

TAX BRIEFING

ROS GOES LIVE



Introduction

The Revenue On-Line Service (ROS) goes live on 29 September. Once ROS is on-line Revenue customers and tax practitioners can commence the registration process described in **Tax Briefing** Issue 40 (June 2000). The Revenue Commissioners have made an Order under section 917E Taxes Consolidation Act 1997 to apply the electronic filing legal provisions to the returns to be filed in Phase 1 of ROS.

On-line returns will start to come in in early October and the due date for September P30s - 14 October - will provide the first real test of the ROS system. The P30s together with the VAT3s will be a feature of the November returns - P30s on 14 November and VAT3s on 19 November. P45s can be filed once a digital certificate is in place. Requests for Statements of Account for VAT and PREM (i.e. employer PAYE returns) will also feature in the early days.

It is difficult to anticipate what the initial uptake will be but the development of ROS has been warmly welcomed by all sections of Revenue's customer base and an

active marketing strategy is being pursued to maximise the uptake.

Government Backing

The Government's interest in this development by Revenue reflects its commitment to the concept of eGovernment, the overall objective of which is to provide as many Government services on-line for as many citizens as possible and to minimise the need for citizens to actually visit Government offices. The Government is also anxious to provide the framework which will advertise Ireland internationally as a 'hub for eCommerce'.

Features of ROS

ROS is easily navigable and can be accessed via the Revenue web-site at www.revenue.ie. A number of features of ROS can be explored from the ROS home-page without any requirement to register. These include a section on frequently asked questions about ROS which cover issues as basic as 'what is ROS?' to questions about digital certificates. Another feature includes demonstrations on how to use ROS to file returns. Access to the registration option is also available on the ROS home-page to customers who decide they would like to use the service.

Access control

In many tax practices and in larger businesses staff have different levels of authorisation in relation to certain clients or in relation to filing certain returns. ROS is providing an access control system which will allow the 'administrator' in the firm, (e.g. the

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Revenue



KEY DATES

Sept.

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

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

19 VAT
VAT 3 return and payment for period July/August

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

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

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

Oct.

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

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

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

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

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

Nov.

1 Income Tax
Preliminary Tax

1 Capital Gains Tax
Preliminary Tax

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

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

19 VAT
VAT 3 return and payment for period September/October

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

1-30 Corporation Tax
Returns for APs ending between 1-28 February

1-30 Corporation Tax
Returns of Third Party Information for APs ending between 1-28 February

Revenue

ROS

Continued from page 1

Senior Partner or Financial Controller), provide the appropriate access to staff within the firm. Some may get permission to only view certain details on ROS. Others may be enabled to file VAT returns while yet others may file all returns on behalf of certain clients. A Senior Partner might reserve the ROS filing aspects in respect of certain clients to himself or herself.

The access control system is hosted on ROS but is maintained by the administrator using his or her digital certificate for identification and access.

Not necessary to file returns to use ROS

It is important to note that it is not a requirement of ROS that people who register file returns. ROS is available to Revenue customers who merely want access to their account information - although this is limited in Phase 1 to the Statement of Account for VAT and PREM, as already mentioned.

Direct Debit required to file VAT3 or P30

It is a requirement that intending filers of VAT3s and P30s must complete a ROS Debit Instruction (RDI) giving the details of a bank account from which Revenue can collect the appropriate liability at the due date. The RDI can be completed on-line on the ROS site, digitally signed and submitted to Revenue who will pass the details on to the bank. Alternatively, a paper copy can be run-off, signed and sent to Revenue by land-mail.

We wish to assure ROS customers that:

- † A liability in excess of the amount stated will not be taken from the account
- † The liability will not be collected before the due date.



eGovernment

Although ROS is delivering on Revenue's stated strategy of encouraging "electronic filing of returns and other electronic information exchange", (Statement of Strategy 1997-1999), it has become the flagship project in a wider eGovernment programme which it is ultimately intended will enable citizens interact with government agencies quickly and easily over the internet, 24 hours a day. Access will be through a common gateway or portal (the eBroker) where citizens can seek or will be directed to the particular service they require.

Through the strategic planning involved, the application of internet technologies, and the use of digital certificates to identify its customers, ROS is setting standards which can be adapted in delivering this eGovernment agenda.

The broader objective of this agenda is that by Government demonstrating its commitment to new communications technologies, and legal and technological infrastructure, and by embracing these technologies to deliver Government services, the business sector will be encouraged to make more services available on the internet. This will further the ultimate aim of making Ireland an international 'hub for eCommerce'.

Further information on eGovernment can be found at www.irlgov.ie/taoiseach/elreland/intro.htm.

Marketing

Once ROS goes live it will be important to ensure that as many of our potential customers are aware of and know how to use it. We have developed a layered strategy to achieve this.

The first layer involves using our existing resources to contact customers - via **Tax Briefing**, providing presentations and demonstrations for seminars, conferences etc., writing directly to customers, including mail-shots with other correspondence to our customers - VAT3s and P30s - and providing articles for trade and representative bodies magazines.

The second layer is more focused: internet advertising on popular news and business web-sites coinciding with ROS going live; and the use of a mobile classroom which we will have at exhibitions, seminars and conferences in the months following the launch of ROS. This classroom has eight networked PCs on which it will be possible to give customers training in the use of ROS. We hope to make the classroom available countrywide on a pre-arranged basis through representative and business organisations. However, if readers are interested they should contact Computer Gym at 01-2762824 or eMail info@computergym.iol.ie saying they are interested in getting ROS training, the number of people involved and a contact name, phone number or eMail address. The staff at Computer Gym will note their details and make contact when a visit is taking place near the caller's office. Training cannot be guaranteed, however, as the diary is already filling up but we will do our best to facilitate as many people as possible.

The final layer is the traditional newspaper and business magazine advertising. This will commence towards the end of September and run through the period when ROS goes live.



ROS

Continued from page 3

Help-desk - 1890 20 11 06

One of the key elements of the ROS advertising campaign will be to publicise the ROS help-desk. The number of the desk is 1890-201106. Staff at the desk will take calls from late September on any issues pertaining to ROS, such as how to register for ROS, installation of the digital certificate, any difficulties in completing returns on ROS etc. The normal customer service routes in Revenue should continue to be used for queries in relation to tax matters, customer information etc. Only ROS queries can be answered at the ROS help-desk.

Guides

Guides on how to register for ROS and how the access control system works are currently in preparation and should be available in October. Copies of these guides will be mailed to all readers of *Tax Briefing*.

P45 stationery

Since P45s Part 1 can be filed electronically once ROS goes live, it will be necessary to provide new stationery for printing Parts 2, 3 and 4. The new stationery has been designed and the three parts now appear on an A4 size sheet of paper which is available in either cut sheet or continuous stationery formats. They can therefore be printed on most printers for issuing to employees. The new stationery can be ordered from the *Revenue Forms and Leaflets Service* at 01 - 8780100. **z**

COMMENCEMENT ORDERS - SECTIONS 48 & 63 F.A. 2000

Section 48: Film Relief

The Commencement order for *section 48 of the Finance Act 2000* was signed by the Minister for Finance on 14 August 2000 following EU approval and took effect from **20 July 2000**. The section extends the film relief regime in *section 481 TCA 1997* for a further 5 year period, to 5 April 2005. It also increases by 10% the maximum amount of the cost of production of a film which can be met by tax relieved funding.

The EU Commission had also required that certain amendments be made to the film relief scheme. These amendments were also included in *section 48*:

- t by abolishing the special uplift of that funding which was available for winter projects and projects where post-production was carried out in the State
- t by removing the statutory limit to the amount of *section 481* funding which can be raised where the work on production of the film carried on in the State is less than 50%, and
- t by extending the definition of qualifying company (i.e. the company which produces the film) to include a company incorporated or resident outside the State but which is carrying on a trade in the State through a branch or agency.

Section 63: Accelerated Capital Allowances for Childcare Facilities

As indicated in *Tax Briefing*, Issue 39 [March 2000] accelerated capital allowances at the rate of 100% were, **subject to clearance by the EU Commission**, provided for in Finance Bill 2000 in respect of expenditure on certain childcare facilities. The allowances consist of an initial allowance of 100% which is available to owner-occupiers and investors and free depreciation up to 100% which is available to owner-occupiers only. The allowances apply in respect of expenditure incurred on and from 1 December 1999 on the construction, extension or refurbishment of childcare facilities which meet the required standards for such facilities, as provided in the Child Care Act 1991 and the Child Care (Pre-School Services) Regulations, 1996. Expenditure incurred on the conversion of a building to a qualifying childcare facility is also eligible for relief.

EU approval of the accelerated allowances has now been received and a commencement order, which brings the section formally into operation from 21 June 2000, has now been signed by the Minister for Finance. Even though the section came into operation from 21 June 2000 relief will apply in respect of all claims made after that date in respect of expenditure incurred on and from 1 December 1999. **z**



TAX CREDIT SYSTEM

6 April 2001

Introduction

Employers will shortly receive an Information Leaflet which contains information on:

- † The changeover to a tax credit system from 6 April 2001
- † The introduction of a shortened tax "year" from 6 April 2001 to 31 December 2001 in preparation for a calendar tax year
- † The change to a calendar tax year from 1 January 2002.

The purpose of this article is to give an overview of the tax credit system insofar as it relates to the operation of PAYE and to outline the main implications for employees / employers (and their advisors).

For details of the implications of the change to a calendar tax year see separate article on page 7 and 8

Tax Credit System from 6 April 2001

From 6 April 2001 the procedure for calculating tax on an employee's salary will change. **Tax Tables** and **Table Allowances** will no longer be a feature of the PAYE system. The tax credit system will replace the existing tax-free allowance based system. In future, tax will be calculated at the appropriate tax rates on gross pay and the gross tax will be reduced by the tax credits due to arrive at the net tax payable. The new procedure will be as follows:

- n The tax office will, in respect of each employee, notify the employer of the:
 - n standard rate cut-off point
 - n rates of tax, and
 - n tax credits.

The information will be provided on a "Notification of Determination of Tax Credits and Standard Rate Cut-Off Point" (or tax deduction card, tape/diskette, as appropriate). This replaces the existing "Certificate of Tax-Free Allowances"

- n The calculation of tax for each pay period is made by applying the information supplied in the notification against the gross pay (less superannuation) as follows:
 - n Gross pay is taxed at the appropriate tax rate(s) to give gross tax
 - n The standard rate of tax is applied to gross pay up to the standard rate cut-off point for that week or month. Any balance of pay over that amount in that pay period is taxed at the higher rate.
 - n The gross tax is reduced by a tax credit as advised by the tax office to arrive at the net tax payable.

Example 1

The following example illustrates the practical application of the procedure outlined above

A married couple (one spouse earning) have gross earnings of £50,000.

The tax office issues a Notice of Determination of Tax Credits (or tax deduction card, tape/diskette, as appropriate) showing:

Standard rate cut off point £28,000 p.a. = £538.46 p.w.	i.e. based on a standard rate band of £28,000
Standard rate of tax 22%. Higher rate of tax 44%	i.e. based on standard rate of 22% and a higher rate of 44%
Tax credits of £2,288 p.a. = £44 p.w.	i.e. equivalent to weekly Tax-Free Allowances under the current system

The tax calculation for the first week would be as follows:

Gross pay	£961.54		i.e. Gross pay £50,000 /52
Tax on £538.46 @ 22% =		£118.46	i.e. standard rate up to a maximum of the standard rate cut off point as advised by the Tax Office
Tax on £423.08 @ 44%		£186.15	i.e. higher rate on pay in excess of the standard rate cut off point
Total Tax		£304.61	i.e. sum of tax due at standard and higher rates
Less Tax Credit		(£ 44.00)	i.e. tax credit advised by the Tax Office
Tax Due this week		£260.61	i.e. total tax less tax credit.

Tax credits are non-refundable. They are used to reduce tax calculated on the gross pay. Any unused tax credits are not refundable. They are carried forward to subsequent pay periods. However, the cumulative basis of the PAYE system will, of course, continue to apply and any unused tax credits may be carried forward within the tax year.

Coded income and non-standard rated reliefs

Some employees may be liable for tax on non-PAYE income e.g. Benefit-in-Kind which is collected ("coded") through the PAYE system. Some may have deductions e.g. expenses in employment, on which tax relief is due at the higher rate of income tax.

In calculating the tax credit, all the employee's tax reliefs (whether tax credits or deductions) will be allowed at the standard rate of income tax. In this way, employees will get relief by way of tax credits at the standard rate of income tax on all their tax reliefs irrespective of whether they are formal tax credits or deductions from income, which for PAYE operational purposes are converted into tax credits.



TAX CREDIT SYSTEM

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“Coded” income and Standard Rate Cut-Off Point

Where an employee has non-PAYE income or benefits-in-kind (the tax on which is collected under the PAYE system) the amount of the tax credits is reduced by the amount of the non-PAYE income/benefit-in-kind at the standard rate of income tax and the standard rate tax band is reduced by the amount of that income. Example 2 below illustrates this point.

Example 2

An employee has a benefit-in-kind of £2,000. For the purposes of this example the tax rate bands and tax rates are as set out in example 1. The amount of the tax credit is reduced by £2,000 x 22%. The standard rate tax band is also reduced by £2,000 in arriving at the Standard Rate Cut-Off Point.

Non-standard rated reliefs and Standard Rate Cut-Off Point

Where an employee has deductions from income which qualify for tax relief at the higher rate of income tax, the tax credits will be increased by the amount of the relief at the standard rate of income tax and the standard rate tax band will also be increased by the amount of the relief. Example 3 below illustrates this point.

Example 3

A married couple (one spouse earning) have gross income of £50,000 and basic personal and PAYE tax credits of £2,288. For the purposes of this example the standard rate tax band and tax rates are as set out in example 1. Assume there is also qualifying expenditure of £1,000 in respect of expenses of employment (relievable at the higher rate of income tax) - the tax credit is increased by £220 i.e. £1,000 x 22% and the standard rate tax band is

increased by £1,000 in arriving at the Standard Rate Cut-Off Point.

The adjustments required to arrive at the appropriate Standard Rate Cut-Off Point for individual employees will be made by the tax office and incorporated into the Notification of Determination of Tax Credits and Standard Rate Cut-Off Point.

Example 4

This example illustrates the points raised above in relation to “coded” income and non-standard rated reliefs by showing how the tax office will calculate the tax credits and the Standard Rate Cut-Off Point in the circumstances outlined.

- n A married couple (one spouse earning) have gross earnings of £50,000.
- n The employee has a benefit-in-kind of £2,000 the tax on which is collected through the PAYE system.
- n There is qualifying expenditure of £1,000 in respect of expenses of employment (relievable at the higher rate of income tax)
- n For the purposes of this example the tax rate bands and tax rates are as set out in example 1.
- n This example assumes a full 12 month tax year. For the short tax “year” the necessary apportionment will be made by the tax office.

The employee will receive a *Notification of Determination of Tax Credits and Standard Rate Cut-Off Point*.

The employer will receive a less detailed notification (or tax deduction card, tape/diskette, as appropriate) showing the bottom line information.

Calculation of Tax Credits - Example 4

Tax Credits		£
Married	9,400 @ 22%	2,068
PAYE	1,000 @ 22%	220
Total		2,288
Increased by		
Expenses	1,000 @ 22%	220
Reduced by		
Benefit-in-Kind	2000 @ 22%	(440)
Net Tax Credits		2,068
Euro		2,625.82
Weekly		39.77
Euro		50.50
Monthly		172.33
Euro		218.81

Calculation of Standard Rate Cut-Off Point - Example 4

Standard Rate Cut-Off Point	£
Standard Rate Band	28,000
Increased by	
Expenses	1,000
Reduced by	
Benefit-in-Kind	(2,000)
Standard Rate Cut-Off Point	27,000
Euro	34,282.93
Weekly	519.23
Euro	659.29
Monthly	2,250
Euro	2,856.91

Note

The figures used in the examples in this article are for illustration purposes only.



CALENDAR TAX YEAR

Alignment from 2002

Introduction

The Minister for Finance announced on 20 July 2000 that the income tax year is to be aligned with the calendar year. At present the income tax year runs from 6 April to the following 5 April. The move to a calendar tax year is to take effect from 1 January 2002. Thus, the calendar year 2002, that is, the period from 1 January to 31 December 2002, will be the first tax year under the new system. The legislation to give effect to the new system will be contained in the *Finance Bill 2001*.

What does this mean for taxpayers generally?

The first calendar tax year, that is, the year 2002, will be preceded by a short transitional tax "year", running from 6 April to 31 December 2001.

For a normal 12 month tax year a taxpayer would generally pay tax on the basis of 12 months earnings or profits. In the case of a PAYE taxpayer, the tax would be based on his or her earnings for the 12 month tax year. In the case of a self-employed taxpayer, the tax would be based on the profits of his or her trade or profession for a 12 month period of account ending in the tax year. Obviously, where a tax "year" is less than 12 months in length, taxpayers cannot be expected to pay tax on the basis of 12 months earnings or profits. Similarly, the normal annual income tax allowances, credits and bands will have to scaled back to take account of the short tax "year".

Thus, for the short tax "year" a PAYE taxpayer will pay tax on his or her earnings for the period from 6 April to 31 December 2001 only, while a self-employed taxpayer will pay tax on the basis of 74% (270 days/365 days) of the profits from his or her trade or profession for the 12 month period of account ending in the short tax "year". Moreover, income tax allowances, credits and bands for the short tax "year" will be 74% of the normal annual amounts.

Are there specific implications for PAYE taxpayers?

No. PAYE taxpayers will receive their tax credit notifications for the short tax "year" next February/March as normal. Although, the normal annual or 12 month allowances and credits will have been scaled back to 74% of what they would otherwise have been, PAYE taxpayers will still have the same weekly or monthly allowances and credits as would have applied weekly/monthly for a 12 month tax year.

From 1 January 2002 the tax year will run from 1 January to 31 December. PAYE taxpayers can therefore expect to receive their tax credit notifications for the tax year 2002 in December 2001. Furthermore, where tax reductions or increased allowances or credits have been announced in

the Budget, PAYE taxpayers will see the benefits of those reductions and increases reflected in their January pay-packets, rather than having to wait until April.

Self-employed: payment and return filing dates

The move to a calendar tax year will involve changes to the payment and return filing dates which apply under the Self-Assessment system. These changes will start to apply in 2002. Thus, the return filing date for the short tax "year" 2001 will be 30 June 2002, with the balance of tax for that short tax "year" being due by 30 September 2002. Preliminary tax for the tax year 2002 will also be due by 30 September 2002, with the return and balance of tax for that year being due on 30 June 2003 and 30 September 2003, respectively.

A comparison of the existing and the new arrangements is set out in the following Table:

Event	Existing System		New System	
	Date	Interval	Date	Interval
Pay Preliminary Tax	1 November (in year of assessment)	7 Months (from start of year of assessment)	30 Sept. (in year of assessment)	9 Months (from start of year of assessment)
File Return	31 January (in following year of assessment)	10 Months (from end of year of assessment)	30 June (in following year of assessment)	6 Months (from end of year of assessment)
Pay Balance of Tax	30 April (following the return filing date)	13 Months (from end of year of assessment)	30 Sept. (following the return filing date)	9 Months (from end of year of assessment)

Capital Gains Tax

The tax year for capital gains tax purposes is also to be changed to the calendar year with effect from 1 January 2002, to be preceded by a short transitional tax "year" for the period from 6 April to 31 December 2001. For this short transitional "year" taxpayers will be chargeable only in respect of chargeable gains accruing in that period. The normal annual capital gains tax exemption amount will be scaled back to take account of the short tax "year".

Other issues

Appropriate measures will be necessary to deal with the case of those self-employed taxpayers who, because they make up their annual accounts on dates ending in the period from 1 January to 5 April, will not have a 12 month period of account ending in the short tax "year".

In addition, the existing rules which apply in the case of the commencement or cessation of a trade or profession trader will need adjustment where the commencement or cessation years straddle the short transitional income tax "year". The question of credit for professional services



withholding tax and relevant contracts tax paid by taxpayers also requires examination.

Currently, self-employed taxpayers have three options for satisfying their preliminary income tax obligations for a tax year. They can pay an amount equal to 90% of their tax liability for the actual tax year (the 90% rule), or an amount equal to 100% of their liability for the preceding tax year (the 100% rule) or an amount equal to 105% of their liability for the pre-preceding tax year (the 105% rule). Because the introduction of the calendar tax year will involve the operation of a short tax "year", appropriate adjustments will have to be made to the 100% rule and the 105% rule in the early years of the new system.

Various monetary limits which govern access to certain reliefs, or which operate to restrict reliefs in certain cases, will also require examination and possible adjustment.

The specific measures to deal with the above issues, and any other transitional matters which arise, will be contained in the *Finance Bill 2001*. These measures will be covered in detail in future issues of **Tax Briefing**. **Z**

ANTI-SPECULATIVE PROPERTY TAX

Introduction

The *Finance (No. 2) Act 2000* which was enacted on 5 July 2000 includes provision for a new tax called the anti-speculative property tax. The anti-speculative property tax applies, in general, to residential property in the State which is acquired on or after 15 June 2000 and which is not the principal private residence of the new owner.

Residential property is:

- t A building or part of a building used or suitable for use as a dwelling (a mobile home will not be treated as residential property for the purposes of this tax) and
- t Land which the occupier of such a building or part thereof has for his/her own occupation and enjoyment with the said building or part as its garden or grounds of an ornamental nature.

Transitional arrangements

- t Any property to which a person was beneficially entitled on 14 June 2000 is not liable to the tax except in the case of a principal residence which is replaced after 14 June 2000 but retained afterwards as an investment
- t Property purchased before 15 June but not conveyed until on or after that date is only exempt if the contract was evidenced in writing before that date
- t Property built after 14 June 2000 on land to which a person was beneficially entitled on that date will not be liable to the tax.

Exempt residential property (apart from main residence)

As well as the exemption of an individual's principal private residence an exemption from the tax applies where:

- t The property was acquired by the current owner as an inheritance
- t The property was acquired as a gift so long as the donor owned the property prior to 15 June 2000
- t The property is let and the landlord has complied with the registration, rentbooks and standards regulations provided for under the *Housing (Miscellaneous Provisions) Act 1992*
- t The property is held by a charity
- t The property is comprised in a trust established out of public subscriptions for the benefit of one or more permanently incapacitated individuals
- t The property is owned by a spouse but is occupied by the other spouse as his or her only or main residence in circumstances where a decree of divorce or a decree of judicial separation has been granted in respect of the marriage
- t The property is comprised in the trading stock of a trade.
- t The property is:
 - n a building which is intrinsically of significant scientific, historical, architectural or aesthetic interest and to which reasonable access is afforded to the public or which is in use as a tourist accommodation facility (a registered guest house or other accommodation facility listed under Section 9 of the Tourist Traffic Act 1957) for at least 6 months in any calendar year including not less than 4 months in the period commencing on 1 May and ending on 30 September.

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- n a "section 23" type property under various tax incentive schemes. The properties in question are rented residential properties, the expenditure on the construction, conversion or refurbishment of which qualify for a deduction against rental income. Thus rented residential accommodation under the following schemes will be exempt:

1. The Customs House Docks Area Scheme
2. The Temple Bar Area Scheme
3. The 1994 Urban Renewal Scheme
4. The Seaside Resorts Scheme
5. The Islands Scheme
6. The New Urban Renewal Scheme
7. The Rural Renewal Scheme
8. The Scheme of Residential Accommodation for certain students
9. The Rented Residential Accommodation element of the Park and Ride Scheme
10. The Town Renewal Scheme

- n a Bord Fáilte registered holiday cottage or apartment, or other listed self-catering accommodation throughout the country (e.g. listed holiday cottages and listed holiday apartments).

Principal private residence

An individual's principal private residence at any time is the building or part of a building occupied by the individual as his or her only or main residence:

- n During the period of 12 months ending with that time or
- n Where the building was more recently acquired, from the time of acquisition to that time.

An individual is treated as occupying a building as his or her only or main residence even where the terms of a person's employment require that he or she absent themselves from the building so long as both before and after any such period of absence the individual actually occupies the building as his or her only or main residence.

Can an individual have more than one principal private residence?

It is not possible to have more than one main residence. However, where a person is moving from one residence to a second residence, and for a period of up to 6 months owns the two residences, neither residence in that period (if it straddles 6 April) will be liable to tax.

How the tax will operate

Anti-speculative property tax is a self assessment tax which will last for 3 years. Those liable to the tax must make a return and pay the tax on or before:

1 November 2001, in respect of property owned on 6 April 2001

1 November 2002, in respect of property owned on 6 April 2002

1 November 2003, in respect of property owned on 6 April 2003.

The tax due for each of those years is 2% of the market value of all non-exempt residential property owned by the person on the 6th day of April in that year but where the property was acquired and fully paid for before 6 April 2001, the price paid is taken as the market value of the property on that date.

Property abroad

Property abroad is not liable to the tax. The tax only applies to residential property in the State.

Property in the State owned by a person outside the State

Once the property is in the State it makes no difference where its owner resides - the tax still applies.

Who is liable for the tax?

Each person with an ownership interest (excluding a future interest) is liable for the tax to the extent of his or her proportionate interest in the property. In the case of "settled" property the life tenant is liable for the entire tax but can raise the tax out of the property.

What is market value?

The market value of a property is the price which it would be expected to fetch on the open market assuming the sale were arranged to achieve the best possible price for the vendor. No account is taken of any mortgage or other debt charged on the property. The purchase price of a property purchased between 15 June 2000 and 6 April 2001 will be taken to be the market value at 6 April 2001.

Further Information

Further information on the Anti-Speculative Property Tax measures included in the Bill as published can be obtained by telephoning Capital Taxes Division at:

01 - 679 2777

Extensions: 24172 / 24173 / 24281

(See example on page 10)



ANTI-SPECULATIVE PROPERTY TAX

Continued

EXAMPLE

On 14 June 2000 Mary and John jointly own their family home worth £450,000. In February 2001 they jointly purchase a holiday cottage (in need of repair) for £120,000. In September 2001 John buys an apartment in Cork to use on his many overnight business trips to the Cork region. The cost was £250,000.

Assume the following

Holiday Cottage

Market value 6 April 2001	£130,000*
Market value 6 April 2002	£200,000
Market value 6 April 2003	£250,000

Cork Apartment

Market value 6 April 2002	£260,000
Market value 6 April 2003	£300,000

*value for tax is £120,000 as the property was acquired and fully paid for before 6 April 2001.

Anti-Speculative Property Tax Due

Mary		John			
Family Home	Exempt	Family Home	Exempt		
Holiday Cottage		Holiday Cottage		Apartment	
2001	£1,200	2001	£1,200	2001	Nil
2002	£2,000	2002	£2,000	2002	£5,200
2003	£2,500	2003	£2,500	2003	£6,000

The tax due for each year must be paid on or before 1 November in that year. **z**

STAMP DUTY

Residential Property



15 June 2000, for **residential property** are shown for each class of transferee in the table set out below.

Aggregate Consideration	Residential Rates of stamp duty			
	First Time Buyer	Owner Occupier	Transitional	Investor
Does not exceed £5,000	Exempt	Exempt	Exempt	9%
£5,001 to £10,000	Exempt	Exempt	Exempt	9%
£10,001 to £15,000	Exempt	Exempt	Exempt	9%
£15,001 to £25,000	Exempt	Exempt	Exempt	9%
£25,001 to £50,000	Exempt	Exempt	Exempt	9%
£50,001 to £60,000	Exempt	Exempt	Exempt	9%
£60,001 to £100,000	Exempt	Exempt	3%	9%
£100,001 to £150,000	Exempt	3%	4%	9%
£150,001 to £170,000	3%	4%	4%	9%
£170,001 to £200,000	3%	4%	5%	9%
£200,001 to £250,000	3.75%	5%	5%	9%
£250,001 to £300,000	4.5%	6%	7%	9%
£300,001 to £500,000	7.5%	7.5%	7%	9%
Over £500,000	9%	9%	9%	9%

Introduction

The Finance (No. 2) Act 2000, which was enacted on 5 July 2000, introduced, with effect from 15 June 2000, a revised stamp duty regime in respect of new and second-hand residential property. At its core is an investor rate of 9% in conjunction with exempt thresholds and reduced rates for First Time Buyers and other Owner Occupiers. Where the investor rate applies, it applies irrespective of the amount of the consideration.

However, where an instrument to which the investor rate applies is executed solely in pursuance of a contract evidenced in writing before 15 June 2000, and the deed has been executed on or before 31 January 2001, then under a Transitional Arrangement the pre-15 June 2000 rates of stamp duty continue to apply.

The exempt thresholds, reduced rates and transitional arrangement all operate by means of certificates within the instrument of transfer. Details of these are set out in the table below. The effective stamp duty rates as and from

Who is a First Time Buyer ?

A first time buyer is a person, (or where there is more than one buyer, each of such persons):

- ~ who has not on any previous occasion, either individually or jointly, purchased or built on his/her own behalf a house/apartment,
- ~ in Ireland or abroad,
- ~ where the property purchased is occupied by the purchaser, or a person on his behalf, as his/her only or principal place of residence,
- ~ and where no rent is derived from the property for five years after completion of the current purchase.

Revenue

In addition a First Time Buyer includes:

- ~ In the case of the trustees of a trust to which *Section 189A TCA 1997* applies the first house/apartment acquired by the trustees for the benefit of the beneficiary, or where there is more than one, each of the beneficiaries.
- ~ A spouse to a marriage the subject of a decree of judicial separation or a decree of divorce where such spouse had in relation to the former marital home, left that home; not retained an interest in that home; whose separated/former spouse continues to occupy that home which was occupied by both spouses prior to the separation or dissolution of the marriage.

Who is excluded from the definition of First Time Buyer?

- t A company acquiring a house/apartment on or after 27 June 2000
- t A person acquiring a house/apartment on or after 27 June 2000, who had acquired a house/apartment in the past in a fiduciary capacity
- t A person, from again qualifying for the relief in respect of a subsequent purchase or gift of a house/apartment, who had obtained First Time Buyer relief in respect of a gift of:
 - n a house/apartment made on or after 22 June 2000,
 - n a part interest in a house/apartment made on or after 27 June 2000.

Who is an Owner Occupier?

An Owner Occupier is a person who purchases a property which is to be occupied by the purchaser, or a person on his/her behalf, as his/her only or principal place of residence and no rent is derived from the property for a period of 5 years from the date the instrument of transfer is executed.

How does a transferee obtain the benefit of the exemptions, reduced rates, transitional arrangement and what certificates should be endorsed by an Investor?

As mentioned in the introduction above the key to the new rates are the certificates endorsed in the instrument of transfer. The following tables indicate for each type of transferee and transaction the appropriate certificates the wording of which is set out on pages 12 and 13.

What certificates should be endorsed in the deed to indicate that the transferee is a First Time Buyer?

Transaction Type	Certificates
Second-hand house	Nos. 3A/B* + 5 + 6 + 7C + 8A/B*
New House - if conveyance/lease gives effect to a site/building contract(s)	Nos. 2A/B* + 6 + 7A + 8A/B*
New House - if conveyance/lease gives effect to a contract for a completed house	Nos. 4A/B* + 6 + 7A + 8A/B*

*as appropriate

What certificates should be endorsed in the deed to indicate that the transferee is an Owner Occupier?

Transaction Type	Certificates
Second-hand house	Nos. 3A/B* + 5 + 7B + 8A/B*
New House - if conveyance/lease gives effect to a site/building contract(s)	Nos. 2A/B* + 7A + 8A/B*
New House - if conveyance/lease gives effect to a contract for a completed house	Nos. 4A/B* + 7A + 8A/B*

*as appropriate

What certificates should be endorsed in the deed to indicate that the transferee is applying and availing of the Transitional Arrangement?

A Transitional Arrangement deed must be executed on or before 31 January 2001, and in addition to the appropriate certificates, must also contain the following certificate:

"It is hereby certified that this instrument was executed solely in pursuance of a contract evidenced in writing prior to 15 June 2000."

Transaction Type	Certificates
Second-hand house	Nos. 3A/B* + 8A/B*
New House - if conveyance/lease gives effect to a site/building contract(s)	Nos. 2A/B* + 7A + 8A/B*
New House - if conveyance/lease gives effect to a contract for a completed house	Nos. 4A/B* + 7A + 8A/B*

* as appropriate and with transaction certificates 8A/B altered to reflect the pre-15 June 2000 value bands

What certificates should be endorsed in the deed to indicate that the transferee is an Investor?

Transaction Type	Certificates
Second-hand house	Nos. 3A/B* + 8A/B*
New House - if conveyance/lease gives effect to a site/building contract(s)	Nos. 2A/B* + 8A/B*
New House - if conveyance/lease gives effect to a contract for a completed house	Nos. 3A/B* + 8A/B*

*as appropriate

Does the existing exemption for new grant-size houses continue to apply?

Yes. The exemption continues to apply in the case of an Owner Occupier, whether a First Time Buyer or not, regardless of the amount of the purchase price. To obtain this exemption, the conveyance/lease should contain certificate no. 1 shown on page 12 of this article.



STAMP DUTY

Continued

What is the position in relation to larger new houses ?

The existing relief (under which the chargeable consideration is the site value or 25% of the total price of the house) continues to be available for Owner Occupiers, whether a First Time Buyer or not. The new reduced rates for Owner Occupiers and First Time Buyers, as appropriate, will apply to the above chargeable consideration.

Do the reduced rates apply where non-residential property forms part of the transaction ?

Yes. Where the transaction includes a non-residential element together with a single residential element (e.g. a farm with a farm house) the consideration should be apportioned between the residence (including the curtilage up to 1 acre) and the land. The reduced residential rate of stamp duty will apply to the residence in the case of a First Time Purchaser or Owner Occupier and the appropriate non-residential rate will apply to the land.

Can the benefit of the new reduced rates be withdrawn?

Yes. If the house or apartment is let within five years of the date of execution of the instrument of transfer the benefit of the reduced rates will be clawed back.

If an individual inherited a house some years ago does he/she still qualify for the First Time Buyer rate if he/she now acquires another house to be occupied as the individual's only or principal place of residence and no rent is derived from this house?

Yes. The mere fact of inheriting a house would not disqualify a person from the First Time Buyer rate.

If an individual was gifted a house some years ago and intends to buy and move to another house, does he/she qualify for the First Time Buyer Rate?

Yes. The prior gift of a house would not debar you from obtaining the First Time Buyer rate.

Further Information

For further information or for a copy of Revenue's leaflet SD 9A on this subject phone or fax our Stamp Duty Offices at:

Dublin Office: Telephone 01 - 679 2777
Ext. 48552/48180/48093
Fax 01 - 679 3261

Cork Office: Telephone 021 - 968783
Ext. 3105/3109/3141
Fax 021 - 318088 Z

Certificates in Conveyances/Leases - Residential Property

Cert No.	Wording of Certificates (delete as appropriate) Note: Knowingly furnishing an incorrect certificate is a Revenue Offence
1	"It is hereby certified that - (a) this instrument gives effect to the purchase of a dwellinghouse/apartment on the erection of that dwellinghouse/apartment, (b) on the date of execution of this instrument, there exists a valid floor area certificate (within the meaning of section 4(2)(b) of the Housing (Miscellaneous Provisions) Act, 1979) in respect of the said dwellinghouse/ apartment, and (c) the purchaser/one or more of the purchasers/a person or persons in right of the purchaser/a person or persons in right of one or more of the purchasers will occupy the dwellinghouse/apartment as his/her/their only or principal place of residence for the period specified in section 91(2)(b) (new dwellinghouse/apartment with floor area certificate) of the Stamp Duties Consolidation Act, 1999, and that no person will derive any rent or payment in the nature of rent (other than by virtue of a title prior to that of the purchaser) for the use of the dwellinghouse/ apartment or any part of it during that period."
2A	"It is hereby certified that section 29 (conveyance on sale combined with building agreement for dwellinghouse/ apartment) of the Stamp Duties Consolidation Act, 1999, applies to this instrument."
2B	"It is hereby certified that section 53 (lease combined with building agreement for dwellinghouse/apartment) of the Stamp Duties Consolidation Act, 1999, applies to this instrument."
3A	"It is hereby certified that section 29 (conveyance on sale combined with building agreement for dwellinghouse/ apartment) of the Stamp Duties Consolidation Act, 1999, does not apply to this instrument."
3B	"It is hereby certified that section 53 (lease combined with building agreement for dwellinghouse/apartment) of the Stamp Duties Consolidation Act, 1999, does not apply to this instrument."
4A	"It is hereby certified that this instrument gives effect to the purchase of a dwellinghouse/apartment on the erection of that dwellinghouse/apartment and that sections 29 (conveyance on sale combined with building agreement for dwellinghouse/apartment) and 91 (new dwellinghouse/ apartment with floor area certificate) of the Stamp Duties Consolidation Act, 1999, do not apply."
4B	"It is hereby certified that this instrument gives effect to the purchase of a dwellinghouse/apartment on the erection of that dwellinghouse/apartment and that sections 53 (lease combined with building agreement for dwellinghouse/apartment) and 91 (new dwellinghouse/apartment with floor area certificate) of the Stamp Duties Consolidation Act, 1999, do not apply."
5	"It is hereby certified that this instrument gives effect to the purchase of a dwellinghouse/apartment"
6	"It is hereby certified that the purchaser/each of the purchasers is a first time purchaser as defined in section 92B(1) of the Stamp Duties Consolidation Act, 1999."

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Cert No.	Wording of Certificates (delete as appropriate) Note: Knowingly furnishing an incorrect certificate is a Revenue Offence
7A	"It is hereby certified that the purchaser/one or more of the purchasers/a person or persons in right of the purchaser/a person or persons in right of one or more of the purchasers will occupy the dwellinghouse/apartment as his/her/their only or principal place of residence for the period specified in section 92(1)(b)(ii) (new dwellinghouse/apartment with no floor area certificate) of the Stamp Duties Consolidation Act, 1999, and that no person will derive any rent or payment in the nature of rent (other than by virtue of a title prior to that of the purchaser) for the use of the dwellinghouse/apartment or any part of it during that period."
7B	"It is hereby certified that the purchaser/one or more of the purchasers/a person or persons in right of the purchaser/a person or persons in right of one or more of the purchasers will occupy the dwellinghouse/apartment as his/her/their only or principal place of residence for the period specified in section 92A(3)(ii) (residential property owner occupier relief) of the Stamp Duties Consolidation Act, 1999, and that no person will derive any rent or payment in the nature of rent (other than by virtue of a title prior to that of the purchaser) for the use of the dwellinghouse/apartment or any part of it during that period."
7C	"It is hereby certified that the purchaser/one or more of the purchasers/a person or persons in right of the purchaser/a person or persons in right of one or more of the purchasers will occupy the dwellinghouse/apartment as his/her/their only or principal place of residence for the period specified in section 92B(4)(b)(ii) (residential property first time purchaser relief) of the Stamp Duties Consolidation Act, 1999, and that no person will derive any rent or payment in the nature of rent (other than by virtue of a title prior to that of the purchaser) for the use of the dwellinghouse/apartment or any part of it during that period."
8A	"It is hereby certified that the consideration (other than rent) for the sale/lease is wholly attributable to residential property and that the transaction effected by this instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration (other than rent) which is attributable to residential property, or which would be so attributable if the contents of residential property were considered to be residential property, exceeds £100,000/£150,000/£200,000/£250,000/£300,000/£500,000."
8B	"It is hereby certified (a) that the consideration (other than rent) for the sale/lease is partly attributable to residential property, and (b) that the transaction effected by this instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration (other than rent) which is attributable to residential property, or which would be so attributable if the contents of residential property were considered to be residential property, exceeds £100,000/£150,000/£200,000/£250,000/£300,000/ £500,000, and (c) that the transaction effected by this instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration (other than rent) which is attributable to property which is not residential property exceeds £5,000/£10,000/£15,000/£25,000/£50,000/£60,000."

Relevant Contracts Tax (RCT)

Section 18 Finance Act 1999 changed the statutory basis of collection and recovery of RCT from an annual basis to a monthly basis with effect from 6 April 1999 - see **Tax Briefing** Issue 37 [October 1999] for details. The Revenue Commissioners made new regulations to provide for the raising of monthly estimates where a principal contractor fails to make a monthly return (RCT 30) - see **Tax Briefing** Issue 40 [June 2000] for details.

A principal contractor who deducts tax from payments made to subcontractors is obliged to make a monthly return to the Collector-Generals on Form RCT 30 and remit the tax deducted tax during a month within 9 days after the end of the income tax month. A principal contractor if issued with a monthly Form RCT 30 is obliged to make a return, whether or not tax has been deducted. Regulation 13 provides for the Collector-General to issue a monthly estimate of tax due where a principal contractor fails to remit the tax deducted or fails to make the required monthly return to the Collector-General.

The Collector-General's Office are issuing Leaflet CG 10 with the October issue of forms RCT 30 to all principal contractors reminding them of the new regulations and inviting those who are no longer operating as principal contractors to advise their Inspector of Taxes of the change in their circumstances. Former principal contractors should complete the form contained with Leaflet CG10 and return it to their Inspector of Taxes. This will enable the tax offices update the records and avoid the Collector-General's Office issuing unnecessary estimated assessments. **Z**



ACCOUNTING RULES & TAXATION

FRS 12

Interaction of accounting rules and taxation

FRS 12 Provisions, Contingent Liabilities and Contingent Assets

FRS 12 applies as regards accounts for periods ending on or after 23 March 1999. The new standard applies to all financial statements intending to provide a true and fair view, subject to a number of exceptions set out in the FRS. In particular, the FRS does not apply to financial statements covered by more specific requirements in another FRS or a SSAP. This article deals with the interaction of the new FRS with tax computations.

Background note on FRS 12

The objective of FRS 12 is to ensure that appropriate recognition criteria and measurement bases are applied to provisions, contingent liabilities and contingent assets and that sufficient information is disclosed in the notes to the financial statements to enable users to understand their nature, timing and amount.

The Standard replaces SSAP 18, Accounting for Contingencies, and makes a minor amendment to FRS 3, Reporting Financial Performance. It was developed as part of a joint project with the International Accounting Standards Committee, who produced IAS 37 on the same topic.

The Standard attempts to produce a consistent method of accounting for provisions, contingent liabilities and contingent assets while also applying the fundamental accounting concept of prudence to the recognition of contingent liabilities. It does this by requiring that a provision should be recognised only when the following conditions are satisfied:

- t an entity has a present obligation (legal or constructive) as a result of a past event;
- t it is probable that a transfer of economic benefits will be

required to settle the obligation; and

- t a reliable estimate can be made of the amount of the obligation.

A clear distinction is drawn between an intention to incur expenditure and an obligation to do so. The mere intention to incur expenditure is not sufficient to justify the making of a provision.

In a number of situations where, in the past, provisions were made on the basis of potential or even probable future losses, such provisions must now be written back. Unless the entity can clearly prove that an obligation exists, such provisions are in contravention of FRS 12. This change may entail a change in accounting policy [e.g. where no provision was previously required but one is required under FRS 12 or vice versa] or a change in an accounting estimate [i.e. where the amount of a provision requires to be recalculated].

General rule as regards provisions

Apart from *Section 81(2)(i) TCA 1997* which deals with the allowance for doubtful debts, the Tax Acts are silent as regards the question of provisions. Accordingly, the allowability of a provision will depend on whether the provision is necessary in ascertaining the full profits for tax purposes.

Revenue has up to now treated a provision as allowable for tax purposes if

- n The provision did not seek to anticipate a loss i.e. the provision did not refer to expenditure which had not been incurred [see paragraph 12 of the Revenue Commissioners' memorandum (April 1975) to the Accountancy Bodies on SSAP 9 - the text of paragraph 12 is set out at the end of this article].
- n The expenditure in respect of which the provision was made

would be an allowable deduction in computing profits for tax purposes - for example, the expenditure would not be capital expenditure

- n It is made in accordance with the correct principles of commercial accounting
- n It can be estimated with a reasonable degree of accuracy
- n It is made to correctly ascertain the full profits for tax purposes, being the receipts during the year and the expenditure laid out to earn those receipts

New Revenue approach to provisions

In the light of a number of recent UK court decisions, Revenue is prepared to accept that there is no longer any rule of tax law which prohibits a provision for future losses, where such a provision is required in accordance with a system of commercial accounting which correctly ascertains the full profits for tax purposes of the trader. Revenue accepts that a provision made in accordance with generally accepted accounting practice [GAAP], including a provision made in accordance with FRS 12, is made in accordance with such a system. Revenue also accepts that a provision for a loss on a contract, made in accordance with paragraph 9 of Part 1 of SSAP 9, is no longer precluded on the basis that the provision takes account of expenditure which has not yet been incurred. The other requirements governing the allowability of a provision, which are listed above, continue to apply.

Where there is a doubt as to whether a provision is allowable for tax purposes, taxpayers should avail of the expression of doubt facility in *section 955(4) TCA 1997*.

An examination of the facts supporting provisions is a normal part of Revenue's audit programmes.



Prior year adjustments arising from FRS 12

FRS 12 introduces a more stringent test as regards the making of provisions in accounts. Where provisions have been made in previous years, an accounting adjustment may be required to the first accounts for periods ended on or after 23 March 1999. FRS 12 states that any such adjustment should be made by restating the comparative figures for the preceding year and adjusting the opening balance of the reserves for the cumulative effect.

The treatment, for tax purposes, of such an accounting adjustment will depend on whether the provision was allowed for tax purposes for the period in which it was made.

- t If the provision was allowed for tax purposes for the period in which it was made, the accounting adjustment should be included in the profits for tax purposes of the period in which the change in accounting policy took place.

Example 1

A provision of £200k was made for the accounting period ended 31 March 1996. The provision was allowed for tax purposes for that period. In the period ended 31 March 1999 the provision is reduced to £120k, in accordance with FRS 12. The reduction of £80k appears as an adjustment to the comparative figures for the period ended 31 March 1998 in the 1999 accounts and an increase in the opening reserves for the year ended 31 March 1999 of that amount. In calculating the profits for tax purposes for the period ended 31 March 1999, the profits should be increased by the reduction in the provision i.e. the increase in the reserves.

- t If the provision was not allowed for tax purposes for the period in which it was made (because, for example, it was not capable of

estimation with a reasonable degree of accuracy), an appropriate tax adjustment would have been made for the period in which the provision was made. In these circumstances, the provision as adjusted under FRS 12 will be allowable for tax purposes, provided it does not breach any of the rules listed above. Assuming it is allowable, it may be claimed for the period in which the change of accounting policy takes place.

Example 2

A provision of £100k was made in the accounting period ended 31 March 1998. In calculating the profits for tax purposes, the provision had been added back. In accordance with FRS 12, the provision is reduced to £40k in the year ended 31 March 1999. The reduction in the provision appears as a restatement of the comparative figures for the year ended 31 March 1998 in the 1999 accounts and an increase in the reserves for the year ended 31 March 1999 of £60k (i.e. write back of excess provision). Assuming there is no tax rule precluding a deduction for the provision, the provision revised in accordance with FRS 12 may be claimed for the period ended 31 March 1999 (£40k).

Provisions disallowed for tax purposes in the past

Where a provision was previously disallowed on the basis that it anticipated a loss, the earlier year will not be re-opened. The return of income for these periods, which would have taken account of such an adjustment, would have been prepared in accordance with the practice generally prevailing at the time. Accordingly, error or mistake claims under *section 930 TCA 1997*, will not be admitted in respect of such adjustments. The provision, calculated in accordance with FRS 12, may be claimed in the first open accounting period ending on or after 23 March 1999.

Provisions which should have been disallowed for tax purposes in the past

Where a provision had been claimed for tax purposes for accounting periods ending before 23 March 1999 and allowed under the self-assessment system, Inspectors will not now seek to disallow the provision on the grounds that the provision anticipates a loss.

Where provisions which are not allowable for some other reason [e.g. because they are capital in nature] had been claimed for tax purposes in the period in which they were made, taxpayers should contact their local Inspector to agree the adjustment due for the earlier period together with any interest and penalties which may arise.

[References to the period in which a provision was made include a reference to basis periods for years of assessment.]z

Text of paragraph 12 of Revenue Commissioners' memorandum (April 1975) to the Accountancy Bodies on SSAP 9.

Long Term Contracts

"12. It is not normally permissible for tax purposes to take account of expenditure which has not been incurred and a provision for an expected future loss made in accordance with paragraph 9 of Part I of the Statement will therefore be disallowed for tax purposes to the extent that it exceeds the amount determined under paragraphs 10 and 11."



INDUSTRIAL & COMMERCIAL BUILDINGS

Capital Allowances



Introduction

The *Finance Act 2000* introduced restrictions on the availability of capital allowances for expenditure incurred on the construction or refurbishment of industrial and commercial buildings under certain tax incentive schemes. The restrictions apply in relation to:

- † Property developers in certain circumstances
- † Owner-occupiers of buildings in use in certain sectors and industries
- † Buildings provided for certain large investment projects.

The restrictions were inserted in order to comply with EU requirements.

Where a restriction applies capital allowances are not available for industrial or commercial buildings. In the case of an industrial building, within the meaning of *Section 268 TCA 1997*, while the enhanced allowance (initial allowance and free depreciation) available under the particular scheme is not available, the ordinary industrial building writing down allowance is available.

Schemes Affected

The schemes affected and the relevant sections of the *Taxes Consolidation Act 1997* are as follows:

Airport Enterprise Areas	- Section 343(11)
New Urban Renewal Scheme	- Section 372K(1)
Rural Renewal Scheme	- Section 372T(1)
Certain Childcare facilities	- Section 843A(5)
Town Renewal Scheme	- Section 372AJ(1)

Restrictions Applying

It should be noted that the restrictions do not apply uniformly to all of the schemes. The various restrictions and the schemes to which they apply are outlined below:

- n **Airport Enterprise Areas Scheme**
Restriction applies in relation to property developers.

- n **New Urban Renewal Scheme**

Restriction applies to

- (a) property developers,
- (b) owner-occupiers of buildings in use in certain sectors and industries, and
- (c) buildings provided for certain large investment projects.

- n **Rural Renewal Scheme**

Restriction applies to

- (a) property developers, and
- (b) owner-occupiers of buildings in use in certain sectors and industries.

- n **Certain Childcare Facilities**

Restriction applies to property developers.

- n **Town Renewal Scheme**

Restriction applies to

- (a) property developers,
- (b) owner-occupiers of buildings in use in certain sectors and industries, and
- (c) buildings provided for certain large investment projects.

Summary Chart

Scheme	Property Developers	Industries /Sectors	Large Investment Projects
Airport Enterprise Areas	4		
New Urban Renewal Scheme	4	4	4
Rural Renewal Scheme	4	4	
Childcare Facilities	4		
Town Renewal Scheme	4	4	4

Property Developers

As outlined, the restriction on the availability of capital allowances to property developers applies in relation to all the schemes listed above.

Details

Capital allowances for expenditure incurred on the construction or refurbishment of industrial or commercial buildings/structures are not available to a property developer where the property developer owns the relevant interest for capital allowances purposes in the building/structure, in circumstances where the actual construction or refurbishment was carried out by the

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property developer or by a person connected with the property developer. Thus, for example, capital allowances are not available to a property developer where the property developer:

- n Constructs a number of commercial buildings and retains one, say, either as an office or as an investment, or
- n Purchases (for similar purposes) a new commercial building which was constructed by a person with whom the property developer is connected.

What is a property developer?

A property developer is defined as a person carrying on a trade which consists wholly or mainly of the construction or refurbishment of buildings or structures with a view to their sale. The reference to a person includes a company. Accordingly, if more than 50% of the turnover from a person's trading activities arises from the construction or refurbishment of buildings or structures with a view to their sale, the person is regarded as a property developer. Where the person is involved in a number of trading activities the test is applied to the aggregate of the turnover from all the person's trading activities.

When is the test to be applied?

In the case of a company, the test is applied at the end of the company's accounting period to which the claim relates. In the case of an individual, the test is applied at the end of the basis period for the year of assessment to which the claim relates.

What if a property developer jointly owns a property with an individual who is not a property developer and the construction of the property was carried out by the property developer or by a person connected with him/her?

The entitlement of the joint owners to capital allowances is looked at separately. In this case the property developer is not entitled to capital allowances due to the restriction outlined above. However, as the other joint owner of the property is not a property developer no restriction applies in relation to his/her capital allowances.

What if a controlling director of a property development company purchases a property from the company?

Capital allowances *are* available to the director unless the director is a property developer in his/her own right. If he/she is a property developer, then capital allowances are not available as the property was constructed or refurbished, as the case may be, by a connected person i.e. the company which he/she controls.

Purchase of New Buildings/Structures

Section 279 TCA 1997 provides that where expenditure is incurred on the construction of a building/structure and the relevant interest, for capital allowances purposes, in a

building or structure is sold, the person who buys that interest is deemed to have incurred the expenditure on the construction of the building/structure equal to the lesser of the actual expenditure or the net price paid, provided that:

- n The building/structure was sold before it was used or within one year of first use, and
- n No capital allowances had been claimed in respect of the building/structure.

Where a property developer buys such a building/structure the restriction on the availability of capital allowances does not apply as the property developer will not have incurred the actual expenditure on construction. However, if the actual construction expenditure was incurred by a person connected with the property developer the restriction applies.

In other words, capital allowances are available to a property developer where the property developer purchases a newly constructed building, say, either as an office or as an investment, where the actual construction was carried out by an unconnected person.

Owner-Occupiers of Industrial and Commercial Buildings in use in certain sectors and industries

As outlined above, this restriction applies in relation to the New Urban Renewal Scheme, the Rural Renewal Scheme and the Town Renewal Scheme.

Details

Capital allowances under the above schemes **are not** available in respect of construction or refurbishment expenditure incurred by owners (includes both individuals and companies) of industrial or commercial buildings or structures which are in use for the purposes of the owner's trade (or any activity treated as a trade) where that trade or activity is carried on wholly or mainly in any of the following sectors/industries:

- t The agricultural sector, including the production, processing and marketing of agricultural products
- t The transport, steel, shipbuilding, synthetic fibres or financial services sectors
- t The coal, fishing or motor vehicle industry.

Accordingly, if more than 50% of the turnover from the owner-occupier's trade or activity, in respect of which the building is occupied, arises from activities in one of the above sectors/industries, the restriction applies. Where the building is in use for the purposes of more than one trade or activity of the owner the test is applied in relation to the aggregate of the turnover from all the trades/activities for which the building/structure is used.

Sellers of *agricultural products* will not be regarded as coming within the agricultural sector unless they are also



INDUSTRIAL & COMMERCIAL BUILDINGS

Continued

involved in the production, processing or marketing of agricultural products.

Sellers of *steel, synthetic fibres, coal or fishing industry products* will not be regarded as coming within the sectors/industries unless they are also involved in the production of the products.

In relation to the *financial services sector*, an auctioneer selling financial products, for example, will not be entitled to capital allowances if more than 50% of his/her turnover arises from such sales.

The *motor vehicle industry* is regarded as being confined to the development, manufacture or assembly of motor vehicles. Owner-occupiers of sales outlets, car showrooms, garages or motor factors will not be regarded as coming within the term unless they are also involved in the development, manufacture or assembly of motor vehicles.

When is the test to be applied?

In the case of a company, the test is applied at the end of the company's accounting period to which the claim relates. In the case of an individual, the test is applied at the end of the basis period for the year of assessment to which the claim relates.

Purchase of Buildings/Structures

The restriction also applies where the owner-occupier of a building/structure purchases a new or second-hand building/structure.

Lessors

The restriction *does not* apply to lessors of buildings/structures which are in use by lessees for the purposes of a trade carried on in any of the above sectors or industries.

Buildings provided for the purposes of certain large investment projects

As outlined above, this restriction applies in relation to the New Urban Renewal Scheme and the Town Renewal Scheme. While the restriction does not apply in relation to the Rural Renewal Scheme a separate restriction was included in the legislation governing this scheme, when it was introduced in *Finance Act 1998*, which effectively restricts the availability of capital allowances to small and medium sized enterprises where the number of people employed is 250 or less.

Details

Capital allowances under the New Urban Renewal Scheme and the Town Renewal Scheme are not available in respect of industrial or commercial buildings/structures which are provided for the purposes of a project in respect of which regional aid is limited under certain rules prepared by the Commission of the European Communities. These rules are contained in "*Multisectoral framework on regional aid for large investment projects.*" [Official Journal Issue No. C 107, 7.4.98, p.7]

Under the framework the Commission decides on a case-by-case basis a maximum allowable aid intensity for projects which are subject to the notification requirements. Generally, notification arises where a Member State proposes to award regional investment aid where either of the following criteria are met:

- n The total project cost is at least £ 50 million, the cumulative aid intensity expressed as a percentage of the eligible investment costs is at least 50% of the regional aid ceiling for large companies in the area and aid per job created or safeguarded amounts to at least £40,000, or
- n The total aid is at least £50 million.^z



LIFE ASSURANCE COMPANIES

New Taxation Regime

Introduction

This article outlines the new taxation regime for life assurance companies and their policyholders as provided for in *section 53 Finance Act 2000*.

There were two regimes operating prior to this change - one in the IFSC and the other for our domestic assurance companies. There will be just one regime for all policies and contracts commenced from 1 January 2001.

Overview of current regime

The *current regime for assurance companies in the IFSC*, which have only non-resident policyholders, is that they are taxed in a similar fashion to any other trade. The profits accruing to the *shareholders* are liable to corporation tax. The *policyholders* may be liable to tax in their own country of residence but they are not liable in this State.

The *current domestic regime* is that the income and gains accruing to policyholders' funds are taxed within the fund on an annual basis at the standard rate of income tax, while shareholders' profits are taxed at the corporation tax rate. The policyholder is not liable to any further tax on maturity or encashment of a policy.

Overview of new regime

From 1 January 2001 the IFSC regime will be extended to all assurance companies so that there is no annual tax imposed on policyholders' funds. However, when an assurance company makes a payment to a policyholder, the company will have to deduct tax on the investment return to the policyholder at the standard rate of income tax plus three percentage points. That tax will be a final liability tax. However, tax will not be deducted from a payment to a person who is neither resident nor ordinarily resident in the State and who has complied with the declaration requirements.

This system, where a policyholder's investment is allowed to grow tax free throughout the term of the policy, is common in other EU countries and is referred to as the "gross-roll-up system".

The ***new regime will come into effect*** for existing domestic companies from 1 January 2001, but only in respect of new policies issued from that time. The existing life assurance business of these companies at that time will continue to be taxed on the old basis viz. an annual tax on the investment return of policyholders' funds. For existing IFSC companies there will effectively be no change in their tax regime except that from 1 January 2001 they will be entitled to sell their products on the domestic market, and they must comply with the new declaration procedure.

Details of the legislative changes

Section 53 Finance Act 2000 introduces *Chapters 4 and 5 into Part 26 TCA 1997*. *Chapter 4* provides a new regime for taxing life assurance companies themselves, both those operating from the IFSC and domestic assurance companies. *Chapter 5* provides a taxation regime for the investment return of a life assurance policy where the policyholder is resident or ordinarily resident in the State. In general, that investment return is only taxed when realised.

Chapter 4 TCA 1997: Taxation of Assurance Companies - New Basis

Profits of life business - new basis

Chapter 4, which comprises *section 730A*, provides that the profits of a life assurance company will be computed and charged to tax under the provisions applicable to Case 1 of Schedule D where the profits arise from "new basis business" as defined. Such business is:

- n the policies of domestic life companies commenced on or after

1 January 2001 together with such companies' existing pension business, general annuity business and permanent health business (so far as already taxed under Case 1 of Schedule D),

- n all policies of IFSC life companies, commenced on or after 1 January 2001, and
- n all policies of new life companies set up on or after 1 April 2000, unless such company elects under *section 730A(2)* to have its policies commenced prior to 1 January 2001 taxed on the old basis.

Sections 730A(3) and 730A(4)

provide that new basis business is to be treated as a separate business whose profits are to be computed in accordance with and charged to tax, under Case 1 of Schedule D.

Section 730A(5) provides that in making the Case 1 computation a deduction is allowed for amounts allocated to policyholders but not in respect of amounts reserved for policyholders.

Chapter 5 TCA 1997: Policyholders - New Basis

Chapter 5 introduces six new sections which deal with the taxation of the investment return on a life assurance policy

Taxation of policyholders

Section 730B sets out that the intention of the Chapter is to impose a tax charge in respect of life assurance policies which come within the definition of "new basis business" other than such a policy which relates to pension business, general annuity business or permanent health insurance business.

Chargeable event

Section 730C(1) gives a definition of "chargeable event" in relation to a life policy. These are the occasions on which a tax charge can arise. Such occasions are:



LIFE ASSURANCE COMPANIES

Continued

- n the maturity, the surrender or assignment (in whole or in part) of the life policy, and
- n the 31st of December 2000 in respect of a life policy previously issued by a life company which commenced business between 1 April 2000 and 31 December 2000 where the company is charged to tax on profits of that period under Case 1 of Schedule D - in other words, the company did not elect under *section 730A(2)* to be taxed on the old basis.

However, if the maturity or surrender in whole or in part of a life policy is occasioned by a death or disability which gives rise to benefits under the policy, a chargeable event does not arise.

Section 730C(2) states that a chargeable event does not occur on the assignment of a policy as a security for a debt or on the discharge of such a debt so secured. For example, if on taking out a loan from a bank, a policyholder assigns his or her life assurance policy to the bank as security for the loan, a chargeable event does not arise.

Gain arising on a chargeable event

Sections 730D(1) and 730D(3) provide that where there is a chargeable event in relation to a life policy a gain arises in the amount of:

- n the policy proceeds less premiums paid*, where the event is the maturity or total surrender of the policy,
- n the value of the policy at the time of assignment less premiums paid* where the event is the total assignment of the policy,
- n the amount payable less a proportionate part of premiums paid*, where the event is the partial surrender of the policy, and
- n the value of the part assigned less a proportionate part of premiums paid*; where the event is the

partial assignment of the policy, and

- n the value of the policy on 31 December 2000 less premiums paid* where a chargeable event is deemed to occur on that date.

*[The amount to be included in respect of premiums paid is the amount of all premiums paid less any such amount taken into account in determining a gain on the happening of an earlier chargeable event.]

Gain not treated as arising on a chargeable event

Under Section 730D(2) a gain does not arise on the happening of a chargeable event in relation to a life policy if at that time the life company is:

- t in possession of a declaration in relation to the life policy referred to in *section 730E(2)* (viz. a declaration of non-Irish residence made at the time of taking out of a policy by a policyholder) or a declaration referred to in *section 730(E)(3)* (viz. a declaration by policyholder that he/she is neither resident nor ordinarily resident in the State), and
- t is not in possession of any information suggesting that:
 - n the contents of the declaration are not, or are no longer, materially correct;
 - n the policyholder failed to advise the life company that he/she had become resident in the State; or
 - n the policy holder is resident or ordinarily resident in the State.

Declarations

Section 730E sets out the terms of the non-resident declarations to be made by a policyholder seeking a gross payment to be made to him/her in respect of a life policy.

Subsection (1) specifies who exactly the policyholder is. *Subsection (2)* relates to a the declaration required

from a policyholder who was never resident in the State. *Subsection (3)* relates to the declaration required from a policyholder who was resident in the State at the time of taking out the policy but subsequently becomes neither resident nor ordinarily resident in the State.

Subsection (4) provides that where two or more people are policyholders they are to be treated as if each of them were a policyholders for declaration purposes and the imposition of tax.

Deduction of tax on the happening of a chargeable event

Section 730F(1) provides that the tax rate to be applied to a gain arising on the happening of a chargeable event is the standard rate of income tax plus 3 percentage points where the gain arises on maturity or surrender or assignment, in whole or in part, and a rate of 40 per cent where the gain arises on the chargeable event treated as happening on 31 December 2000. Under *subsection (2) and (3)* the life company is liable for the tax and is entitled to meet that liability from the policyholders proceeds/funds.

Returns and collection of appropriate tax

Section 730G sets out how the tax collected by a life company is to be accounted for and paid to Revenue. Under *subsection (2) and (3)* a return of tax payable is to be made and the tax to be paid to the Collector-General twice yearly i.e. 30 days after 30 June and 30 days after 31 December in respect of chargeable events happening in the first and second half, respectively, of each year.

Under *subsection (4)*, an assessment can be raised where an Inspector is dissatisfied with a return and under *subsection (5)* any necessary adjustments or set-offs to secure correct liability of the life company (and if necessary a policyholder) can be made where a return contains any amount of tax deducted in error.



Life Assurance Companies and Group Relief

Overview

Section 54 Finance Act 2000 amends *section 420 Taxes Consolidation Act 1997* to allow life assurance companies to avail of group relief in respect of “new basis business” under the new “gross-roll-up” regime for taxing life assurance companies which is effective from 1 January 2001. The preceding article on Life Assurance Companies explains the term “new basis business” and outlines the new taxation regime in place.

Access to group relief

Section 420 TCA 1997 provides for the allowability of group relief i.e. one member of a group which incurs a trading loss can surrender that loss for set off against profits of another member of the group. Because the profits and losses arising to a life assurance company were, in general, not computed on a normal trading Case 1 basis, but rather on an historic *Income less Expenses* basis, access to the group relief provisions were denied to such companies.

Under *section 53 Finance Act 2000*, the new tax regime for life companies effective from 1 January 2001 provides that profits and losses of “new basis business” of such companies will be computed under Case 1. Under *section 54 Finance Act 2000*, access to group relief is, therefore, allowed in respect of this new basis business.

Life assurance policy or deferred annuity contract entered into or acquired by a company

Overview

Section 55 Finance Act 2000, which amends *section 595 TCA 1997*, alters the basis on which companies are taxed on the disposal of a life assurance policy or deferred annuity contract. In general, in respect of such policies or contracts entered into on or after 1 January 2001, the profit on disposal will suffer an exit tax equal to the standard rate of income tax plus three percentage points.

New regime - Basis of taxation

Under the **old** domestic life assurance regime there is an annual tax at the standard rate of income tax on the income and gains of the policyholders’ fund. For a policyholder who is an individual there is no further tax to pay on redemption of the policy. However, for a company, the proceeds on disposal of a life assurance policy is grossed up at the standard rate of income tax, brought into account as a chargeable gain accruing to the company and included in profits, with a tax credit being given at the standard rate of income tax.

Under the **new regime** there will be an exit tax on redemption of a policy. The treatment as applied heretofore for companies will no longer apply. The relevant policies affected are life assurance policies and deferred annuity contracts (other than foreign life assurance and deferred annuities) which are “new basis business” [the term “new basis business” is explained in the article on Life Assurance Companies on page 19]. Companies will suffer a similar exit tax as individuals on redemption of such policies.

Profits of life business

Life assurance companies trading from the IFSC exclusively with non-resident customers are taxed in accordance with the rules applicable to Case 1 of Schedule D - *section 710(2) TCA 1997*. In effect, this means that the shareholders’ profits are taxed at the 10 per cent corporation tax rate and no tax is levied on policyholders’ funds. This is referred to as a “gross-roll-up” regime.

From 1 January 2001, IFSC life assurance companies will be entitled to sell their products on the domestic market. Under existing legislation, if they did so they would lose their entitlement to the 10 per cent tax rate. *Section 56 Finance Act 2000* ensures that the eligibility to the 10 per cent rate will continue to apply but only to the that element of profit which derives from doing business with non-residents. **Z**



BENEFIT-IN-KIND

Bus & Train Passes

Exemption for Monthly/Annual Bus or Train Passes: "Salary Sacrifice" Arrangements

The Benefit-in-Kind Exemption

Section 118(5A) TCA 1997 exempts employees and directors from benefit-in-kind taxation for 1999/2000 and subsequent tax years where an expense has been incurred by an employer on the provision of a monthly or annual bus or train pass for the employee or director.

The bus or train pass must be issued by either:

- t CIE or any of its subsidiaries (e.g. Bus Eireann, Iarnrod Eireann, Bus Atha Cliath); or
- t A private bus operator holding a passenger licence under *Section 7 of the Road Transport Act 1932*; or
- t A person who provides a passenger transport service under an arrangement entered into by CIE in accordance with *Section 13(1) of the Transport Act 1950*.

Expense of providing Bus/Rail Pass must be incurred by the Employer

For the benefit-in-kind exemption to apply, the employer must incur the expense of the bus/train pass. It will not be sufficient for an employer to purchase a pass and recover the cost from the employee - in such circumstances the expense will have been incurred by the employee. The main purpose of this note is to clarify Revenue's interpretation of the circumstances under which an employer will be considered to have incurred such an expense in relation to an employee in the specific context of so-called "salary sacrifice" arrangements.

Salary Sacrifice Arrangements: General Tax Treatment

The term salary sacrifice is generally understood to mean an arrangement under which an employee agrees with the employer to take a cut in

remuneration and in return the employer provides a benefit of a corresponding amount to the employee (in this case a bus/rail pass).

As a general rule (There is an exception to this general rule in the case of Approved Profit Sharing Schemes, provided certain conditions are met), Revenue do not regard salary sacrifice arrangements as reducing the employee's taxable income. If an employee forgoes salary payable under an **existing contract** of employment in exchange for a benefit, the employee remains taxable on the "gross" income payable. The salary sacrificed will be considered to be an application of income earned by the employee, not an expense incurred by the employer. This interpretation is supported by case law (See, for example, *Heaton v Bell* [1969] 46 TC 211 and *Parker v Chapman* 13 TC 677). This is in contrast to the position where an existing contract of employment is bona fide renegotiated so as to provide a mixture of salary and benefits. In those circumstances the employee will be taxed on what he or she gets, i.e. the cash salary plus the taxable value of the benefit-in-kind, provided the new employment contract involves no right on the employee's part to choose between cash and benefits.

Similarly, where remuneration is entirely discretionary and the employee has no prior entitlement to it (e.g. a bonus), the discretionary payment may be made by way of a benefit, and be treated for tax purposes as a benefit, provided such an arrangement precedes any "entitlement" to the bonus etc. on the part of the employee.

Where a benefit is fully taxable in the hands of the employee it generally makes little difference in terms of income tax whether the charge is on the "gross" remuneration or on a mixture of cash salary and benefits. On the other hand where a benefit is

not taxable, as in the case of bus/rail passes coming within *Section 118(5A)*, there is of course a tax saving to the employee if arrangements can be put in place under which the provision of a bus/rail pass by the employer can legitimately be classified as a benefit-in-kind i.e. an "expense incurred" by the employer under *Section 118(5A)*.

Salary Sacrifice in the Specific Context of Bus/Rail Passes

In the specific context of the provision of bus/rail passes Revenue are prepared to regard salary sacrifice arrangements which meet the conditions set out below as being effective for tax purposes. Where the conditions are met:

- n The employee will not be chargeable to tax on the remuneration sacrificed; and
- n The corresponding amount paid by the employer to provide a monthly or annual bus/rail pass will be regarded as an "expense incurred" by the employer for purposes of *Section 118(5A) TCA 1997*.

The conditions are as follows:

- n There must be a bona fide and enforceable alteration to the terms and conditions of employment (exercising a choice of benefit instead of salary)
- n The alteration must not be retrospective and must be evidenced in writing
- n There must be no entitlement to exchange the benefit for cash
- n The choice exercised (i.e. benefit instead of cash) cannot be made more frequently than once a year and then only with the consent of the employer.

Further Information

Further information and advice can be obtained by contacting the Central Telephone Inquiry Office Tel. 01 - 8780 000; or from local tax offices. **Z**



NEW PENSION OPTIONS

FA 2000 Changes



Introduction

The *Finance Act 1999* introduced new options for certain individuals on retirement. These options are set out in detail in our Booklet IT 14. *Finance Act 2000* introduced a number of changes to this system. The following is a summary of the changes.

Who may avail of the new options?

Up to 5 April 2000 only persons with retirement annuities or directors who controlled more than 20% of the voting rights in their company were entitled to exercise the new options. With effect from 6 April 2000:

- t Directors who control more than 5% of the voting rights in their company and
- t Employees who make additional voluntary contributions (AVC's) to their pension scheme can exercise the new options. AVC's are contributions made by an employee or director, where the employer does not make a matching contribution.

The option may be exercised only at the time a pension would otherwise become payable. But where the rules of a pension scheme allow for the purchase of an annuity to be deferred for a period, the new options may be exercised up to the latest date by which an annuity must be purchased. This applies to pensions becoming

payable on or after 6 April 1999. The tax free lump sum which may be taken by employees with AVC's is not affected by the change.

Changes in taxation of Approved Retirement Funds (ARFs)/ Approved Minimum Retirement Funds (AMRFs) opened on or after 6 April 2000

In the case of existing ARFs/AMRFs, income and gains were taxable in the hands of the ARF/AMRF holder as they arose. Distributions of the original pension fund were also chargeable to tax in the hands of the ARFs/AMRFs holder.

Where the ARF/AMRF is opened on or after 6 April 2000 a new scheme of taxation, known as 'gross roll-up' applies. This means that as long as income or gains are allowed to remain in the ARFs/AMRFs, there is no tax liability. Where funds are withdrawn, whether these withdrawals come from income or gains or from the original pension fund, they are taxed under PAYE as the income of the ARFs/AMRFs holder for the year in which the withdrawal is made. Where the qualifying fund manager has not received a Tax-Free Allowance certificate, tax must be deducted at the higher rate (2000/01, 44%).

Withdrawals following death of the ARF/AMRF holder

Special rules apply to withdrawals from an ARF/AMRF following the death of the holder.

- t Generally the amount distributed is treated as the income of the deceased ARF/AMRF holder for the year of death.
- t But where the distribution is made to an ARF/AMRF in the name of the ARF/AMRF holder's spouse or to a child of the ARF/AMRF holder who is under 21 at the date of death of the ARF/AMRF holder, no income tax liability will arise.

CAT liability may arise in the case of a distribution to a child under 21 at the date of the ARF holder's death.

- t Where the distribution is made from the ARF/AMRF following the death of the surviving spouse or to a child of the ARF/AMRF holder who is 21 or over at the date of death of the ARF/AMRF holder, tax will be deducted at the standard rate for the year in which the distribution is made. No further tax liability will arise in respect of such a payment.

Qualifying fund managers

A list of qualifying fund managers is contained in Booklet IT 14. With effect from 6 April 2000, the following persons may also act as qualifying fund managers:

- n Banks licensed in other EU States
- n Insurance companies licensed in other EU States, who are carrying on life assurance business in the State
- n Investment Intermediaries, authorised either in the State or in another EU State, to hold client money other than a Restricted Activity Investment Product Intermediary.

A qualifying fund manager who is not resident in the State must appoint a resident agent who will be responsible for the discharge of all duties and obligations regarding the ARFs/AMRFs managed by that qualifying fund manager.

Further Information

Copies of Booklet IT 14 and an insert outlining the *Finance Act 2000* changes are available from the *Revenue Forms & Leaflets Service* at 01 - 878 0100 or from any tax office. **Z**



DIVIDEND WITHHOLDING TAX

Summary of Scheme

Introduction

Tax Briefing Issue 35 [March 1999] contained details of the Dividend Withholding Tax (DWT) scheme as contained in the 1999 Finance Bill. Issue 39 [March 2000] highlighted a number of changes to the scheme which were proposed in Finance Bill, 2000. These changes have now been enacted. The following is a summary of the scheme based on the legislation currently in force and should be read in conjunction with the earlier articles.

DWT Scheme

In general, DWT, at the standard rate of income tax for the year of assessment in which the distribution is made, applies to all dividends paid and other distributions made by companies resident in the State on or after 6 April 1999. The Irish resident company making the distribution is required to withhold the tax and pay it over to Revenue. However, the legislation makes provision for an entity known as an "authorised withholding agent" (AWA) to act for the company making the distribution. If an AWA is involved, the amount of the distribution can be paid gross by the paying company to the AWA, who then takes over responsibility for applying the DWT rules.

The basic principle is that DWT must be deducted at the time the distribution is being made unless the company or the AWA has satisfied itself that the recipient is a non-liable person and is entitled to receive the distribution without the deduction of DWT. All DWT must be paid to Revenue by the 14th of the month following that in which the distribution is made.

Exemptions

Certain recipients of distributions are specifically excluded from the scope of the tax while certain other persons are entitled to an exemption. (See Issues 35 and 39 of **Tax Briefing** for lists of these recipients). It should be noted that exemption is not automatic and must be established by means of an appropriate declaration of exemption which must be completed by the applicant and accompanied by the necessary certification. Blank declaration of exemption forms are available from:

*DWT Section,
Office of the Revenue Commissioners,
Government Offices,
Nenagh,
Co. Tipperary.*

Tel: +353 67 33533
Fax: +353 67 33822
e-mail: info@dwt.revenue.ie

Where a distribution is to be made directly to an exempt shareholder by the company or by the AWA, the shareholder must give the completed declaration of exemption and back up certification to the company or the AWA. If the distribution is to be made through a Qualifying Intermediary (QI), the evidence of entitlement to an exemption must be given to the QI. That QI will then notify the company of the amount of the distribution to be received on behalf of exempt persons. Where a distribution is to be made to an exempt shareholder through a series of QIs, the evidence of entitlement of the shareholder to an exemption must be given to the QI from whom the shareholder will finally receive payment. This QI will then pass the information up through the chain of QIs to the paying company or AWA.

Supporting Documentation

The supporting documentation which must accompany a declaration of exemption is as follows:

- t A declaration made by a non-resident person (not being a company) must be accompanied by a certificate of residence from the tax authority in the country of the person's residence
- t A declaration by the trustee or trustees of a non-resident discretionary trust must be accompanied by:
 - n a certificate given by the tax authority of the country in which the trust is, by virtue of the law of that territory, resident for the purposes of tax certifying that the trust is resident in that territory,
 - n a certificate from the trustee or trustees showing the names and addresses of the settlers and beneficiaries of the trust, and
 - n a certificate from Revenue indicating that they have seen the certification and have noted its contents.

In this context it should be noted that the DWT legislation defines the term "beneficiary" in a wide manner. The term means any person who, directly or indirectly, is beneficially entitled under the discretionary trust, or may, through the exercise of any power or powers conferred on that person or any other person or persons, reasonably expect to become beneficially entitled under the trust to income or capital or to have any income or capital applied for that person's benefit or to receive any other benefit.



t A declaration made by a non-resident company which is claiming the exemption on the basis that it is either:

- n** ultimately controlled by persons resident for the purposes of tax in a relevant territory, or
- n** a company, the principal class of shares of which (or of a company of which it is a 75% subsidiary) is substantially and regularly traded on a recognised stock exchange in a relevant territory, or
- n** a company which is wholly owned by two or more companies, each of whose principal class of shares is substantially and regularly traded on one or more recognised stock exchanges in a relevant territory,

must be accompanied by a certificate from the company's auditor certifying that in the opinion of the auditor it meets one of these criteria.

t A declaration from a company claiming the exemption on the basis that it is resident for the purposes of tax in a relevant territory and is not under the control, whether directly or indirectly, of a person or persons resident in Ireland must be accompanied by:

- n** a certificate given by the tax authority of the relevant territory in which the company is, by virtue of the law of that territory, resident for the purposes of tax certifying that the company is resident in that territory, and
- n** a certificate signed by the auditor of the company certifying that in the opinion of the auditor the company is not under the control, either directly or indirectly, of a person or persons who is or are resident in Ireland.

Period of validity of exemption forms

Exemption declarations for resident (excluded) persons remain valid until such time as:

- n** The excluded person notifies the paying company or the QI that they have ceased to be an excluded person, or
- n** The paying company or QI becomes aware, for whatever reason, that the person who made the declaration has ceased to be an excluded person.

Exemption declarations for qualifying non-resident persons remain valid for a maximum period of 6 years. This period of validity is determined by the date on which the relevant certificates accompanying the exemption declarations are issued. The legislation confirms that these certificates remain valid for the period from the date of issue until 31 December in the fifth year following the year in which the certificate was issued, thus providing for a maximum period of validity of 6 years where a certificate was issued on 1 January in a year.

All queries in relation to the DWT scheme, including requests for additional information, forms etc. should be addressed to:

*DWT Section
Office of the Revenue Commissioners
Government Offices
Nenagh
Co. Tipperary
Ireland*

Tel: + 353-67-33533
Fax.: + 353-67-33822
e-mail: info@dwt.revenue.ie

DWT Documentation

The following is a list of the documentation most commonly used in connection with DWT:

t Exemption Declaration forms:

- n Composite Resident Form** is used for declarations to be made by "excluded persons" resident in Ireland
- n Composite Non-Resident Form** is used for declarations to be made by "qualifying non-resident persons" **not resident in Ireland.**

t The **DWT Declaration and Payslip** is used for the return which all paying companies and AWAs are obliged to make to Revenue by the 14th. of the month following that in which a distribution is made and which contains summary details of distributions made and DWT deducted.

t The **Guide to the Submission of Returns in Electronic Form** provides a specification for the electronic returns which paying companies and AWAs are obliged to make to Revenue by the 14th. of the month following that in which a distribution is made and which contain details of each person to whom a relevant distribution is made.

t Where Revenue is satisfied that a paying company/AWA does not have the facility to make an electronic return, a "paper" return can be made using the **DWT Distribution Details** form.

t Similarly, the **Guide to the Submission of QI Returns in Electronic Form** specifies the manner in which QIs must make their returns when requested to do so by Revenue.

t Dividend Withholding Tax Information Leaflet (DWT-INFO1) provides general guidance on DWT to investors and QIs/AWAs.

All of the above documentation may be obtained by contacting **DWT Section** at the above address and numbers.



DIVIDEND WITHHOLDING TAX

Refunds

Who can claim a refund of DWT?

- n Persons who are within the charge to income tax, where the amount of DWT deducted exceeds their income tax liability
- n Persons who are not within the charge to income tax
- n Persons who are “non-lia ble persons” for the purposes of DWT (i.e. excluded persons or qualifying non-resident persons).

Who processes these claims?

Generally speaking, claims for refunds from Irish individuals may be submitted to the individuals’ own Tax District. However, where a resident company, charity or pension scheme, which is an excluded person under the DWT legislation, suffers DWT as a result of not having its DWT exemption declaration in place in time, claims for refunds may be submitted to **DWT Section**.

Claims for refund may be submitted, using the **Dividend Withholding Tax Refund Claim Form** to

*International Claims Section,
Office of the Revenue Commissioners,
Government Offices,
Nenagh,
Co. Tipperary,
Ireland*

Tel: + 353 67 33533
Fax: + 353 67 32916

What documentation is required to support a refund claim?

All refund claims should be accompanied by original dividend voucher(s) and/or subsidiary tax certificate(s). In certain instances, **International Claims Section** will entertain the processing of “bulk claims” from nominee companies on behalf of their underlying clients. Where such claims are permitted, **Form: Bulk Claim Int** should be used and, in addition to provision of original dividend voucher(s) and/or subsidiary tax certificate(s), nominee

companies will be required to furnish statements to the effect that they hold the relevant shares in a nominee capacity only. Letters of authorisations are required from the underlying clients to the effect that the nominee companies are empowered to claim refunds of DWT on the clients’ behalf.

In order to establish entitlement to a refund, it will be necessary to provide the following information:-

- t **Individuals resident in a relevant territory** - to show the tax resident status of the claimant, we will accept a copy of the certificate which was issued in order for the claimant to obtain an exemption from DWT.
- t **Companies resident in a relevant territory and entitled to exemptions on the basis of tax residence status and control by persons not resident in Ireland** - to establish the basis for entitlement to exemption, we will accept a copy of the certificates which were issued in order for the claimant to obtain an exemption from DWT.
- t **Companies resident in a relevant territory and entitled to exemptions on the basis of auditors’ certificates** - to show the “ultimate control”/“share trading” status of the claimant, we will accept a copy of the auditor’s certificate which was issued in order for the claimant to obtain an exemption from DWT.
- t **Companies resident in a relevant territory but NOT entitled to exemptions** - to show the tax resident status of the claimant, the claim must be accompanied by a certificate from the tax authority in the country of residence of the claimant. The Dividend Withholding Tax Refund Claim Form incorporates a tax residence certificate which can be completed and stamped by the tax authority where the

claimant is resident for tax purposes. A letter from the tax authority can be substituted if the certificate cannot be completed by the tax authority. In the case of companies resident in the United States, we will accept Form 6166, issued by the US Internal Revenue Service. This form will be valid from the date on which it issues to 31 December in the fifth year following the year in which it issues.

- t **Bodies of persons resident in a relevant territory** - to show the tax resident status of the claimant, we will accept a copy of the certificate which was issued in order for the claimant to obtain an exemption from DWT.
- t **Companies not resident in a relevant territory, but entitled to exemptions on the basis of auditors’ certificates** - to show the “ultimate control”/“share trading” status of the claimant, we will accept a copy of the auditor’s certificate which was issued in order for the claimant to obtain an exemption from DWT.

The foregoing assumes that all persons who are potentially entitled to seek exemptions from DWT actually wish to obtain exemptions. In cases where a non-resident person might **not be able** to obtain an exemption, but wishes to obtain a refund of DWT deducted e.g. a company which is resident in a relevant territory, but which cannot obtain an exemption on the basis of an auditor’s certificate, or where a non-resident person **does not wish** to obtain an exemption e.g. where a person who once held shares in Irish companies, and received a net dividend, no longer owns these shares and no longer requires a DWT exemption, then the tax residence status of the claimant must be certified by the relevant tax authority, either on the relevant refund claim form or on a supporting document, as appropriate.



In addition, certain individuals who are not resident in Ireland and who are ordinarily chargeable to tax in respect of any income arising from sources within Ireland may claim relief from that tax. Those who may claim this relief include:-

- t Citizens of Ireland
- t Individuals who have been resident in Ireland and who now reside outside Ireland for the sake or on account of her/his health or the health of a member of her/his family resident with her/him
- t Individuals who, before 5 April 1935 were:
 - n British subjects
 - n employees, ex-employees of the British Crown or their widows
 - n residents of the Isle of Man or the Channel Islands
- t Citizens, subjects or Nationals of Member States of the European Union
- t Residents of Members States of the European Union whose Irish income represents at least 75% of their total world income
- t Residents or Nationals of a State with which Ireland has a Double Taxation Agreement which provides for such relief.

In these cases, **Form 59 Claims (F.R.)** is used to claim relief. Generally, proof of citizenship (in the form of a photocopy of the claimant's passport) is required in support of a claim.

Forms for non-resident persons seeking to reclaim refunds of DWT can be obtained from **International Claims Section** at the address outlined above. **Z**

PRELIMINARY TAX

Preliminary Tax Obligations

Practitioners will be aware of the general rule under Self Assessment whereby taxpayers who are chargeable persons are obliged to pay Preliminary Tax on or before the 1 November in the year of assessment. The minimum amount of Preliminary Tax which must be paid is:

- t 90% of the tax liability for the actual year of assessment or
- t 100% of the tax liability for the previous year of assessment or
- t in the case of those paying Preliminary Tax by Direct Debit 105% of the tax liability for the pre-preceding year of assessment. The 105% option is not available where the tax liability for the pre-preceding year is NIL.

Revenue wish to draw particular attention to the fact that:

- n Failure to meet the minimum payment requirements means that **all** the Income Tax liability for the year becomes due from 1 November
- n Apart from direct debit cases, payments received by Revenue after 1 November do not qualify as preliminary tax payments. **(This includes post-dated cheques forwarded before the 1 November but dated after the 1 November)**

Where taxpayers fail to meet their preliminary tax obligations, they should pay the balance of tax for the year at the earliest possible date in order to minimise the interest charges arising.

2000/2001

Receipts for Preliminary Tax Payments

Practitioners are advised that there will be a restriction on the number of receipts issued at the counter to any one caller to the public office in the Collector-General's Office, Apollo House, Dublin in respect of income tax preliminary tax payments. This will minimise any delay for callers submitting such payments and will enable Revenue to provide a speedy and efficient service.

Practitioners who intend to lodge a number of income tax preliminary tax payments at the same time on behalf of their clients in the public office of the Collector-General's Office, Apollo House, Dublin are reminded that the most efficient way of facilitating confirmation of receipt of payment by Revenue is to record preliminary tax details of each payment with the name and registration number of the client on a list to be supplied when the payments are being made in Apollo House. This list will then be stamped appropriately by the Collector-General's Office confirming submission of payment. A formal receipt for each payment made will follow by post within the week.

Queries on preliminary tax payments may be addressed to :

*Office of the Collector-General,
Sarsfield House,
Limerick.*

Tel. Locall 1890 203070 **Z**



SHARE OPTIONS

Deferral of Payment of Income Tax

Introduction

Section 27 Finance Act 2000, inserts a new section 128A TCA 1997, which 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 for up to 7 years, the details of which are outlined in **Tax Briefing** Issue 40 [June 2000]. The provision applies to share options exercised on or after 6 April 2000.

This article deals with the question of Preliminary Tax and the making of an Election to defer payment of income tax payable.

Preliminary Tax - Year of Exercise

Tax charged in an assessment to income tax is due and payable on the Preliminary Tax due date where:

- n the chargeable person has defaulted in making the payment of Preliminary Tax (PT)
- n the PT paid is less than the least of
 - ~ 90% of the tax payable for the year of assessment
 - ~ the tax payable for the preceding year of assessment or
 - ~ 105% of the tax payable for the year preceding the preceding year of assessment where the PT is paid by direct debit
- n the chargeable person has not paid the PT on the PT due date (currently 1 November in year of assessment).

Where an election is made to defer the tax payable on the exercise of a share option, in accordance with section 128A TCA 1997, the tax payable for the year of assessment for the purposes of the 90% rule will be regarded as the tax payable for that year of assessment less the deferred amount of income tax payable.

Preliminary Tax - Year of Payment of deferred amount of tax payable

The tax liability on the exercise of a share option remains the liability for the year of assessment in which the share option is exercised, notwithstanding that an election is made to defer the payment of the tax due.

The deferred amount of tax payable is separate from the PT due and payable for the year of assessment in which the deferred amount becomes payable.

Payment of the deferred tax

Payment of the deferred amount must be made on or before the earlier of:

- n 1 November in the year of assessment following the year of assessment in which the shares are disposed of, or
- n 1 November in the year of assessment following the year of assessment beginning 7 years after the year of assessment in which the share option(s) is/are exercised.

The normal principles of self-assessment will apply in relation to the payment of the deferred tax, i.e. the taxpayer is obliged to make a timely payment of the deferred income tax whether or not a demand has issued for the tax. Interest charges will arise for late payment. The interest will run from the relevant due date above, as appropriate.

Example

On 1 May 1999, an employee is granted an option to purchase 5,000 shares in Company X for £3. He exercises the option on 1 September 2000 when the shares have a Market Value of £5. He makes a timely election under section 128A to defer the payment of the income tax payable. He subsequently sells the shares on 1 September 2004.

Income Tax Payable on Share Option	£
Market Value of shares at 1 Sept. '00	25,000
Option Price paid	15,000
Gain chargeable to Income Tax	10,000
Tax Payable (at marginal rate, say, 44%)	4,400
Income Tax payable on other income	25,000
Total Tax payable for 2000/2001	29,400
Deducted under PAYE	17,000
Tax payable	12,400
i.e. Tax payable now	8,000
Deferred	4,400

To satisfy the 90% PT Rule for the year 2000/2001, the employee needs to pay £7,200 i.e. 90% of £8,000.

Payment of the deferred amount of tax payable, i.e. £4,400 is due on or before 1 November 2005.

If in this example, the employee retains the shares until on or after 6 April 2008, the payment of the £4,400 is due on or before 1 November 2008.

Election

An election to defer payment of income tax payable on the gain arising on the exercise of a share option(s) must be made in writing to the Inspector by the normal return filing date i.e. on or before 31 January after the relevant year of assessment. A taxpayer may find it convenient to make the election when filing his or her timely return of income. **Z**



TOWN RENEWAL SCHEME



A total of 100 towns around the country have now been designated as areas for tax incentives under the Town Renewal Scheme. The designations were based on Town Renewal Plans submitted by county councils and in line with recommendations made by a special Expert Advisory Panel. Details of the designated towns are available from the Department of the Environment and Local Government's website at www.enviro.n.ie

The scheme is being introduced in two phases. The residential tax

incentives will apply with effect from 24 July 2000 and the commercial incentives will be introduced following approval by the EU Commission under State Aid rules.

A summary of the residential tax incentives is shown in the chart below. A booklet outlining details of the residential tax incentives will be available in Nov/Dec 2000. **Z**

Residential Development

Owner-Occupier	New Construction: 50% of eligible construction costs allowed at the rate of 5% per annum over 10 years against total income Refurbishment: 100% of eligible construction costs allowed at the rate of 10% per annum over 10 years against total income
Investor/Lessor	"Section 23" relief: 100% of eligible construction refurbishment or conversion costs may be set against Irish rental income (including income from other lettings)

CHARITIES

Standard Memorandum and Articles of Association for Charities Applying for Charitable Tax Exemption under the provisions of Section 207 Taxes Consolidation Act 1997

A standard Memorandum and Articles of Association is now available for use by bodies who propose to incorporate as a company limited by guarantee and who intend to apply for charitable exemption. This document will assist solicitors acting on behalf of applicant bodies or the applicant bodies themselves or company formation services. Copies are available in diskette form from:

*Charities Section,
Revenue Commissioners,
Government Offices,
Nenagh,
Co. Tipperary*

Tel: 067-33533
Ext. 63310
(01-677 4211 if calling from Dublin). **Z**

EC/MEXICO PREFERENTIAL TRADE AGREEMENT

A new preferential trade agreement between the EC and Mexico came into force on 1 July 2000. Eligible Community products imported into Mexico and goods of Mexican origin imported into the Community will benefit from reduced rates of customs duty on production of a Movement Certificate EUR.1 or an Invoice Declaration.

Mexico will continue to be a beneficiary of the EU's Generalised System of Preferences. Therefore, importers should be aware that they must have the correct certificate of origin in order to claim preference; **Form A for GSP claim** and an **EUR.1 or Invoice Declaration for a claim under the new Agreement**. The authority responsible for issuing EUR.1 certificates in Mexico is the "Secretaria de Comercio y

Fomento Industrial - SECOFI" Ministry of Trade and Industrial Development).

The rules of origin contained in the new agreement are broadly the same as those contained in the Eastern European Agreements. The agreement provides for bilateral cumulation of origin between the EC and Mexico. This means that:

- Materials, components or parts which have originated in Mexico in accordance with the provisions of the agreement can be regarded as originating in the EC when they are further processed or incorporated in a finished product which will be exported from a Member State under preference; and

- EC products which have met the appropriate origin rules can be regarded as originating in Mexico when they are further processed or included in a finished product for export to the Community under preference.

Further information on the EC/Mexico Preferential Trade Agreement or on any of the Preferential Trade Agreements can be obtained by contacting:

*Customs Economic Procedures Unit,
Customs and Excise Branch,
Revenue Commissioners,
Government Offices,
Nenagh,
Co. Tipperary.*

Tel: 067- 44260 / 44213 / 44325
Fax: 067-44388
E.Mail: info@nceb.revenue.ie **Z**

Revenue

VEHICLE REGISTRATION TAX (VRT)



Summary of Finance Act 2000 VRT Changes

Introduction

A number of legislative changes relating to VRT were made in the *Finance Act 2000* and are operable since the passing of the Act on 23 March 2000. The following is a summary of the changes.

Appeals

Section 98 FA 2000 extends the scope of excise appeals to a number of new areas. In the case of VRT, decisions in relation to the following additional matters can now be appealed:

- t A decision to delete an entry from or amend an entry in the Register of Vehicles
- t A determination made by the Revenue Commissioners or an authorised officer of Open Market Selling Price (OMSP) which supersedes that by a franchised distributor under *Section 133(2) Finance Act 1992*
- t A decision to grant, refuse or revoke an Authorisation under *Section 136 Finance Act 1992*.

A new information leaflet entitled "Appeal Procedure relating to Vehicle Registration Tax" (Leaflet No. VRT 6) has been issued and is available from any Vehicle Registration Office. The new leaflet deals comprehensively with all aspects of the VRT appeal procedure.

Delegation of Certain Powers

Section 99 FA 2000 permits the Revenue Commissioners to delegate certain key administrative powers/functions to officers specifically authorised by them for such purposes. These include authority to:

- n Amend/ delete an entry in/from the Register of Vehicles
- n Determine OMSP under *Section 133(2) Finance Act 1992*
- n Refuse/revoke an authorisation under *Section 136 Finance Act 1992*.

Registration of Vehicles

Section 100 FA 2000 has been inserted to enable a single Registration Certificate to be issued by Department of the Environment and Local Government on behalf of the Revenue Commissioners. The new certificate will replace the existing Vehicle Registration Certificate and Vehicle Licensing Certificate, will meet the EU harmonised requirements of Council Directive 1999/37/EC and will be introduced next year. Both Departments are working on this project at present.

Chargeable Value

Section 101 FA 2000 clarifies and confirms the legal position in regard to the determination of OMSP by the Revenue Commissioners which may supersede that standing declared by a franchised distributor. In effect, the Revenue Commissioners may determine OMSP at any time where in their opinion and having regard to the marketplace, it is higher or lower than the OMSP standing declared at that time.

Further Information

For further information please contact:
VRT Administration Branch,
1st Floor, Stamping Building,
Dublin Castle, Dublin 2

Tel: 01-679 2777
Fax: 01-671 1762 Z

Health Expenses

Kidney Patients

Tax Briefing, Issue 33 (September 1998) set out detailed guidelines and procedures in relation to health expenses claims under *Section 469 TCA 1999*. The following is an update on the reliefs available in respect of certain expenses incurred by kidney patients.

Hospital Dialysis Patients (where the patient attends hospital for treatment)

Relief in respect of expenditure incurred travelling to and from hospital (unlimited journeys) may be allowed at the following rates:

1999/00	25p per mile
[1998/99	25p per mile]

Home Dialysis Patients (where the patient uses a dialysis machine at home)

Relief may be allowed in respect of expenditure up to the following amounts:

	1999/00	1998/99
Electricity	£830	£830
Laundry	£1,050	£995
Telephone	£75	£70
Travel* - per mile	£0.25	£0.25

*subject to a maximum of 25 trips per year

Chronic Ambulatory Peritoneal Dialysis [CAPD] patients (where the patient has treatment at home without the use of a dialysis machine)

Relief may be allowed in respect of

	1999/00	1998/99
Electricity	£660	£660
Telephone	£75	£70
Travel* - per mile	£0.25	£0.25

*subject to a maximum of 25 trips per year

EMPLOYEES' MOTORING EXPENSES



Motor Mileage Rates effective from 1 January 1999

Official Mileage in a calendar year	Engine Capacity		
	Up to 1,200cc	1,201 cc to 1,500cc	1,501cc and over
Up to 4,000	53.11p	61.41p	75.64p
4,001 and over	28.10p	31.50p	34.59p

Transitional Arrangements

There are transitional arrangements in place for employees affected by the change in the categories of car engine sizes.

Employees whose current cars are between 1,138cc and 1,200cc may avail of the rates applying to the new middle car category (engine capacity of 1,201cc to 1,500cc) on a personal basis from 1 January 1999 to 31 May 2004, provided that they have not changed or do not change to a car which is under 1,138cc during this period. In the event of such a change the appropriate lower rate will apply from the date of change of the car.

Employees whose current cars are between 1,388cc and 1,500cc may avail of the rates applying to the new large car category (engine capacity of 1,501cc and over) on a personal basis from 1 January 1999 to 31 May 2004, provided that they have not changed or do not change to a car which is under 1,388cc during this period. In the event of such a change the appropriate lower rate will apply from the date of change of the car.

Further Information

Leaflet IT51 Employee's Motoring Expenses has been updated to reflect the above changes. Copies are available from any tax office or from the *Revenue Forms & Leaflets Service* at 01-878 0100. **Z**

Employees' Subsistence Expenses

Leaflet IT54, covering the re-imbursement of Subsistence Expenses to Employees (including Directors) has been updated and is available from

- n local tax offices
- n the *Revenue Forms & Leaflets Service* on 01-878 0100
- n the Revenue Web Site at www.revenue.ie

New Rates

Introduction

There are two types of mileage allowance schemes which are acceptable for tax purposes, if an employee bears all the motoring expenses:

- t The prevailing schedule of Civil Service rates, **or**
- t Any other schedule with rates not greater than the Civil Service rates.

Either of those two re-imbursement rates may be applied **without specific Revenue approval** where a satisfactory recording and internal control system is in operation.

Civil Service Rates

Following a general review of the Civil Service Motor Mileage Rates changes to the schedule were announced in June 2000. The changes bring into effect a simplified mileage rate structure involving a reduction in the mileage bands from six to two bands and streamlining the categories of car engine capacities. In addition, all Civil Service employees have a mileage year based on the calendar year, with effect from 1 January 1999. The new rates and car engine capacities, details of which are shown below, apply with effect from 1 January 1999.



SUPREME COURT DECISION

Whether company entitled to manufacturing relief

- Case:** Patrick J. O'Connell (Inspector of Taxes) v Fyffes Banana Processing Ltd.
- Decision made by:** The Supreme Court
- Decision Date:** 24 July 2000
- Relevant Legislation:** *Sections 39 and 41 Finance Act 1980 (now sections 443 and 448 Taxes Consolidation Act 1997, respectively)*

Summary

The company was incorporated on 22 January 1991 and is a wholly owned subsidiary of Fyffes Plc. and its business is the provision of banana ripening services to other companies within the Fyffes group.

It had been held by the Supreme Court, in *Charles McCann Ltd v S. O'Cualachain, Inspector of Taxes*, (1998) IR 196, that the process of artificially ripening bananas was a manufacturing process. Following that decision *section 39(5) Finance Act 1980*, as inserted by *section 41(1)(c) Finance Act 1990* provided that:

"... goods shall not, for the purposes of the definition of "goods" in subsection (1), be regarded as manufactured if they are goods which result from a process ... which consists primarily ...of applying methods of ... maturation or other similar treatment to any foodstuffs ..."

The company claimed that its eligibility to manufacturing relief is governed solely by the provisions of *section 39(2)* which provides that:

"Where a company carries on a trade which consists of or includes the rendering to another person of services by way of subjecting commodities or materials belonging to that person to any process of manufacturing, the following provisions shall apply for the purposes of relief under this Chapter -

- (a) the rendering within the State of such services shall be regarded as the manufacture within the State of goods;*
- (b) any amount receivable in payment for services so rendered shall be regarded as an amount receivable from the sale of goods ..."*

It was contended, on behalf of the company, that this was a self contained provision which was unaffected by the 1990 amendment.

On behalf of Revenue, it was contended that the restrictions to the meaning of the word "goods" provided for in *section 39(5)* had effect throughout *sections 39 and 41* and that the company was not entitled to the relief.

It was held by the Supreme Court that the Oireachtas had stated in clear and unambiguous language that goods such as bananas which are subjected to an artificial ripening process are not to be regarded as goods manufactured in the State for the purposes of *section 41(2)*. The only effect of *section 39(2)* is to ensure that companies engaged in a manufacturing process are not deprived of the relief where the manufacturing process is carried out by way of service.

The Supreme Court decided that a company which is engaged in the activity of artificially ripening bananas belonging to another person was not entitled to manufacturing relief.

This summary is for reference only and readers are recommended to read the full text of the judgment.[Z](#)

DISTRICT COURT RULES

Disclosure by Financial Institutions

On 25 August 2000 new District Court rules came into effect in relation to *Section 908A Taxes Consolidation Act 1997* (Revenue Offence: power to obtain information from Financial Institutions). The new rules were made to cater for changes made to *Section 908A TCA 1997* by *Section 68(d) Finance Act 2000*. *Section 908A* has been extended to cover all types of financial institutions and all types of information/records held by financial institutions, in relation to the person or persons in respect of whom a Court order for disclosure is obtained under that section. (There are several applications for such orders pending at present.)[Z](#)



TOPICAL QUESTIONS

Lump Sum Termination Payments - PRSI, Health Contributions

Are lump sums paid on retirement or termination of an employment liable for tax, PRSI and Health Contributions?

The taxation treatment of redundancy / termination payments is outlined in **Tax Briefing**, Issue 28 (October 1997). In brief, the lump sum payments are chargeable to tax subject to the exemptions and reliefs provided for in the legislation i.e. the basic exemption of £8,000 (plus £600 for each complete year of service), the increase of up to £4,000 on the basic exemption or the Standard Capital Superannuation Benefit exemption, and Top Slicing Relief.

The excess of the taxable lump sum over the relevant exemption is chargeable to tax in the same way as salary.

The lump sum is not regarded as reckonable income for Pay Related Social Insurance (PRSI) purposes and is not liable for PRSI. However, the taxable element of the lump sum i.e. the gross lump sum less the exemption, is liable for Health Contributions (1%).

Health Expenses - Dependent Relative

Where an individual (claimant) claims relief for health expenses incurred on the provision of health care for a dependent relative who has income in his/her own right, what is the Revenue approach to determining the amount of health expenses defrayed?

Legislation

The legislation at *section 469 Taxes Consolidation Act 1997* provides for relief, subject to specified restrictions, where an individual defrays expenses incurred on the provision of health care for a dependent relative (as defined for tax purposes). The claimant must firstly be entitled to a deduction for dependent relative allowance. Expenses are not regarded as having been defrayed by the individual insofar as they are recouped in any way, by the individual or by any dependant of the individual from a public or local authority or under a contract of insurance or by way of compensation or otherwise.

The amount of the **health expenses defrayed** by the claimant must be arrived at in the light of the particular facts and circumstances of each case including whether the dependant has income in his/her own right and how such income is utilised.

Revenue Approach

Insofar as health expenses are defrayed directly or indirectly out of the income of the dependent relative, they are not regarded as having been defrayed by the claimant. The following working rule applies:

In the case of a dependent relative **who is maintained full time in a nursing home/hospital**, 60% of the dependent relative's old age pension or other similar income is deducted in arriving at the amount of health expenses defrayed by the claimant. The balance of the dependent relative's pension (40%) is regarded as meeting personal, non-medical expenses of the dependent relative and this amount should not be regarded as defraying any part of the health expenses. The example below illustrates the position:

	2000/01	£
Health Expenses relating to Dependent Relative		10,000
Income of Dependent Relative		
- old age pension, say,	5,536	
Personal Expenses (40%)	<u>2,214</u>	<u>3,322</u>
Health Expenses defrayed by claimant		6,678

Where the dependent relative commences to be maintained in a nursing home/hospital during the tax year, this restriction is applied *pro-rata*. Other income e.g. salary, rents etc., of the dependent relative is deducted **in full** from the total amount of the health expenses in arriving at the figure on which relief is to be allowed.

In the case of expenditure incurred by the claimant in respect of **once-off treatment for a dependent relative (e.g. a serious operation)**, the expenditure would be regarded as defrayed in full by the individual claiming dependent relative allowance. In other words, the health expenses would not be restricted by any part of the dependent relative's old age pension or other similar income.

Capital Gains Tax

Is a contract expressed as being subject to loan approval a conditional contract?

A contract is conditional if the condition attaching is a condition precedent. A condition precedent is a condition which neither party to the contract covenants to bring about but which must be satisfied before an obligation to perform the contract arises. The contract is not enforceable until the condition is satisfied.

The granting of loan approval is something removed from the parties and to the contract and cannot therefore be



something that they covenant to bring about. The obligation of the purchaser is to complete but if the condition is not satisfied the contract simply comes to an end.

The time of disposal then, is when the condition is satisfied i.e. when loan approval is granted, not when the contract is signed and not when the contract is closed..

Is the partition of a joint tenancy or tenancy in common a disposal for CGT?

Yes. Revenue regard the partition of a joint tenancy or a tenancy in common as being a disposal for capital gains tax purposes. Each party concerned in the severance is disposing of a lesser interest in a part of the property concerned and is acquiring a larger interest in a divided part. The treatment of these matters is provided in *sections 534 and 557 TCA 1997*.

However, in certain circumstances where the asset is a business asset it may be that the parties concerned would be able to avail of re-investment relief (under *section 597 TCA 1997*) on their re-investment in replacement business assets.

Is a non resident individual who is liable to capital gains tax here on the disposal of specified assets (land, buildings etc. in the State) entitled to the annual exemption of £1,000 (section 601(1) TCA 1997)?

Yes. A non resident individual is entitled to the £1,000 annual exemption. It should be noted that this exemption is restricted to individuals only - whether resident or non resident. Companies, trustees or other non-corporate bodies are not entitled to it.

Value Added Tax

Short term lettings

What is the VAT position in relation to short term lettings of immovable goods ?

Short term lettings are exempt from VAT. This means that no VAT is chargeable on the rents arising from the lettings and no input credit can be claimed on the acquisition or development costs of the property.

What type of letting is regarded as short term?

A letting for a period of under 10 years is regarded as a short term letting for VAT purposes.

VAT input credit on the acquisition, development costs of property

If a person wanted to claim VAT input credit on the acquisition, development costs of a property, are there any circumstances whereby the individual (or company) would be allowed register for VAT for that purpose?

There is a provision (Section 7 VAT Act 1972, and Regulation 4 of the VAT Regulations 1979) whereby a person (or a partnership/company) can waive their entitlement to exemption on the rents. What this means is that the person registers for VAT (if not already registered) and charges VAT, currently at 21%, on the rents and is then entitled to claim the VAT input credit on the acquisition, development costs.

Are there any other implications if a person waives entitlement to exemption from rents on one particular property?

Yes. Generally, if a person is in receipt of short-term rents from other properties these will also become liable to VAT at 21%.

When should an application for a waiver of exemption be submitted?

As, generally, a waiver of exemption can only come into effect from the beginning of the VAT period in which it is received, it is imperative that timely application is made.

Can a waiver be back dated in any circumstances?

Normally a waiver cannot be backdated. However, there are some specific circumstances where back dating of a waiver can be allowed - see Paragraphs 2A to 2H of Regulation 4 of the VAT Regulations 1979 (S.I. 63/1979, as amended).

What happens when a waiver is cancelled?

If the waiver is cancelled an adjustment is carried out which may result in the person having to repay some or all of the VAT input credit claimed on the acquisition, development of the property. Again, the position is set out in Regulation 4 of the VAT Regulations 1979.

If the property is sold will there be a charge to VAT on the supply?

If the waiver is cancelled and the adjustment above is carried out then no VAT liability will arise on the supply of the property. If the waiver is still in place then the property will be liable to VAT when it is sold. [Z](#)



REVENUE NEWS

Change of Address

Dublin Audit Districts

The following tax districts:

Dublin Audit District No.1

[Construction Industry]

Dublin Audit District No.2

[Property Developers]

Dublin Audit District No.4

[Agri-Business & Fisheries]

Dublin Audit District No.8

[Transport & Light Industry]

Special Enquiry Branch

have relocated to:

Plaza Complex

Belgard Road

Tallaght, Dublin 24

The telephone number for all offices is

01 - 6470700

The fax numbers are as follows:

Dublin Audit District No.1

01 - 6341880

Dublin Audit District No.2

01 - 6341980

Dublin Audit District No.4

01 - 6341885

Dublin Audit District No.8

01 - 6341884

Special Enquiry Branch

01 - 6341981

Vehicle Registration Office

The Vehicle Registration Office previously located in Castleforbes Road, Dublin 1 has been transferred to:

Furry Park Industrial Estate,

Santry,

Dublin 9.

Telephone 01 - 857 9800

Fax No. 01 - 857 9820

Local Enquiry Office, Lr. Mount Street, Dublin 2.

To provide improved facilities and service to our customers our Local Enquiry Office at 85/93 Lower Mount Street, Dublin 2 will be **closed to personal callers** from 28 August to 3 November inclusive for refurbishment. Practitioners can continue to contact tax offices in Mount Street by telephone at

(01) 6474000. Personal callers in the Dublin area can attend at whichever of the following locations is most convenient:

Central Revenue Information Office

Cathedral Street (off Upper O'Connell St.), Dublin 1

Tallaght Revenue Information Office

Level 2, The Square, Tallaght, Dublin 24

New Leaflets & Forms

Form 12A

The Form 12A (Application for Certificate of Tax-Free Allowances) has been redesigned and now contains explanatory notes.

VAT 3 & RTD

The VAT 3 and Return of Trading Details (RTD) forms have been improved and updated following consultation with representative bodies. A guide to completing the new forms is also available.

Leaflet SD 9A

Stamp Duty - Conveyances & Leases of Residential Property

Capital Gains Tax Clearance Certificate

Form CG 50 - the application Form for a Capital Gains Tax Clearance Certificate in the case of certain disposals is redesigned. While the form looks different there is no change to the information requested.

Form CG50A - the Capital Gains Tax Clearance Certificate which is issued by the vendor's tax district has a new look and will in future issue on the tax district's corporate stationery.

CGT 1 - The Capital Gains Tax Guide has been updated.

Updated Leaflets

Leaflet IT 2 - Taxation of Married Persons (June 2000)

Leaflet IT 51 - Employees' Motoring Expenses (July 2000)

Leaflet IT 54 - Employees' Subsistence Expenses (July 2000)

Leaflet IT 19 - Professional Services Withholding Tax (July 2000)

The forms and leaflets mentioned are available from the *Revenue Forms & Leaflets Service* at 01 - 8780100, from local tax offices, and from the Revenue website (www.revenue.ie)

Copies of Tax Briefing

We currently issue one copy of **Tax Briefing** to each firm of practitioners on our mailing list. We receive numerous requests from practitioners for additional copies or to have additional named employees of firms added to our mailing list.

Unfortunately, for a number of operational reasons we are unable to facilitate these requests. However, we would like to remind practitioners that **Tax Briefing** is available on 31/2" diskettes in Adobe Acrobat portable document format (pdf). These diskettes are available free of charge and can be used to circulate the publication within your firm. **Tax Briefing** is also available from our internet site (www.revenue.ie) in pdf format. You will need Adobe's Acrobat Reader to access this format. The **Tax Briefing** homepage gives information regarding the Adobe Acrobat Reader software required to view and print files published in pdf. Our website provides a link to the Adobe Systems website (www.adobe.com) from where you can download the Acrobat Reader software.

Tax Briefing Supplement - June 2000

Please note the following amendments to the **Tax Briefing Supplement** - June 2000

Corporation Tax Rates - page 6
Reduced Rate (on first £100,000)
1/1/99 - 31/12/99 is 25%.

Lloyds Conversion Rates - page 22
Conversion Rate for 31/12/99 is
Stg£1 = IR£1.2668 **Z**



ROS IN CONTEXT

who ?

Do you have internet connection?

Do you file VAT3s, P30s or P45s with Revenue?

Would you like to access your VAT or PAYE data outside office hours?

If the answer is 'yes' then you can be a Revenue On-Line Service customer.

why ?

Filing your returns on-line means:

- less paper
- no mailing
- no copying
- instant acknowledgement
- faster and more efficient service
- electronic communication

when ?

From September you will be able to e-file your VAT3s, P30s and P45s.

All you have to do is go to our web site at

www.revenue.ie

click on

Revenue On-Line Service

and we will tell you what to do.

The global economy is in the middle of a technological revolution known as the "Information Age" which is changing the way we live our lives and the way we conduct business. This revolution is being fuelled by advances in computer and telecommunications technologies. Internet traffic is doubling every 90 days and 100,000 new WEB addresses are registered every week around the world. E-Commerce is currently estimated to be worth \$6 billion annually and is expected to grow to \$300 billion over the next three years.

The Government is determined that the legal and technological infrastructure be put in place to enable Ireland become a 'hub' for eCommerce. The Government is also embracing the new technologies itself to provide the framework for an electronic administration to improve both the quality of, and the speed with which it delivers services. It is against this background that Revenue is launching ROS.



revenue.ie