**, Issue 34 (June 1997)

Preferential loans: Where an employer provides a loan to an employee at a rate of interest which is lower than the “specified rate”, the difference between the interest paid, if any, and the amount at the specified rate is a benefit-in-kind for tax purposes. The “specified rates” are:

Principal Private Residence loans 4% from 6 April 2000 [previously 6%, 1999/2000]

Other loans 10% from 6 April 1999 [previously 11%]

Example

An employer gives a loan of £70,000, at an interest rate of 2%, which is used in the purchase of the employee’s principal private residence. The benefit-in-kind is:

Interest at the “specified rate” 4%	
= £70,000 x 4% =	£2,800
less interest actually paid by employee	
= £70,000 x 2% =	1,400
Taxable benefit-in-kind 2000/01	1,400

For home loan interest relief purposes, the amount of the BIK is treated as home loan interest paid. Tax relief at the standard rate of tax, 22% for 2000/01, is available on this amount plus the amount of the home loan interest actually paid subject to the general tax relief limits on home loan interest paid. **Information Leaflet**

IT 1 - Allowances, Reliefs and Tax Rates gives details of the current home loan interest paid limits for tax relief.

Vehicles other than cars (e.g. vans, lorries etc.): The benefit-in-kind rules are set out in **Information Leaflet IT 20 - Benefits from Employment**.

Summary of Valuation Rules

Benefit	How Valued
Discharge of a pecuniary liability	Generally the amount paid by employer
Benefit convertible into cash	Amount realisable on sale by employee / director or expense incurred by employer whichever is the higher
Benefit not convertible into cash	Expense incurred by employer. Where the asset is owned by the employer [e.g. house provided rent free]- the annual value of the use of the asset plus current expenses incurred by the employer apply Company cars and preferential loans - special rules apply

The exemptions from Benefit-in-Kind

The vast majority of benefits-in-kind are taxable. The **specific exemptions** provided for in the legislation are:

- n office accommodation, furniture or supplies used by a director or employee in carrying out the duties of the office or employment. In other words facilities used solely for business purposes are tax free e.g. stationery, briefcase etc.
- n living accommodation provided for an employee (but not a director) on the employer’s business premises, if the employee is, for the purpose of enabling him/her properly perform the duties of the employment, required by the terms of his/her employment to reside in the accommodation and either -
 - n the accommodation is provided in accordance with a practice which, since before 30 July 1948, has commonly prevailed in trades of the class in question as respects employees of the class in question, or
 - n it is necessary, in the particular class of trade, for employees of the class in question to live on the premises.
- n meals in a canteen where meals are provided for staff generally - an exclusive executive canteen would not be included. The facility must be available to all employees - otherwise, the exemption does not apply.
- n contributions paid by the employer in or in connection with the provision of a pension, annuity, lump sum, gratuity or other like benefit to be given on the death or retirement of the director or employee.
- n annual or monthly bus or train passes provided by an employer to an employee in respect of scheduled licensed passenger transport services
- n childcare services provided by the employer for a child of a director or employee on premises which are made available:
 - n solely by the employer,
 - n by the employer jointly with other persons and the employer is wholly or partly responsible for financing and managing the provision of the childcare service,
 - n by any other person or persons and the employer is wholly or partly responsible for financing and managing the provision of the servicesubject to certain requirements of the Child Care (Pre-School Services) Regulations 1996.

“Childcare service” means any form of child minding service or supervised activity to care for children whether or not provided on a regular basis.



TAXATION OF FRINGE BENEFITS

Continued from page 25

Where there is **no cost or expense to the employer** in providing the **benefit-in-kind** and assuming that the tax law has not otherwise provided for a taxable value [for example, an annual taxable value in the case of company cars, preferential loans, living accommodation etc.] then there is no taxable amount. The type of benefit-in-kind which would fall into this category would be "in-house" benefits where the marginal cost is nil e.g. the employer, say, a surveyor or solicitor gives free expert advice to an employee on the handling of a contract for the purchase of his/her house. As there is no cost to the employer in giving the advice the taxable amount is nil.

Payment of the Tax

The charge to tax is under the Schedule E income tax rules and the employee or director is ultimately chargeable on the benefits and will get credit for any PAYE tax suffered.

The legislation and the PAYE regulations require the deduction of PAYE on the payment of emoluments. The legislation defines emoluments as anything assessable to income tax under Schedule E. This, in strictness, would include fringe benefits, particularly payments of a pecuniary nature. Employee is defined as any person in receipt of emoluments and employer is any person paying emoluments. Where there is a payment of emoluments to an employee the PAYE tax deduction

system must operate. The term "payment" is wide enough in some contexts to include non-pecuniary payments.

Some benefits are not amenable to PAYE tax deduction because their nature is such that they may not constitute a straightforward payment. These are the pure benefits-in-kind like company cars, preferential loans, living accommodation, facilities and services. These particular benefits-in-kind are taxed by restriction of Tax-Free Allowances or by direct assessment on the employee / director.

Benefits, other than benefits-in-kind, are exposed to PAYE tax deduction and PRSI and Health Contribution charges. The *Employer's Guide to PAYE* at paragraph 23 gives an outline of the items that should be included in "pay". Income tax due on the benefits, other than benefits-in-kind, is normally deducted by the employer at source under PAYE. In practice, Revenue currently accept in certain circumstances that the benefits may be taxed by restriction of Tax-Free Allowances or by direct assessment on the employee. Where, for example, there is salary substitution or vouchers exchangeable for cash or the payment of material amounts of perquisites or benefits or tax planning or avoidance involved Revenue insist on deduction of income tax under PAYE [and PRSI

and Health Contribution charges] on an on-going basis.

Perquisites such as vouchers and the payment of a pecuniary liability of the director or employee are pecuniary or cash-like in nature and, in strictness, are subject to PAYE/PRSI/Health Contributions and should be regrossed at the director's or employee's marginal rate of tax and also for PRSI and Health Contribution charges. However, where the amounts are reasonable the benefits may normally be taxed by restriction of TFA or by direct assessment, as appropriate.

A practice is also in place whereby settlement of the overall liability for employees' fringe benefits may be made by the employer. In such cases the employer must agree the overall liability with the Inspector.

Employers' Reporting Obligations

Employers who are given notice by Revenue on **Form P11D - Return by Employer of benefits, non-cash emoluments** etc., must return details of their employees' / directors' fringe benefits within the time limit mentioned on the form. The **Form P11D** lists the relevant taxable benefits which should be returned.

Forms P11D for 1999/2000 issued at the end of April to about 1,900 employers. The return filing date is 30 June 2000. **Z**



SHARE OPTIONS & OTHER RIGHTS

Tax Treatment

Introduction

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

The charge to income tax is under Schedule E and it applies to any gain arising on the exercise, assignment or release of a right or option (and also on any gain arising on the grant of a "long option or right") by an individual on or after 6 April 1986 as a director of a company or as an employee.

A "long option or right" is an option or right which is capable of being exercised more than 7 years after the grant date.

Any shares or other assets acquired by the exercise of a share option or other right **are chargeable to capital gains tax** on the subsequent disposal of those shares or assets.

This article outlines:

- t the scope of the legislation [section 128 TCA 1997] in relation to share options and other rights
- t the charge to income tax and capital gains tax
- t the information return requirements, and

incorporates the changes introduced by Section 27 Finance Act 2000.

Scope of the legislation

Section 128 Taxes Consolidation Act 1997 applies to any right obtained by a person as a director of a company or as an employee. The section defines "right" as a right to acquire any asset or assets including shares in any company. "Shares" is defined as including stock and securities.

A person is regarded as acquiring a right as a director of a company or as

an employee if, by reason of his/her office or employment, it is granted to him/her or to another person who assigns the right to him/her.

Section 128 applies notwithstanding that the right may be granted either before the director or employee commenced to hold the office or employment or after he/she ceased to hold the office or employment. However, the section does not apply to a right obtained by reason of a foreign office or employment the income from which is taxable on a remittance basis under Section 71(3) on the director / employee.

In effect, the legislation applies to options to acquire shares (i.e. share options) and other rights to acquire shares or assets granted to directors and employees by reason of their office or employment.

Charge to Income Tax

The **charge to income tax** arises for the tax year in which the share option or other right is exercised, assigned or released and also, in the case of "long options or rights" for the tax year in which granted.

Section 27 Finance Act 2000 inserts a new section 128A Taxes Consolidation Act 1997 and makes provision for a taxpayer to elect to defer payment of the income tax payable on the gain arising on the exercise of a share option.

The income tax payable may be deferred until the earlier of the year of assessment:

- n in which the shares acquired by the exercise of the right are disposed of, or
- n which is 7 years after the year of assessment in which the exercise took place.

To qualify for the deferral of tax

- (a) the right to acquire shares must be exercised on or after 6 April 2000 and result in an amount

chargeable under Schedule E, and

- (b) an assessment must be made for that year, and
- (c) the recipient must make an election.

However, it cannot apply if the disposal of the shares takes place in the same year as the right to acquire those shares is exercised.

The election must be made in writing to the Inspector by the normal return filing date i.e. 31 January after the end of the relevant year of assessment.

Where the tax has been deferred, payment is required to be made on the earlier of the following:

- (a) 1 November in the year after the year of assessment in which the shares are disposed of, or
- (b) 1 November in the year after the year of assessment beginning 7 years after the rights to acquire the shares were exercised.

There is also provision in relation to a part disposal of shares and the legislation ensures that if, say, half of the shares so acquired, are disposed of in any year, then only half of the deferred tax payable becomes due for payment. It also envisages events such as rights or bonus issue of stock or stock splits and ensures that by applying a just and reasonable basis for apportionment, that the appropriate amount of tax will be paid, for example:

- n Year 1: 1,000 shares acquired giving rise to a deferred tax payable of £10,000
- n Year 2: 500 shares sold. Income Tax payment of £5,000 is due
- n Year 3: a stock split occurs (2 for 1). The person's holding of shares is now 1,000 (500 x 2)

Continued on page 28



SHARE OPTIONS & OTHER RIGHTS

Continued from page 27

- n Year 4: a further 500 shares sold. Income tax payment of £2,500 is due
- n Year 5: the balance of 500 shares is sold. Income tax payment of £2,500 is due.

Capital Gains Tax is also due in respect of gains arising on the disposal of the shares.

Where there is an election to defer the tax charge and subject to any other similar provision in the Tax Acts, the gain realised is to be regarded as the last part of the person's income. This means that the tax thereon is calculated at the person's marginal rate of tax and that amount of tax is deferred.

The due date for payment of tax which has been deferred will, for the purposes of *section 1080 TCA 1997*, be the date when the tax becomes due and payable. This means that the interest provisions will apply from that date.

The amount of the gain chargeable to income tax is:

Share Options or Rights Exercised

- n Market value of the shares or other assets (the subject of the option or right) at the date of their acquisition
less
- n Aggregate of the value of the consideration given for the shares or other assets and the price (if any) paid for the grant of the option or right

Share options or rights assigned or released

- n Consideration received for assignment or release
less
- n Price (if any) paid for grant of the option or right

Long Options or Rights

Where the exercising of a share option or right can be delayed for

more than seven years a tax charge arises also for the tax year in which granted. The amount chargeable is:

- n Market value of the shares or other rights (the subject of the option or right) at the date the option or right is granted
less
- n Option price (if any) at which the shares or other assets may be acquired on the exercise of the option or right. [If the option price is variable the lowest possible option price is taken.]

In addition, tax is charged when the share option or right is exercised, assigned or released.

Any tax chargeable on the grant can be deducted from any tax subsequently chargeable on the exercise, assignment or release of the option or right.

Section 27 FA 2000 puts beyond doubt that persons in receipt of share options are chargeable to tax under self-assessment in respect of the gain arising to them from share options - except where the amount of the gain is deducted in determining the amount of the person's Tax-Free Allowances for that year, or the person has been exempted from the requirement to make a return by reason of a notice given under *section 951(6) TCA 1997*.

Charge to Capital Gains Tax

An individual who acquires any shares or other assets by the exercise of a share option or other right is chargeable to capital gains tax on any chargeable gain realised on the subsequent disposal of those shares or assets.

The acquisition cost of the shares or other assets for capital gains tax purposes is:

- t The actual price paid for the shares or other assets on the exercise of the option, **plus**

- t the price (if any) paid for the grant of the option, **plus**
- t the amount charged to income tax under Schedule E in respect of the exercise of the option.

Indexation is available, subject to the normal rules, by reference to the date the expenditure is incurred. In the case of any amount charged to income tax under Schedule E that date may be taken to be the date the tax is paid.

Information Returns

Section 128 requires that persons must provide particulars to Revenue in respect of:

- n share options and other rights granted, assigned or released, and
- n shares allotted and assets transferred in pursuance of a share option or other right to acquire shares or assets.

Self assessment principles apply to the making of a return. **Form SO2 - Share Options and Other Rights** is the form provided for the return of particulars under *section 128*. **Section 27 Finance Act 2000** has amended the deadline for the making of such returns to 30 June after the end of the year of assessment in which the grant, assignment etc. took place.

Section 27 Finance Act 2000 provides that returns will also be required from the Irish employer where the share options are granted by a non-resident company.

Forms SO2 - 1999/2000 issued at the end of April 2000 to about 1,900 employers for completion.

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

Copies of the form [IR£ and euro versions] are available on request from local tax offices. **Z**

PROFIT SHARING SCHEMES

APSS & ESOT



Approved Profit Sharing Schemes (APSSs) and Employee Share Ownership Trusts (ESOTs)

Shares held as Security for Borrowings

Under the current APSS legislation there is a limit on the value of shares which can be appropriated tax-free to an eligible employee in any one year. The normal limit is £10,000 but in certain circumstances, and subject to certain conditions, this limit can be increased to a once off £30,000. This £30,000 limit was provided for in *Finance Act 1999* and is intended to cover the situation where shares have to be held for a long period in an ESOT because they are required as security for borrowings and are not consequently available for appropriation to employees until the borrowings have been paid off. One of the necessary conditions is that at least 50% of the shares must have been held in the ESOT and used as security for borrowings by the ESOT for minimum period of at least 5 years from the time the ESOT was established.

Section 24 Finance Act 2000 amends *Section 515 TCA 1997* to provide that the Minister for Finance may, by order, and with the prior approval of the Dáil, reduce the minimum period of 5 years.

Company Takeovers

Section 25 Finance Act 2000 amends *Schedule 11 to the TCA 1997*, by the insertion of a new *paragraph 13A*.

This new paragraph makes provision for an individual who has already had an appropriation of shares under the terms of an Approved Profit Sharing Scheme (APSS) from his or her employer company ("first company") in a particular year, to avail of another appropriation under the terms of a second company's APSS in the same year, where the "first company" has been taken over by the second company. This will only be allowed in the year of take-over, and will be subject to the existing annual limits of £10,000/£30,000 applying to the aggregate value of the shares appropriated under both schemes.

This new treatment will apply to an appropriation of shares made on or after 23 March 2000, by the trustees of an approved scheme.

Terms and Conditions for approved ESOTs

A former employee of a company may continue to be a beneficiary of an ESOT established by the company if he or she was an employee of the company at any time in the 5 year period after the ESOT was established, and at all times in that period a minimum of 50% of the shares in the ESOT were held as security for borrowings by the ESOT.

Section 26 Finance Act 2000 amends *Schedule 12 of the TCA 1997* to provide that the Minister for Finance, may by order, and with the prior approval of the Dáil, prescribe a shorter period of encumbrance.

Savings-Related Share Option Schemes

Section 51 Finance Act 2000 makes two changes to the Savings-Related Share Option Scheme provisions in *Sections 519A, 519B and Schedule 12A to the TCA 1997*.

It provides that where a company uses a dedicated trust or subsidiary company ("relevant body") as part of a Savings-Related Share Option Scheme, to hold "scheme shares" that trust or company will not be liable to Capital Gains Tax (CGT) on the transfer 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 will be the price actually paid by them.

The company will not be entitled to a corporation tax deduction in respect of any expenses incurred by it in enabling the "relevant body" to acquire the scheme shares.

The second change relaxes the "pensionable age" rules of the Savings-Related Share Option Scheme. At present the legislation generally requires that an employee must save for a minimum period of 3 years before exercising options granted to him/her under the scheme. However, provision is made to allow the early exercise of share options granted under the scheme, where the employee reaches "pensionable age" (which currently stands at 66) even though he or she may not have saved for the minimum period of 3 years.

Section 51 changes the "pensionable age" from 66 to any age between 60 and 66, which must be specified by the company in the rules of the Savings-Related Share Option Scheme. **Z**



VALUE-ADDED TAX

VAT / VRT



VAT AND VRT

Sale of a new vehicle by one dealer to another for immediate supply to an identified final customer

Introduction

In the case of a supply of a new (unregistered) motor vehicle, VAT is chargeable on the net price before the addition of any amount due for VRT (Vehicle Registration Tax). Subsequent supplies of the vehicle are liable to VAT on the full selling price inclusive of VRT.

This article sets out the VAT and VRT treatment which applies in the case of a dealer selling a new vehicle to another dealer for immediate supply to a customer.

Nature of Transaction

A customer orders a new vehicle from one dealer (the second dealer) who purchases the vehicle from another dealer (the first dealer). The first dealer will register the car for VRT purposes in the name of the customer and will then sell it to the second dealer who will supply it to the customer.

VAT and VRT Treatment

Heretofore, while the sale from the first dealer to the second dealer was liable to VAT on the VRT exclusive price (because it was the first sale), the sale by the second dealer to the final customer was treated as liable to VAT on the **VRT inclusive price**. (This was because it was the second or a subsequent sale of the vehicle).

This treatment has been reviewed by Revenue and in the context of *Article 11A(3)(c) of the Sixth VAT Directive* it has been decided to regard the VRT paid by the customer to the second dealer as a repayment for expenses paid by the second dealer on behalf of that customer. In the circumstances the second dealer can be allowed to account for VAT on the sale price by him/her less the VRT when the vehicle in question is supplied by him/her to that customer.

Conditions

The conditions for the operation of this treatment are as follows:

- n The transactions must be at arms length between the dealers
- n The two dealers involved must be dealers in different marques or one dealer must have no marque
- n The vehicle involved must be new and unused or used outside the state and not yet registered for VRT in the State
- n The sales by the first dealer to the second dealer and by the second dealer to the customer must take place simultaneously

- n The vehicle must be registered in the name of the final customer at the time of the supply by the first dealer to the second dealer
- n The invoice issued by the first dealer to the second dealer must show:
 - (i) the date of registration of the vehicle
 - (ii) the name and address of the customer in whose name the vehicle was registered
 - (iii) the amount of VRT collected and paid on behalf of the final customer
- n The document / invoice issued by the second dealer to the retail customer must show:
 - (i) the date of registration of the vehicle
 - (ii) the registration number of the vehicle
 - (iii) a cross reference to the original invoice received from the first dealer for the purchase of the vehicle.

It should be noted that this treatment may only be applied to the specific type of transaction outlined above. The sale of vehicles which are registered for any other purposes (e.g. demonstration models, vehicles taken out of stock and registered for commercial purposes, etc.) are and will continue to be liable to VAT on the full VRT inclusive selling price.

The treatment is applicable to all similar transactions entered into since VRT was introduced on 1 January 1993. **Z**



VALUE-ADDED TAX

Section 4A Applications

Applications under Section 4A VAT Act 1972

Section 4A of the VAT Act 1972 provides that, where a letting of property is considered to be a taxable supply of goods and the lessee is entitled to a full input credit deduction in respect of the VAT chargeable on the supply, then no VAT is chargeable by the lessor and the lessee is the person responsible for accounting for the VAT due. At the same time the lessee may, of course, claim input credit of a similar amount.

The object of the legislation is to provide a cash flow benefit to both the lessor and the lessee. Application for this treatment to be applied is made on Form VAT 4A.

Authorisation to supply the property without charging VAT is issued to the lessor (copied to the lessee) on Form VAT 4B.

The provisions of Section 4A do not apply to the supply of freehold interests.

The relief provided for is subject to the conditions set out in that section and **both the lessor and the lessee must agree** to the operation of the provisions and sign declarations on Form VAT 4A to that effect.

Inspectors have been encountering some problems with applications under *Section 4A*, and particularly with applications:

- n Being submitted late i.e. after the supply of property has been made
- n Being received where no VAT charge arises on the supply of the property
- n Where incorrect methods have been used to arrive at the capitalised value of the interest

- n Where the provisions cannot apply because the lessee is not entitled to a full input credit deduction.

Lessors and lessees of taxable property and their advisers must submit **proper and timely applications** under *Section 4A* to ensure that all of the requirements of the legislation are met. In relation to the specific problem area set out above the following should be noted.

Date of application

Revenue regard the supply of the property as being made on the date the property is occupied or the date the lease is signed **whichever is the earlier**. The legislation requires that both the lessor and the lessee agree to the application of the provisions and that they both sign declarations to that effect. Accordingly, it is important that any application under *Section 4A* be made well in advance of the supply of the property. If a lessee is taking up occupation of a property with a clear intention of signing a lease for a period in excess of ten years then application should be made before the date of occupation. If a lease is signed prior to occupation then application should be made before the lease is signed.

Is the supply of the property subject to VAT?

There are several conditions which must be met before a supply of property is subject to VAT. These conditions are set out in the leaflet **VAT Property Transactions Leaflet No. 2**.

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

How is the leasehold interest valued for VAT purposes?

There are three methods of valuing the supply of a leasehold interest and these methods are also set out in the above leaflet.

Is full deductibility due?

For full deductibility to apply the whole property must be used for taxable activities. **In cases of partial deductibility Section 4A is not applicable.**

If persons are in doubt as regards any of the above they should contact their local tax office.

The 1997 Finance Act changes

The *Section 4A* mechanism has no application in the case of assignments or surrenders of leases that are governed by the changes introduced for such transactions by the *1997 Finance Act*. In such cases the tax due will normally be accounted for on a reverse charge basis and the landlord or assignee will, normally, be able to take an immediate input credit for the tax charged.

However, the mechanism could have application where, following the surrender of an existing lease, the landlord grants a new lease and the transaction falls to be treated in accordance with the 1997 provisions.

These changes are outlined in the booklet, *VAT on Property, Finance Act 1997 Changes - A Revenue Guide*. Copies of this booklet are also available from the *Revenue Forms & Leaflets Service* at 01 - 878 0100 or from local tax offices.

Important

If the *Section 4A* mechanism is not in place prior to the supply of a taxable property the transaction will be treated as liable to VAT. **Z**



CAPITAL TAXES

Stamp Duty & CAT

Features of Finance Act 2000 introduced at Committee Stage

Stamp Duty

Young Trained Farmers

In addition to extending the stamp duty relief on transfers of land to young trained farmers for a further 3 years until 31 December 2002, *Section 126 Finance Act 2000* has increased the extent of the relief from two thirds to 100% of the duty otherwise payable.

Instruments of transfer will still require adjudication but will be stamped exempt where the conditions of the relief are met. Both the extension of the term and the increase in the extent of the relief to 100% of the duty otherwise payable apply to instruments executed on or after 1 January 2000.

Collective Investment Undertakings

To facilitate the reorganisation of domestic collective funds, such as unit trusts, arising from the new tax regime for collective funds, the transfer of assets by a domestic collective fund to another such fund in exchange for the issue by that other fund of units has been exempted from stamp duty by *Section 130 Finance Act 2000*. The exemption applies where the transfer of the assets effects a disposal not chargeable to capital gains tax under *Section 739A TCA 1997* (as inserted by *Section 57 Finance Act 2000*). The stamp duty exemption applies to instruments executed on or after 23 March 2000.

Capital Acquisitions Tax Residence Rules

Section 137 Finance Act 2000, provides that a person will be resident in the State on a particular date if he or she is resident in the State for the tax year in which that date falls. Following a Committee Stage amendment the section provides that it will not be necessary to await the end of a tax year before being able to decide whether or not a person is resident in the State on a particular date within that tax year.

Inheritance Tax/Residence

Section 139 Finance Act 2000 provides that a charge to inheritance tax will arise in respect of foreign assets where either the donor or the beneficiary is resident or ordinarily resident in the State at the relevant date. The section, as amended at Committee Stage, now ensures that foreign assets will only be subject to discretionary trust tax or to probate tax where the deceased person concerned was resident or ordinarily resident in the State at his or her date of death (or, in the case of a discretionary trust created in the lifetime of the deceased, at the date the property entered the trust).

In other words, the amended section ensures that a charge to either tax will not arise solely on the basis of the residence of a trust - which has no legal personality in its own right.

Dwelling-House Exemption

The clawback provision in *Section 151 Finance Act 2000* provides that a person who takes a gift or inheritance of a house must continue to own and occupy it for a period of 6 years after the date of the gift or inheritance or lose the exemption (except in certain prescribed circumstances).

As amended at Committee Stage, the clawback provision now enables a beneficiary to sell the house and reinvest the proceeds in a replacement house without losing the exemption - on condition that he or she continuously owns and occupies both houses for a total of 6 out of the 7 years after the date of the gift or inheritance. In such circumstances, the clawback will be limited to any proceeds of the sale not invested in the replacement house.

Treatment of Orphaned Minor Children

Section 58 Capital Acquisitions Tax Act 1976 exempts from the tax reasonable expenditure by parents during their lifetime towards the support, maintenance and education of their children. *Section 152 Finance Act 2000* extends the exemption to include reasonable contributions from a trust holding the property of deceased parents towards the support, maintenance and education of their orphaned, minor children. The exemption contained in *Section 152* applies to gifts or inheritances taken on or after 23 March 2000. **z**



TOPICAL QUESTIONS

Schedule D

How is an Irish resident individual assessed to tax in respect of dividends paid by a UK company?

With effect from 6 April 1999 an Irish resident taxpayer in receipt of dividends from a UK company is liable to Irish tax under Case III Schedule D on the actual amount of the dividend received. While the dividend certificate may contain a reference to a UK tax credit, this reference has no relevance for Irish tax purposes.

Up until the Ireland-United Kingdom Double Taxation Convention was amended at the end of 1998, there were provisions in the Convention which allowed residents of each country a credit for part of the tax paid by the company in the other country paying the dividends (known as a repayable tax credit). This reflected the position in tax laws of each country of allowing recipients of dividends a credit in respect of part of the tax paid by the company on the profits out of which the dividends were paid.

However, following the abolition of tax credits in Ireland in 1999, and a significant reduction in the amount of the credit in the UK (the effect of which was to largely eliminate repayable credits in the case of non-UK residents in receipt of UK dividends), the Double Taxation Convention was amended to take account of these developments. Accordingly, there are no longer any reciprocal provisions which allow for repayable tax credits.

Schedule E

Minimum Notice and Terms of Employment Act 1973 to 1991 - what is the taxation treatment of sums paid under this Act?

Normal Pay/Sick Pay/Holiday Pay

Tax should be deducted by the employer under PAYE in the normal way.

Payment in lieu of notice

This income is chargeable to tax but qualifies for the £8,000 (plus £600 for each complete year of service) exemption (and the additional exemption and reliefs, where they apply) provided for in *Section 201 and Schedule 3 TCA 1997*. However, where the contract of employment provides for a payment of this kind on termination of the contract, whatever the circumstances, such payment is chargeable to income tax in the normal way without the benefit of the exemption and reliefs mentioned above.

Awards made by the Employment Appeals Tribunal - what is the tax treatment of awards made?

In general, awards made by the Employment Appeals Tribunal will have tax implications because the payments will normally be connected with the employment. It will depend on what the award covers as to the amount taxable. If it covers, say, a reimbursement of arrears of pay, holiday pay or sick pay it is taxable in full in the normal way. If it covers, say, a payment for breach of contract of service or compensation for loss of employment under the *Unfair Dismissals Act 1977 to 1993* the £8,000 (plus £600 for each complete year of service) exemption (and the additional exemption and reliefs, where they apply) provided for in *section 201 and schedule 3 TCA 1997* will generally apply.

Capital Gains Tax

What are the rates of Capital Gains Tax for 1999/2000

The capital gains tax rates are 20% and 40%. The 20% rate applies to gains on disposals made on or after 6 April 1999 except for:

- t disposals of development land in the period to 30/11/99 - 40%*
- t disposals of foreign life assurance policies - 40%
- t disposals of units in certain offshore funds - 40%

*The 20% rate applies to gains on disposals of development land (other than disposals to connected persons) (a) which is zoned for use solely or primarily for residential purposes in the development plan of the planning authority for the area in which the land is located or (b) with planning permission for residential development or (c) disposed of to a Housing Authority, the National Building Agency or voluntary housing bodies, in certain circumstances. All disposals of development land on or after 1 December 1999 are at the 20% rate.

Year in which Expenditure Incurred - Indexation Factor for disposals in 1999/2000.

74/75	75/76	76/77	77/78	78/79	79/80
6.313	5.099	4.393	3.766	3.479	3.139
80/81	81/82	82/83	83/84	84/85	85/86
2.718	2.246	1.890	1.680	1.525	1.436
86/87	87/88	88/89	89/90	90/91	91/92
1.373	1.328	1.303	1.261	1.210	1.179
92/93	93/94	94/95	95/96	96/97	97/98
1.138	1.117	1.098	1.071	1.050	1.033
98/99					
1.016					

No indexation relief is allowed for expenditure incurred within one year of a disposal. There are restrictions on the availability of relief in development land cases.

Personal Exemption = £1,000 per person. The exemption is not transferable between spouses.

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TOPICAL QUESTIONS

Continued from page 33

Stamp Duty

Conveyance or transfer on sale of shares - what is the stamp duty position?

Where shares in a company are being transferred, duty is payable at the rate of 1% on the consideration paid. There is no exemption threshold and the duty is rounded up to the nearest pound.

Example

An individual purchases 1,000 shares in ABC Ltd, for £4,480. The duty payable on the transfer is £45 which is calculated as follows:

£4,480 at 1% = £44.80

Rounded up = £45

Mortgage - what stamp duty is chargeable?

Where a mortgage is taken out to purchase a property, stamp duty is

chargeable on the mortgage deed as follows:

- n Where the amount of the mortgage does not exceed £20,000 no stamp duty is chargeable.
- n Where the amount of the mortgage exceeds £20,000 stamp duty is chargeable at the rate of 0.1% rounded up to the nearest pound. The maximum duty chargeable is £500.
- n Where a lending institution requires a borrower to provide secondary security for a mortgage e.g. the assignment of a life policy to the lender, such assignments attract a flat rate of duty of £10 each where the amount of the mortgage exceeds £20,000.

Is there stamp duty on gifts of property?

Yes. Where the property is transferred as a gift or for less than its full value, duty is charged on the

market value of the property. This is the price that the property would make if sold on the open market. In the case of land and buildings the rates of duty are the same as those that apply to conveyances or transfers on sale. In the case of shares the rate of duty is 1%.

When must stamp duty be paid?

Stamp duty must be paid not later than 30 days after the date of first execution of the deed. This means the date on which the deed takes effect and is normally the date on the deed.

Does stamp duty apply on a transfer of property between spouses?

No. A transfer of any property between spouses is exempt from stamp duty and there is no need to submit these transfers to the Stamp Duty Office for "exempt" stamping. **z**

SUPREME COURT DECISION

Summary

Whether certain disbursements constitute management expenses

Case: Hibernian Insurance Company Ltd - Appellant v MacUimis (Inspector of Taxes) - Respondent

Decision made by: The Supreme Court

Decision Date: 20 January 2000

Relevant Legislation: Section 15 Corporation Tax Act 1976 (now Section 83 Taxes Consolidation Act 1997)

Summary:

Hibernian Group Plc. (the Group) was incorporated on 7 April 1986 with the object of facilitating the expansion of life and general insurance business carried on through subsidiary companies. The business of the Group consisted wholly or mainly in the making of investments and the principal part of its income was derived from the making of such investments. That business required the maintenance and evaluation of the existing investments of the Group and the evaluation of potential investment opportunities.

In the accounting period to 31 December 1990 the Group claimed a deduction for expenditure incurred in exploring and evaluating the possible acquisition of certain insurance companies. The expenditure was largely in respect of advice from investment bankers and leading accountants as well as legal advice. In the event only one of the companies concerned was ultimately acquired by the Group.

The Supreme Court decided that the expenditure incurred in procuring the expert and specific evaluation of all the investment opportunities did not constitute management expenses.

This summary is for reference only and readers are recommended to read the full text of the judgment. **z**



REVENUE NEWS

Updated Leaflets

Leaflet IT 57 - Relief for Investment in Films - May 2000

The following leaflets are being updated and will be available by July 2000:

Leaflet IT 4 - Understanding PAYE Tax Tables

Leaflet IT 7 - Covenants to Individuals

Leaflet IT 8 - Tax Exemption & Marginal Relief

Leaflet IT 10 - Guide to Self Assessment for the Self-Employed

Leaflet IT 52 - Taxation Treatment of Finance Leases

Leaflet IT 60 - Home Loan Interest Relief

Approved Hospitals and Nursing Homes

An updated list is now available on the Revenue Website at www.revenue.ie or from your local tax office. **Z**

ROS Schedule

The development of ROS is progressing on schedule. Baltimore Technologies, recently awarded the contract to provide internet and identification security for ROS (see the article on how to register for ROS in this issue), now have a team based in the ROS offices in

Blackrock where they are working with the ROS team and the team from Andersen Consulting to ensure the security for Phase 1 is ready in September. Readers will be aware that Phase 1 includes the eFiling of VAT 3s, P30s and P45s as well as access to VAT and employer PAYE Statement of Account details.

ROS Consultative Document

The ROS team are putting the finishing touches to a Consultative Document on issues relating to the eFiling of Forms 11 (Income Tax return) and CT1 (Corporation Tax return), accounts information and other information that usually accompanies such manually filed returns. The document will be sent to the various representative bodies but comments and suggestions are also sought from practitioners, customers, software companies and any other interested persons.

The document will be available from the Revenue web-site (www.revenue.ie) by mid-June. Copies may also be requested from the ROS team. Contact Lorraine O'Kane @ 2090410 or eMail lorokane@revenue.ie. **Z**

INVITATION TO PRACTITIONERS

Collector-General's Open / Information Day

Sarsfield House, Limerick

15 September 2000

The Collector-General proposes holding an Open / Information Day for Tax Practitioners in Sarsfield House, Limerick, on 15 September 2000. This will provide practitioners with an opportunity to meet with management and staff and to view, at first hand, the various operations of the Office.

All Tax Practitioners are invited to attend. If you are interested in attending, please e-mail Marcella Ring, Communications Unit, Collector-General's Division, Sarsfield House, at cgcomms@revenue.ie indicating how many from your practice wish to participate and the specific areas of interest from the list below.

- . Tax Clearance,
- . Debt Management,
- . Customer Service,
- . Enforcement,
- . Remittance / Payment Processing.



PERSONAL PUBLIC SERVICE NUMBER

PPS No.

Background

The Revenue and Social Insurance Number (RSI No.) will in future be known as the individual's **Personal Public Service Number (PPS No.)**. The 1998 Social Welfare Act which came into effect on 5 February 1999 provides for the use of the PPS No. The PPS No. replaces the existing RSI No. which has been in use for both tax and social insurance purposes. **Existing numbers will remain unchanged.** The PPS No. has wider use and is now the individual's unique reference number for dealings with Government Departments and Public Service Agencies.

The PPS No. / RSI No. is essential to register for tax and has always been allocated by the Department of Social, Community & Family Affairs. Up to now individuals who did not have an RSI No. applied to the tax office for this number as part of the application for a Tax-Free Allowance certificate or self-employment registration. The tax office located the number from their records or liaised with Registration Section, Department of Social, Community & Family Affairs for individuals who did not hold an RSI No. From 19 June 2000 the **new procedures** in relation to registration will be in place.

New procedures when registering for a PPS No.

From 19 June 2000 applicants who do not hold [and require] a PPS No. must first register with the

Department of Social, Community & Family Affairs by:

- t calling in person to the nearest or most convenient Social Welfare Local Office or Social Welfare Branch Office,
- t completing a PPS No. application form REG 1, and
- t presenting documentary evidence as requested in the application form to verify their identity.

An individual will be notified of his/her PPS No. by the issue of a Social Services Card.

Individuals with existing PPS Nos. / RSI Nos. are not affected by the change.

Irish Nationals should have a PPS No. / RSI No. if they:

- t were born in the State after 1971
- t registered for tax since 1979
- t are / were in receipt of Social Welfare Benefit payment
- t were issued with a Social Services Card.

In the main the category of individuals who do not hold a PPS No. / RSI No. and who must first register with the Department of Social, Community & Family Affairs are:

- t Irish nationals born before 1971 who is / was not registered for tax in the State
- t nationals of another country.

Probate Cases

In order to facilitate the special needs of Probate cases, solicitors or

executors can contact the Department of Social, Community & Family Affairs, Client Identity Services, Registration, Gandon House, Amiens Street, Dublin 1, directly, if required, in exceptional circumstances e.g.

- t a PPS No. is required for a person who is deceased
- t a beneficiary resides outside the State.

Tax Registrations - New entrants to the PAYE / Self Assessment System

Taxpayers should **first** obtain their PPS No. / RSI No. before submitting an application form (Forms 12A, STR, TR1 etc.) to the tax office. While the tax office may be able to trace some PPS Nos. / RSI Nos., forms submitted without this number will lead to delays in processing the application. Those forms will be returned to the applicant where the tax office is unsuccessful in tracing the number.

General

Pending a full changeover to the PPS No. some forms and publications will continue to refer to the RSI No. As supplies of existing forms are reprinted the term "PPS No." will replace the "RSI No."

Leaflet SW 100 "Personal Public Service Number" issued by the Department of Social, Community & Family Affairs gives further information. Supplies of this leaflet are available from that Department, local tax offices and *Revenue Forms & Leaflet Service* at (01) 8780100. **Z**

Please note our E-mail address taxbrief@revenue.ie.

Comments from readers on tax matters are 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.