

TAX BRIEFING

PAY AND FILE



Last June's issue of *Tax Briefing* - Issue 44 gave an overview of the **Pay and File** tax system and touched on some of the issues arising from the introduction of Pay and File. As we get closer to the first Pay and File implementation date on 31 October next, Revenue are embarking on an awareness campaign among all our self-assessed customers to alert them to their Pay and File obligations.

Revenue Pay and File Guide

We have put special arrangements in place to deal with the unique situation presented by the introduction of Pay and File and the 'once-off' requirements of the short tax 'year' 2001, which result in two filing dates arising in the current year. A Revenue guide entitled "Pay and File and the 2001 Income Tax Return", which sets out the changes and Revenue's special arrangements, will shortly be sent to every self-assessed customer on our records. Copies will also be sent to tax practitioners. Additional copies, if required, will be available from the Revenue Forms and Leaflets Service at 1890 306 706 and from the Revenue website at www.revenue.ie.

In this article

This article summarises the new obligations under Pay and File and the special arrangements being put in place by Revenue to assist both taxpayers and tax practitioners to meet the new obligations. A major part of Pay and File requires that you, as the agent, will now have to calculate your client's tax liability **before** you submit the return.

There are two easy ways to meet this requirement and have certainty in calculations, i.e. either file your client's tax returns early or, better still, file electronically using the **Revenue On-Line Service (ROS)**.

Nationwide Seminars

To familiarise tax practitioners with the new requirements and the special arrangements, Revenue will be holding Pay and File seminars over the coming six weeks at a number of locations nationwide. Given the significant advantage of e-filing in a Pay and File context, the seminars will have 'break-out' sessions where you will have the opportunity to view separate ROS demonstrations on how to register as a ROS customer and on how to complete the electronic Form 11. The seminars will also provide a platform for answering any questions you may have on Pay and File and related matters. We have contacted individual tax practices with an invitation to attend the seminars. We strongly recommend that at least one member of your firm or practice attend a seminar where at all possible.

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KEY DATES

April

- 14 PAYE/PRSI**
P30 monthly return and payment for March
- 14 DWT**
Return and Payment of DWT for month ended 31 March
- 14 RCT**
RCT30 monthly return and payment for March
- 1-28 Corporation Tax**
Preliminary Tax for APs ending between 1-31 October
- 1-30 Corporation Tax**
Returns for APs ending between 1-31 July
- 1-30 Corporation Tax**
Returns of Third Part Information for APs ending between 1-31 July
- 30 Income Tax**
Payment of any balance of tax for pre-preceding tax year

May

- 14 PAYE/PRSI**
P30 monthly return and payment for April
- 14 DWT**
Return and payment of DWT for month ended 30 April
- 14 RCT**
RCT30 monthly return and payment for April
- 19 VAT**
VAT 3 return and payment for period March/April
- 1-28 Corporation Tax**
Preliminary Tax for APs ending between 1-30 November
- 1-31 Corporation Tax**
Returns for APs ending between 1-31 August
- 1-31 Corporation Tax**
Returns of Third Party Information for APs ending between 1-31 August

June

- 14 PAYE/PRSI**
P30 monthly return and payment for May
- 14 RCT**
RCT30 monthly return and payment for May
- 14 DWT**
Return and payment of DWT for month ended 31 May
- 1-28 Corporation Tax**
Preliminary Tax for APs ending between 1-31 December
1st instalment PT for APs ending 1/1/02 - 31/7/02 due on 28/6/02
- 1-30 Corporation Tax**
Returns for APs ending between 1-30 September
- 1-31 Corporation Tax**
Returns of Third Party Information for APs ending between 1-30 September



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Continued from page 1

A summary of the Pay and File seminar dates, locations and venues is set out hereunder. As stated on page 1, we have contacted each tax practice separately with an invitation to attend one of the seminars. The invitation provides more specific details of the agenda for the day, times, etc. If for some reason you do not receive an invitation and you would like to attend one of the seminars please let us know, either by e-mail at payandfile@revenue.ie or by fax at 01 - 6710960, and we will try and accommodate you.

Date	Location	Venue
23/24 April	Kilkenny	Hotel Kilkenny
30 April/1 May	Dublin	Citywest Hotel
2 May	Monaghan	Nuremore Hotel
8/9 May	Limerick	South Court Hotel
14 May	Sligo	Southern Hotel
15/16 May	Ballinasloe	Haydens Hotel
21/22 May	Dublin	Gresham Hotel
28/29 May	Mallow	Hibernian Hotel

What are the changes in the tax system?

The main changes can be summarised as follows:

- **The first Pay and File return is for a 9-month period** from 6 April 2001 to 31 December 2001. In previous years the tax year was for a 12-month period ending on 5 April.
- The change in the tax year means that the filing date for the return has also changed. **The return must now be filed on or before 31 October 2002** - i.e. 10 months after the end of the tax year. (Previously, with the tax year ending on 5 April, the filing date was the following 31 January.)
- **The place of filing the return has changed** from the local tax office to the Office of the Collector-General in Limerick.
- **In addition to filing the return by 31 October 2002 customers must, on or before that date:**
 - Pay any balance of income tax due for the short tax 'year' 2001
 - Pay any capital gains tax due for the short tax 'year' 2001
 - Pay Preliminary Tax for the current tax year 2002

- **The return now has a personalised payslip attached**, which should be used when paying the liabilities referred to immediately above
- **There is a new payment option available (Single Debit Authority)** whereby customers can have their net liability debited direct from a bank account
- **You can now file your client's income tax return and pay the tax 'on-line' via Revenue On-Line Service (ROS).** The ROS facility will also provide instant and accurate calculations of the tax liability

In summary therefore 31 October 2002 is the:

- Filing date for tax return for 2001
- Due date for balance of 2001 tax
- Due date for Capital Gains Tax 2001
- Due date for Preliminary Tax 2002

Plus:

There are two other new requirements that may apply depending on individual circumstances:

- While the Pay and File system places a responsibility on the customer (or his agent) to calculate his/her own tax liability and pay the tax on 31 October, there are tolerances built into the legislation that allow for a small 'margin of error'. Any shortfall in the original payment must be paid by 31 December. [See *Tax Briefing* - Issue 44 (June 2001)]
- If it is necessary to review the tax liability for the tax year 2000/2001 and this results in additional liability, any additional tax due must also be paid by 31 October 2002. A separate payslip for this purpose is available on request from either the Collector-General's Office or any tax office. [See *Tax Briefing* - Issue 44 (June 2001)]

What are the special arrangements for filing and payment obligations arising during 2002?

In view of the transitional nature of the short tax 'year' and the introduction of Pay and File the following special arrangements will apply in relation to payment and return filing obligations. These arrangements apply in respect of the Pay and File obligations arising for 31 October 2002 **only** and where appropriate, replace any existing guidelines or Statement of Practice dealing with income tax and capital gains tax surcharge and/or interest.

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In general, the special arrangements effectively extend the filing deadline by three weeks (from 31 October 2002 to 21 November 2002) and in some instances, where the liability is paid electronically, the payment date will also be extended by the same three-week period. Details are set out below. To get the benefit of these special arrangements the tax must be paid by the dates set out AND for paper filing the tax return must be posted to / or received in the Collector-General's Office in Limerick by 21 November.

Extension to Date of Filing AND Date of Payment for ROS Filers

The date for filing the return and the date of payment will be extended to 21 November where both are made through ROS. If the return is filed through ROS on or before 21 November and the payment is made through ROS the payment will not be debited until 21 November. If the total liability is less than or equal to €5,000 and the return is filed through ROS, and the payment is made through ROS or the Single Debit Authority (SDA), the payment will not be debited until 21 November.

Extension to Date of Filing and Date of Payment for Paper Filers

The date of filing and the date of payment will be extended to 21 November where total liability due* is paid either:

- through the Revenue On-Line Service (ROS), or
- by SDA where the liability is less than or equal to €5,000.

It is also a condition that the tax return is filed to the Collector-General, PO Box 354, Limerick, and must be received or posted on or before 21 November 2002.

Extension to Date of Filing Only

The filing date for the tax return will be extended to 21 November where the total liability due* is paid by cheque or is paid by SDA where the total liability is greater than €5,000.

To qualify for this extension

- the total liability due must have been paid by 31 October and,
- the return must be filed to the Collector-General, PO Box 354, Limerick and must be received or posted on or before 21 November 2002.

Statement Of Practice SP-GEN/1/93

Statement of Practice SP-GEN/1/93 (which deals with surcharge and other penalties or restrictions for late submission of tax returns) is superceded by the special arrangements for the filing of income tax returns for self-assessment customers for the short tax 'year' 2001. SP-GEN/1/93 remains in force for Corporation Tax returns. Guidelines for the 2002 income tax return (due 31/10/03) will issue in due course.

Paper Filing before 31 August 2002 - 'Early Filer'

For paper filers (i.e. those not using ROS) who file returns before 31 August 2002 we will issue a final notice of tax assessment for the short tax 'year' 2001 in time to pay the actual liability on or before 31 October 2002. This will save you having to do the calculations and you will have certainty in the amount of tax to be paid, including Preliminary Tax for the current year. All that has to be done then is:

- ▼ Complete the personalised **payslip** and return it, together with a cheque, to the Collector-General, to arrive on or before 31 October. The latter date will be extended to 21 November where the total liability is less than or equal to €5,000 and the payment is made via Single Debit Authority

OR

- ▼ You can register as a ROS customer and pay through ROS in which case the payment will not become due until 21 November, irrespective of the amount of the tax due

OR

- ▼ If using the Single Debit Authority where the liability is greater than €5,000, the payslip can be returned anytime before the 31 October and a once-off deduction will be made from your clients' bank account no earlier than 31 October 2002.

If you are filing returns before 31 August 2002 you can send them to the local Inspector of Taxes. Otherwise returns should be submitted to the Collector-General's Office, PO Box 354, Limerick.

If returns are filed after 31 August 2002, we cannot guarantee to send final tax assessments before 31 October, so the onus will be on you (or your client) to calculate the tax liabilities and make the necessary payment on time.

* for this purpose 'total liability due' means any balance of income tax for the short tax 'year' 2001, capital gains tax for the short tax 'year' 2001 and Preliminary Tax for the current year 2002.

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Benefits of Electronic Filing through ROS (www.revenue.ie)

As already mentioned, you can now file your client's return AND pay any tax due on-line, using **ROS**. It is available 24 hours a day, 365 days of the year. ROS offers the best and most convenient way to meet the new tax obligations under Pay and File as it provides an instant, accurate and timely calculation of your client's actual liability. Even if you are not ready to file all your client's tax returns on-line for the approaching filing deadline, you should give serious consideration now to registering for ROS immediately as there are other significant benefits from being registered for ROS, including access to all your client's tax payment records and your client will be able to avail of the three week extended payment date as set out in the special arrangements.

Tax Briefing - Issue 45 (October 2001) gives details of the three easy steps to register as a ROS customer. It also

provides information on the ROS Form 11. Please note, however, that registering as a ROS customer may take up to 2 weeks to complete because certain passwords must be sent via land mail. So, give yourself adequate time if you are thinking of using ROS.

Change in Place of Filing - arrangements with An Post

As the place of filing returns has been relocated to the Office of the Collector-General in Limerick special postal arrangements have been made with An Post, to facilitate customers in the transition year 2002. These include special prepaid envelopes for sending tax returns through the postal system. The date of postmark on the envelope will be accepted by Revenue as date of receipt for return compliance purposes for this transitional year.

Remember: Apart from early filing of the tax return, all returns must be sent to the Collector-General in Limerick.

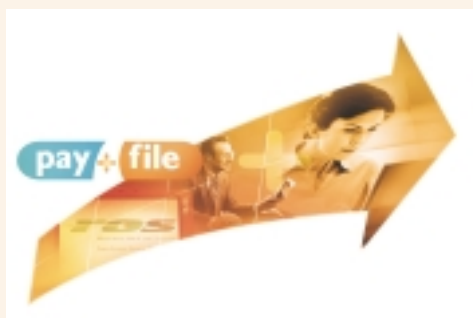


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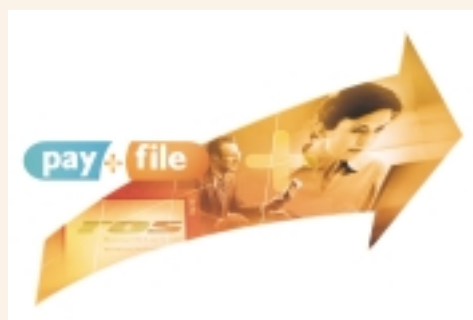
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FINANCE ACT 2002

Summary

The 2002 Finance Act was enacted on 25 March 2002. The following pages highlight some of the changes introduced in the Act.

Income Tax Cost of Employing a Carer

Section 5 Finance Act 2002 amends *Section 467 TCA 1997* by increasing, for the year 2002 and subsequent years, the allowance for family members who employ a carer to look after an incapacitated relative. This allowance is being increased from €12,700 to €30,000 per annum.

Tax relief for Service Charges

Section 6 Finance Act 2002 amends *Section 477 TCA 1997* which provides for a tax credit in respect of local authority service charges and certain similar charges by private operators. The maximum amount of service charges qualifying for the credit at present is €195. This ceiling is being abolished for services provided by local authority and private operations, other than for refuse collection services based on a 'tag' system. In addition, the date on which local authorities must provide the relevant returns to Revenue is being brought forward from January to the previous November to take account of the alignment of the income tax year with the calendar year.

Benefit-in-kind - Preferential Loans

Section 8 reduces for the year 2002 and subsequent years, the level of the specified interest rate used for determining the benefit-in-kind charge on certain preferential mortgage loans made to employees by their employers. The new rate will be 5 per cent (reduced from 6 per cent).

Health expenses relief

Section 9 amends *Section 469 TCA 1997* to widen medical expenses relief. At present, and subject to a minimum threshold, medical expenses may be claimed by an individual against tax at the marginal rate. Claims may be made by an individual in respect of his/her own expenses or expenses met for a dependent relative or child who is not a relative but is being maintained by the individual. This section extends the arrangement to allow an individual to claim in respect of expenses met for a wider range of relatives. It is also being extended to other individuals, whether they are relatives or not, who are aged 65 or over or who are permanently incapacitated. For the purposes of the relief "relative" is defined in the section.

Refunds of Pension Contributions

Section 10 firstly amends the rules in relation to the pension entitlements of a spouse or dependants of a deceased member of an occupational pension scheme.

In future, the aggregate pension that can be provided for a spouse or for dependants of a deceased member of an occupational pension scheme will be equivalent to the maximum pension that could have been provided to the member if he or she had survived. In effect, a full pension can be provided either for a spouse or the children of a deceased member.

This provision applies from the passing of the Act.

Secondly, the section amends the level of tax relief for contributions by employees in occupational pension schemes to mirror the treatment for the self-employed and employees not in occupational pension schemes. Employees in occupational pension schemes will in future be entitled to tax relief on aggregate annual contributions to the scheme,

including AVC contributions as follows:

Age	Limit
Up to 30 years of age	15% of remuneration
30 up to 40 years of age	20% of remuneration
40 up to 50 years of age	25% of remuneration
Over 50 years of age	30% of remuneration

This provision applies as respects the year of assessment 2002 and subsequent years of assessment.

Thirdly, the section amends *Section 780 TCA 1997* to reduce the flat rate of tax charged on refunds of pension contributions made on or after 5 December 2001. The rate is being reduced from the existing rate of 25 per cent to the standard income tax rate, currently 20 per cent.

Fourthly, the section liberalises the rules in relation to Retirement Annuity Contracts (RAC's) for the self-employed. Under the existing rules, a self-employed individual who becomes an employee and joins an occupational pensions scheme must terminate any RAC he or she holds - unless of course he or she continues to have a source of self-employment income. They may in future continue with the RAC or, indeed take out a further RAC but without tax relief. The contributions to the RAC will be carried forward indefinitely, until such time, if any, that the employee acquires a source of self-employment income against which the contributions may be offsettable subject to the normal rules.

This provision applies as respects the year of assessment 2002 and subsequent years of assessment.

Share Options

Section 11 amends *Section 128 TCA 1997*. A company or other person who grants rights to acquire shares and other assets in a tax year is

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obliged to make a return of the particulars to the relevant inspector of taxes by 30 June following the end of that year. This will now be 31 March (given the alignment of the tax and calendar years). Where the company or other person is not resident in the State and operates through a branch or agency, the section clarifies that the obligation to make the return will fall on the agent or manager of that branch or agency.

Relief from Income Tax in respect of certain earnings of sportspersons

Section 12 inserts a new *Section 480A* into Chapter 1 of Part 15 of *TCA 1997*. The section makes provision for relief from income tax in respect of certain earnings of sportspersons listed in *Schedule 23A* of that Act. The sportspersons concerned are: athlete, badminton player, boxer, cyclist, footballer, golfer, jockey, motor racing driver, rugby player, squash player, swimmer and tennis player.

The earnings to which the relief applies are earnings deriving directly from actual participation in the sport concerned such as prize money, performance fees, etc. but not other earnings such as sponsorship fees, advertisement income or income from endorsements, etc. The relief takes the form of a deduction from earnings equal to 40 per cent of those earnings for up to any 10 years of assessment back to and including the tax year 1990/91 for which the sportsperson was resident in the State.

The relief will be given by way of repayment of tax and is to be claimed in the year in which the sportsperson ceases permanently to be engaged in that sport provided they are resident in the State in that year. Provision is made to withdraw the relief by way of a Case IV assessment for the years in respect of which the relief was originally given if the person subsequently recommences to be engaged in that sport, though this

does not prevent a subsequent claim for the relief if and when the sportsperson finally does retire at a later time.

Approved Profit Sharing Schemes (APSS's) and Employee Share Ownership Trusts (ESOT's)

Section 13 makes a series of changes to the tax legislation governing APSS's and ESOT's.

It is provided that the transfer and appropriation of securities other than ordinary shares to the participants in an ESOT/APSS in the circumstances of certain takeovers may take place in a manner, which preserves the tax benefits of the participants. The takeovers are ones to which *Section 586 TCA 1997* (amalgamation by exchange of shares) applies and which occur after the ESOT/APSS was established. The circumstances involve companies with no ordinary share capital, or insufficient ordinary share capital available to them. It is provided that the tax benefits may carry through in the event of a subsequent reorganization of share capital under *Section 584 TCA 1997* (reorganization or reduction of share capital). In addition, interest income receivable on those securities may be used to reinvest in other such securities.

Provision is also made to set a minimum level of ordinary share capital to be used in the case of a takeover by a company limited by shares. This is intended to confine the provision to those situations where there is a genuine difficulty in doing a share for share swap of ordinary shares.

Section 511A TCA 1997 is restated to ensure that the three year retention period for which shares must be held to benefit from tax relief will be satisfied by a combination of the time shares are held in an ESOT and in an APSS.

A number of technical and other changes are also provided for, such as including ACC Bank and the company, which acquires control of the Irish National Petroleum Corporation Ltd. as relevant companies for the purposes of the legislation. These changes allow the original employees participate in both the original ESOT/APSS and if necessary, in a second APSS, subject to the same overall maximum limit of €12,700 per annum that applies to APSS's generally.

Restriction on use of losses on Approved Buildings

Section 14 inserts a new section, *Section 409C*, into the *TCA 1997* for the purpose of restricting the use, by passive investors, of relief under *Section 482* of that Act. This relief is available in respect of expenditure on the repair, maintenance or restoration of certain buildings by the owner or occupier of such buildings. The buildings concerned are those which have been determined by the Minister for Arts, Heritage, Gaeltacht and the Islands to be of significant scientific, historical, architectural or aesthetic interest and determined by the Revenue Commissioners to have reasonable public access. The way that relief is given is to treat the amount of such expenditure as an amount of loss in a trade, which under the Tax Acts can be used to reduce a person's income liable to income tax.

Subject to certain transitional arrangements an individual who, as a result of participating in a passive investment scheme, claims relief under *Section 482* as owner of such a building, will be limited to €31,750 in the amount by which he or she can reduce his or her taxable income. Broadly, a passive investment scheme is defined as arrangements under which:

- A person (who will make a claim under *Section 482* as owner) takes an interest in a building from its original owner

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- At that time, or in the next 5 years, the building is determined to be an approved building for the purposes of *Section 482* and
- The arrangements are such that the original owner has influence over how expenditure on the building is to be incurred or the original owner is entitled to participate in the tax benefits or the original owner may reacquire the interest.

Ex gratia payments

Section 15 amends *Schedule 3 of TCA 1997* so as to increase the additional amount by which the basic exemption from income tax may be increased for ex gratia redundancy payments in certain circumstances. The section also provides that the restriction on the use of this additional amount of relief is modified.

At present the basic income tax exemption limits for ex gratia redundancy payments are €10,160 plus €765 per full year of service. The limits were increased to their present levels in 1999 and an individual may avail of this exemption each time he or she is made redundant. In addition, on a once only basis, the basic exemption may be increased by an additional €5,080 in a case where an individual is not a member of an occupational pension scheme or irrevocably gives up the right to receive a lump sum from such a scheme. If an individual receives or is entitled to receive, a pension lump sum then the additional exemption is reduced by the amount of the pension lump sum.

The section increases the value of the additional amount of €5,080 to €10,000 and modifies the restriction on its use so that it may be availed of by an individual every 10 years. The section provides that the revised arrangements are effective from 1 January 2002.

Business Expansion and Seed Capital Schemes

Section 16 makes a number of changes to the provisions governing the Business Expansion Scheme (BES) and the related Seed Capital Scheme (SCS). Both schemes are being extended for a further two years to 31 December 2003. The BES company limit is being increased from its existing level of €317,500 to €750,000 and this limit will also apply to the SCS.

Under the SCS, employees who leave employment to invest in certain new businesses and take up employment in these businesses can claim a refund of tax paid for the previous 5 years. This refund period is being increased to 6 years.

Finally, it is provided that where any amount raised by a Designated Fund up to 31 January 2002 is invested in qualifying companies before 31 December 2002 the individual investors who subscribed to the funds will have the option of claiming tax relief on their investment for either the short tax year 2001 or 2002. Similarly, in the case of direct investment by investors in qualifying BES companies, where eligible shares are issued before 31 January 2002, the investor will have the option of claiming tax relief on their investment for either the short tax year 2001 or 2002.

Restoration of Interest Relief on Rented residential properties

Section 17 amends *Sections 97 and 248A TCA 1997* so as to restore interest relief as a deductible expense in calculating tax on rental income from residential property. The interest in question is interest on borrowed money employed in the purchase, improvement or repair of such property by an individual, partnership or company and which accrues, on or after 1 January 2002.

Extension of Qualifying periods for certain tax incentive schemes

Section 23 amends *Part 10 of TCA 1997* in order to provide for an extension of the qualifying period for a number of tax incentive schemes in relation to capital expenditure incurred on the construction or refurbishment of commercial and industrial premises.

In the case of multi-storey car parks outside of Cork and Dublin the qualifying period is extended from 31 December 2002 to 31 December 2004, where the local authority certifies by 31 December 2003 that 15 per cent of total costs have been incurred by 30 September 2003.

In the case of the Urban Renewal Scheme, the qualifying period is extended from 31 December 2002 to 31 December 2004, where the local authority certifies by 30 April 2003 that 15 per cent of total costs have been incurred by 31 December 2002. In the case of the Rural Renewal Scheme there is a straight extension from 31 December 2002 to 31 December 2004. Both of these extensions are subject to a Ministerial Commencement Order being made, in order to allow for EU approval to be obtained in respect of the Business Elements of both schemes.

In the case of the Park and Ride Scheme the qualifying period is extended from 30 June 2002 to 30 June 2004. This scheme is also amended to provide that a property developer may not avail of capital allowances in relation to a park and ride facility or a commercial premises within the site of a park and ride facility. This amendment applies as respects expenditure incurred on or after 7 February 2002.

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Motor vehicles

Section 28 amends Part 11 of *TCA 1997* in relation to capital allowances, leasing charges and deductions for running expenses in respect of motor vehicles.

Firstly, the capital value threshold used to determine the amount of capital allowances and leasing charges to be granted for tax purposes for both new and second hand cars used in the course of a trade, profession or employment is increased from €21,585.55 to €22,000.

This new limit applies in respect of expenditure incurred in accounting periods or basis periods, which end on or after 1 January 2002.

The section also repeals *Section 376 TCA 1997*. This section restricted the amount of running expenses deductible for tax purposes where the cost of a car exceeded the capital value threshold referred to above. This change applies as respects expenditure incurred in accounting periods or basis periods, which end on or after 1 January 2002.

Disposal of livestock due to disease eradication measures

Section 29 amends *Section 668 TCA 1997* in relation to the special tax treatment of profits arising from the disposal of livestock due to disease eradication measures.

Firstly, the section extends to four years the period over which a farmer may spread the profit arising from

such a disposal, which arises on or after 21 February 2001. This option, however, will not apply where a permanent discontinuance of the farming trade occurs. The section provides that a farmer is deemed to be entitled to stock relief equal to the profit assessed, provided that s/he re-invests or intends to re-invest, before the end of the 4 year period, not less than the amount of compensation which was received. However, if the compensation is not fully re-invested by the end of the 4 year period, the aggregate stock relief for the 4 years is to be reduced to an amount that bears the same proportion to the aggregate stock relief as the expenditure actually incurred in the 4 year period bears to the compensation received. This reduction is to take place, as far as possible, in the later years.

Finally, the section makes two technical amendments in order to clarify the interaction of this section with the short tax year. The first amendment provides that where an instalment of profit is to be treated as arising in a one year accounting period which ends between 1 January 2002 and 5 April 2002 and which forms the basis period for the tax years 2001 and 2002, then 74 per cent of the instalment is taken as part of the profits of 2001, and 26 per cent of the instalment is taken as part of the profits of 2002. The second amendment provides that the stock relief for the accounting period in question is to be granted in the same proportions. This latter amendment applies as on and from 6 April 2001.

Capital Allowances

Plant and Machinery

Section 31 provides for amendments to the law governing capital allowances for plant and machinery. The *Finance Act 2001* reduced the write-off period for wear and tear allowances for plant and machinery from 7 years to 5 years, thus

providing for a write off of qualifying expenditure at 20 per cent per annum over 5 years. The measure applied only in the case of capital expenditure incurred on or after 1 January 2001. For earlier expenditure, wear and tear allowances continued to apply at the rate of 15 per cent a year (10 per cent in year 7) on a straight-line basis or, in the case of motor vehicles, at 20 per cent a year on a reducing balance basis. This section provides that, at the option of the taxpayer, the tax written-down value of this earlier (pre-1 January 2001) expenditure may now be “pooled together” and qualify for write-off on a straight-line basis at 20 per cent a year over the following 5 years. This change will apply in the case of chargeable periods ending on or after 1 January 2002.

In addition, the section provides that with effect from 1 January 2002 a balancing charge will not arise in respect of plant and machinery where the disposal proceeds for the plant or machinery is less than €2,000. This relaxation of the balancing charge rules will not apply in cases where plant and machinery is disposed of between connected persons.

Private Hospitals

Section 32 amends the legislation introduced in the *Finance Act 2001* to provide for a scheme of capital allowances in respect of expenditure incurred on the construction or refurbishment of buildings used as private hospitals. The section removes the condition that the hospital has to be operated by a body with charitable status for tax purposes, and reduces the minimum requirement of 100 in-patient beds to 70. The section also clarifies that rooms used exclusively for the assessment or treatment of patients qualify for the capital allowances, and provides that fulfilment of the conditions necessary for qualification for the allowances will have to be

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certified annually by the appropriate health board.

The scheme of allowances is subject to clearance by the European Commission from an EU State aids perspective. In order to comply with the European Commission rules on EU State aid, the section also provides that a hospital will not qualify for the allowances where the relevant interest in the capital expenditure incurred on its construction or refurbishment is held by a company, the trustees of a trust, an individual involved in the operation or management of the hospital as an employee or director or in any other capacity, or a property developer in the case where the property developer (or a connected person) incurred the capital expenditure on the hospital. This rule will apply whether the relevant interest in that expenditure is held by any such person in a sole capacity or jointly or in partnership with another person or persons.

Registered Nursing Homes

Section 33 provides for a scheme of capital allowances for expenditure incurred on the construction or refurbishment of housing units associated with a registered nursing home. These residential units are intended for older people who wish to maintain their independent living status within a sheltered, caring environment.

The main conditions of this new scheme are as follows:

- The residential units will have to be operated or managed by a registered nursing home and the nursing home will provide back-up medical facilities (including nursing) to the occupants of the units when required, and an onsite caretaker will also be available
- There will have to be a minimum of 20 housing units within the

site of the nursing home. The units must be single storey houses or comprised in a two storey building. The units and any building in which they are comprised must be designed and constructed to meet the needs of persons with disabilities, including in particular the needs of persons confined to wheelchairs. Each unit must contain one or two bedrooms, a kitchen, a living room, bath or shower facilities, toilet facilities, and a nurse call system linked to the nursing home.

- The units must be leased only to those who are certified by a medical doctor to require such accommodation by virtue of old age or infirmity
- There must be a day care centre on site, which complies with Health Board requirements (although any development cost of providing this centre will not qualify for capital allowances)
- Not less than 20 per cent of the residential units must be made available to the relevant Health Board and the general rates charged must be discounted by at least 10 per cent in the case of the Health Board tenants.

The tax relief available will be the same as existing relief for nursing homes. There will be a write off period of 7 years for qualifying expenditure. Capital allowances of 15 per cent per year will be available for the first 6 years with the balance of 10 per cent being written off in year 7. The allowances will be subject to a claw-back if the units are sold within 10 years. The allowances will be subject to the usual €31,750 limit per year on the amount of capital allowances, which an individual passive investor can set against non-rental income.

The capital allowances will be available for expenditure incurred in

the 5 year period commencing with the passing of the *Finance Act 2002*. However, the allowances will not be available where any part of the construction expenditure on the units is met by State grants.

Sports Injury Clinics

Section 34 provides for a scheme of capital allowances in respect of capital expenditure incurred on the construction or refurbishment of buildings used as private sports injury clinics. In order to qualify for the allowances, the sole or main business of the clinic must be the diagnosis, alleviation and treatment of sports-related injuries. In addition, the clinic must provide day-patient, in-patient and out-patient medical and surgical services and in-patient accommodation of at least 20 beds, and must contain an operating theatre or theatres and on-site diagnostic and therapeutic services. While the clinic will provide services to private patients, not less than 20 per cent of its capacity must be available for public patients, and the clinic must provide a discount of at least 10 per cent to the State in respect of the fees to be charged in respect of the treatment of public patients. Fulfilment of the qualifying criteria will be certified annually by the appropriate health board.

Annual allowances in respect of qualifying expenditure will be available at the rate of 15 per cent for the first 6 years with the balance of 10 per cent being written off in year 7. Any annual allowances given will be subject to a balancing charge if the clinic is sold within 10 years. The allowances will be subject to the usual €31,750 limit per year on the amount of capital allowances, which an individual passive investor can set against non-rental income. Moreover, in order to comply with European Commission rules on EU State aid, a clinic will not qualify for

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the allowances where the relevant interest in the capital expenditure incurred on its construction or refurbishment is held by a company, the trustees of a trust, an individual involved in the operation or management of the clinic as an employee or director or in any other capacity, or a property developer in the case where the property developer or a connected person incurred the capital expenditure on the clinic. This rule will apply whether the relevant interest in that expenditure is held by any such person in a sole capacity or jointly or in partnership with another person or persons. Subject to clearance by the European Commission from an EU State aid perspective, the section will come into operation by way of a commencement order to be made by the Minister for Finance, and will apply as respects expenditure incurred on or after the date of the coming into operation of the section.

Buildings used for Third Level Education

Section 35 amends Section 843 TCA 1997 which provides for a scheme of capital allowances in respect of capital expenditure incurred on certain buildings used for third level education provided that at least 50 per cent of the qualifying expenditure for the project is provided from private sources. Capital allowances are provided in respect of qualifying expenditure (which covers both construction expenditure and expenditure on the provision of plant and machinery) at

the rate of 15 per cent a year for 6 years with the balance of 10 per cent being written off in year 7. Each individual project must be certified in advance by the Minister for Finance. Section 843 currently covers projects undertaken in the period from 1 July 1997 to 31 December 2002. The amendment provides for a 2 year extension of the deadline for projects from 31 December 2002 to 31 December 2004.

Donations to certain Sports Bodies

Section 41 inserts a new Section 847A into the TCA 1997 to provide for a scheme of tax relief for donations to certain sports bodies for the funding of capital projects. To be eligible for this relief, the project must be approved by the Minister for Tourism, Sport and Recreation. The estimated aggregate cost of the project must not be greater than €40m. The sports body must hold a certificate from the Revenue Commissioners that the body is, in the opinion of the Commissioners, a body of persons to which Section 235 TCA 1997 applies, i.e. its income is exempt from tax because it is a body established for and existing for the sole purpose of promoting athletic or amateur games or sports and such income is applied solely for those purposes. The body must also possess a valid tax clearance certificate.

The relief will apply at the taxpayer's marginal rate. It will be paid by the Revenue Commissioners to the beneficiary of the donation (i.e. the sports body) in the case where the donations are made by PAYE taxpayers. For example, if an individual who pays income tax at the higher rate - 42% - makes a qualifying donation of €580 to an approved sports body, that body will be deemed to have received €1,000 less tax of €420. The body will then be able to claim a refund of €420 from Revenue at the end of the year.

Individual taxpayers on the self-assessment system will be able to claim the relief on their annual tax returns as a deduction from total income. A similar arrangement will apply in the case of companies who will claim a deduction for the donation as if it were either a deductible trading expense or an expense of management deductible from total profits. The minimum qualifying donation in any year to any sports body will be €250. The provision will come into effect from 1 May 2002.

Expenditure on Significant Buildings/Gardens

Section 42 makes a number of technical changes to Section 482 TCA 1997, which provides tax relief for certain expenditure on significant buildings and gardens. It makes it clear that expenditure incurred before 1997/98, in relation to an approved garden must, in order to qualify for relief, have been incurred by the person who owned or occupied the garden. Under the existing rules, certain information in relation to opening times and public access to significant buildings/gardens must be provided to Bord Fáilte and the Revenue Commissioners by 1 January in the chargeable period for which a claim for relief is made. This date is being changed to 1 November as a result of the alignment of the tax year and the calendar year. Finally, it is being provided that relief under Section 482 is not adversely affected by ringfencing provisions, introduced by the Finance Act 2001, in relation to trading losses.

Relevant Contracts Tax

Section 51 amends the law governing Relevant Contracts Tax (RCT), the tax which principal contractors are obliged to deduct at a rate of 35 per cent from payments made to certain contractors in the construction, meat processing and forestry industries.

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RCT / CT / CGT



The section:

- ▼ Clarifies that the construction, alteration, repair, extension or demolition of “telecommunication apparatus” is within the definition of “construction operations” for RCT purposes
- ▼ Brings the rendering of the carcasses of slaughtered cattle, sheep, pigs, domestic fowl, turkeys, guinea-fowl, ducks or geese within the definition of “meat processing operations” for RCT purposes and
- ▼ Makes it a condition for the granting of a C2 certificate (a certificate enabling subcontractors to receive payments without deduction of tax) that all interest and penalties (and not just tax) due under the Tax Acts and the Value-Added Tax Acts for the appropriate “look back period” should have been paid.

These changes take effect from 1 April 2002.

Preliminary Corporation Tax payment dates

Section 58 gives effect to the Budget announcement that the payment dates for preliminary tax payable by companies are being brought forward to one month before the end of the accounting period. This is being introduced over a 5 year transition period and will be fully effective for accounting periods ending after 2005 when 90 per cent of final liability will be payable one month before the end of the accounting period. In the case

of a ‘small company’ preliminary tax can be based on 100 per cent of the liability of the previous year. A company will be treated as a small company if the corresponding corporation tax liability of the company for the preceding period does not exceed €50,000.

During the transition period, preliminary tax will be payable in two instalments, the first due 1 month before the end of the accounting period and the second within 6 months after the end of the accounting period. This, however, is subject to a further transitional measure that no first instalment of preliminary tax will be payable before 28 June 2002. The amount of the first instalment will be:

- ▼ For accounting periods ending in 2002, 18 per cent of the final liability but in the case of a small company the payment can be based on 20 per cent of the previous year’s liability
- ▼ For accounting periods ending in 2003, 36 per cent of final liability but in the case of a small company the payment can be based on 40 per cent of the previous year’s liability
- ▼ For accounting periods ending in 2004, 54 per cent of final liability but in the case of a small company the payment can be based on 60 per cent of the previous year’s liability
- ▼ For accounting periods ending in 2005, 72 per cent of final liability but in the case of a small company the payment can be based on 80 per cent of the previous year’s liability. In the case of an accounting period which is less than one month and one day in length, the first preliminary tax instalment will be due on the last day of the accounting period.

In the transition period the second instalment should bring total preliminary tax payments for the

accounting period up to 90 per cent of the final liability for the accounting period.

In the case of a company which has chargeable gains on disposals of assets made in an accounting period but after the preliminary tax payment date for that accounting period, the preliminary tax obligations of the company will be treated as fulfilled where:

- The company pays preliminary tax in the accounting period equal to 90 per cent (or 18%, 36%, 54% or 72% as appropriate in the transition period) of the liability for the accounting period apart from liability in respect of the gains on those disposals, and
- The company makes a ‘top-up’ payment within one month after the end of the accounting period so that the total payments at that time amount to at least 90 per cent (or 18%, 36%, 54% or 72% as appropriate in the transition period) of the full liability for the accounting period.

Capital Gains Tax

Section 59 amends Section 598 TCA 1997. That section provides a measure of relief from capital gains tax where an individual, having attained the age of 55, disposes of certain business assets or shares in his or her family company. The section is being amended so that any land, machinery or plant which the individual owns personally, but which are used by his or her family company for the purposes of its trade can, in certain circumstances, qualify for the relief. One of the requirements is that such assets be disposed of at the same time and to the same person, as the shares in the family company. Section 598 is also being amended so that land, which has been let in the period of 5 years prior to its disposal under a compulsory purchase order (CPO) for the purposes of road-building or

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CGT/VAT

road-widening but prior to its first letting was farmed for 10 years by the person making the disposal, also comes within the relief.

Section 60 amends *Section 600A TCA 1997*. *Section 600A* gives, in certain circumstances, a deferral of capital gains tax arising on the disposal of a residential premises which is let. One of the conditions is that the proceeds from the disposal are re-invested in certain other similar premises. The amendment to the section provides firstly that the premises being disposed of can have any number of residential units and secondly that the replacement premises must contain at least the same number of residential units, but not less than 3 such units.

Section 61 amends *Section 605 TCA 1997*. That section provides for a deferral of capital gains tax liability on the disposal of assets under a CPO if the proceeds are reinvested in certain other assets. In general terms both the original assets and the replacement assets must either be fixed assets of a trade, or land or buildings, which are not assets of a trade. (It should be noted that under *Section 652* where the asset disposed of is development land, the capital gains tax deferral is only available if the land is subject to the CPO for the purposes of road construction or widening). The amendment to *Section 605* allows a person who is disposing of let land under a CPO for road-building or road-widening to qualify for roll-over relief if:

- In the 10 years ending with the time the land was first let, the person farmed the land
- The first letting took place within 5 years ending with the disposal, and
- The proceeds are re-invested in land, which the person will farm or in fixed assets of another trade.

Section 62 amends *Section 542 TCA 1997*. That section provides, inter alia

that, for capital gains tax purposes, the time of a disposal of land under a CPO, where there is no contract, is the earlier of the time the authority concerned enters on the land and the time at which the compensation is agreed. The capital gains tax liability on the disposal arises for the year of assessment in which the disposal is treated as being made. This is being amended so that that the capital gains tax liability will not arise in respect of such a disposal until the year of assessment in which the compensation is received where:

- ▼ The disposal is under a CPO and for the purposes of road building or road widening
- ▼ The person making the disposal is engaged in farming and
- ▼ Immediately before the disposal, the land was used for the purposes of farming.

Section 63 amends *Section 980(3) TCA 1997* which requires a purchaser of certain assets to retain 15 per cent of the consideration to be paid to the vendor, unless the vendor produces a certificate issued by the Revenue Commissioners. The amount of such consideration, above which the section applies, is being increased from €381,000 to €500,000.

Value Added Tax

Section 99 inserts a new *subsection (3A)* into *Section 4* of the VAT Act.

The new subsection provides for a change in the rules regarding the taxation of certain property transactions. If a surrender of possession of immovable goods takes place in circumstances where the holder of the taxable interest disposes of it for less than the amount of the tax exclusive cost of the acquisition plus the development of those goods, the disposal giving rise to the surrender of possession is deemed not to be a supply of immovable goods and is deemed to be a short-term letting of immovable goods. This makes it an exempt

supply and prevents the recovery of input VAT.

The subsection excludes disposals of freehold interests from the new rules.

It also allows Revenue to set aside the provisions if a person can demonstrate that the value of the interest had fallen because of unforeseen changes in market conditions.

Section 100 amends *Section 7* of the VAT Act, which deals with waiver of exemption. These rules allow a person to waive his/her exempt status in certain circumstances and opt to be subject to VAT. The amendment is consequential to the insertion of the new *Section 4 (3A)* and provides that a waiver of exemption cannot apply or extend to the exempt letting of immovable goods to which *Section 4 (3A)* applies.

Section 101 makes several amendments to *Section 8* of the VAT Act, which deals with taxable persons.

Paragraphs (a) and (b)(i) of the amendment provide for the extension of the reverse charge rule to cover cultural, artistic, entertainment or similar services provided by performers not established in the State. The recipient of such services, which in most cases will be the promoter of the event, will become the taxable person in place of the non-established performer.

Paragraph (a) amends *subsection (1)* and relieves the entertainer from liability. *Paragraph (b) (i)* inserts a new *paragraph (aa)* in *subsection (2)* and imposes the liability on the recipient of the services. Where a body that has received a service as provided for in *(b) (i)* and has received funding from the Arts Council at any time over the three years prior to 25 March 2002 the Finance Act provides that the Revenue Commissioners may, at the

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FINANCE ACT 2002

VAT/Interest/Penalties

request of the particular body, defer application of the provisions in *b(i)* not later than 1 March 2003.

Paragraph (b) (ii) inserts a new *paragraph (d)* in subsection (2). The new paragraph provides that:

- The owner of a premises who allows a non-established mobile trader to supply goods on his or her premises shall furnish the trader's details to Revenue and
- Where cultural, artistic, entertainment or similar services supplied by a non-established performer are received by a non-established promoter, the owner of the venue shall furnish details of the promoter and the performance to Revenue.

Where an owner of a premises or a venue fails to furnish these details to Revenue, they may be made jointly and severally liable with the mobile trader or the promoter, as appropriate, for the VAT due. The Act provides for the right of appeal to the Appeal Commissioner in such cases.

Paragraph (c) amends subsection (8), which deals with group registration. The purpose of the amendment is to deal with cases where a short term letting of immovable goods occurs within a VAT group and the lessor has been entitled to deductibility on his or her acquisition. It provides that the transaction will be deemed to have occurred when either the lessor or lessee leaves the group, or the group breaks up, and a charge to VAT will arise at that time. The paragraph also clarifies how the mechanism works in the case of multiple transactions or the cancellation of a waiver of exemption. In the case of multiple transactions the mechanism applies to the first letting for which no waiver of exemption is in place; in the case of a cancellation of a waiver during the lifetime of a letting, the mechanism applies to that letting.

Section 102 amends *Section 10* of the VAT Act, which deals with the amount on which tax is chargeable.

Paragraphs (a) and (b) provide that when certain coupons or vouchers are supplied to an agent with a view to resale they are liable to VAT at that time. VAT is chargeable also on resale of the vouchers by the agent. In these circumstances, no VAT is chargeable when goods are redeemed using such vouchers.

Section 103 confirms the increase in the rate of VAT from 20 per cent to 21 per cent from 1 March 2002.

Section 107 inserts a new *Section 19B* into the VAT Act to provide for an expression of doubt facility in VAT legislation.

Subsection (1) allows a person who is in doubt about the application of VAT to a transaction to lodge a letter of expression of doubt with Revenue at the same time as the appropriate VAT return is due. It also defines a letter of expression of doubt, which has to be accompanied by supporting documentation. The letter of expression of doubt includes an electronic transmission.

Subsection (2) provides that interest will not apply to any additional liability in an expression of doubt case, subject to certain conditions.

Subsections (3) and (4) provide for situations where an expression of doubt is not accepted as genuine by the Revenue Commissioners. Such a case is then treated as if no expression of doubt had been lodged, and interest charges apply in the normal way.

Subsection (5) allows for an appeal mechanism where a taxable person is aggrieved by a decision of Revenue that an expression of doubt is not genuine.

Subsection (6) provides that an expression of doubt is deemed not to be made unless it is acknowledged

and the acknowledgement is kept as part of the taxable person's records.

Subsection (7)(a) provides that where a non-registered person is in doubt as to whether he or she is a taxable person, that person can avail of the expression of doubt mechanism.

Subsection (7)(b) provides the timeframe in which an expression of doubt must be lodged by a person who is concerned as to whether or not he or she is a taxable person.

This section has effect from the date of passing of the Act.

Interest and Penalties

Section 129 changes the basis on which interest charged by Revenue on unpaid tax and paid by it on overpaid tax is calculated. At present this is done on a monthly basis but, with effect from 1 September 2002, interest will be expressed as a daily rate and calculated on a daily basis. Appropriate changes are made to the various provisions of the Taxes Consolidation Act, the Capital Acquisitions Act, the Finance Act 1983, the Finance Act 1993 and the Stamp Duties Consolidation Act which provide for the charging or paying of interest on tax unpaid/overpaid. Arising from this change over to a daily rate of interest, certain minimum interest charges are abolished. (*Section 108* makes similar changes in relation to interest for VAT.) (See Page 21)

Section 130 amends Chapter 1 of Part 47 of the TCA 1997. *Section 1053*, which falls within that Chapter, imposes a tax-geared penalty (i.e. one, which is a proportion of the tax undercharge where a person fraudulently or negligently makes an incorrect return - this includes an individual's income tax return and certain other returns. *Paragraph (a)* of this section amends the section so that a tax-geared penalty can be imposed where there is a tax undercharge and the person in question has not made the return concerned.

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Section 131 amends *Section 1072 TCA 1997* so that tax-geared penalties can be imposed not only where a company fraudulently or negligently makes a return but also where a tax undercharge arises and no such return has been made.

Section 133 amends *Section 1078 TCA 1997* in two respects. *Section 1078 TCA 1997* is concerned with what

constitutes a revenue offence and the penalty for such an offence. Currently, it is an offence if a person “knowingly or wilfully” fails to comply with obligations regarding the furnishing of tax returns or the keeping of records. In *paragraph (a)* this provision is amended to make this failure an offence unless there is a reasonable excuse. *Section 1078* was amended in the *Finance Act 2001* to

allow a Judge to order a person being prosecuted for failing to make a tax return, to order the person to make the return. *Paragraph (b)* further amends *Section 1078* to make the failure by a person to comply with such an order a further offence coming within the scope of the section.

CGT

Retirement Relief And Reconstructions

Where a business is transferred to a new company, with substantially the same shareholding, as part of a reconstruction, *Sections 587 and 615 TCA 1997* apply and no tax is chargeable on such disposals. Essentially, the effect of the legislation is to treat both shareholders and company as if, in relation to the business transferred, they were the original company and its shareholders accordingly.

Where *Section 587 TCA 1997* applies, the shares are deemed to have been acquired at the same time as the original holding. Therefore in relation to any new holding of shares in the new company, the ten year test is satisfied provided the original holding was acquired at least 10 years previously.

In relation to the computation of retirement relief assets held by the new company could be chargeable business assets provided they were acquired by the original company at least 10 years previously.

Generally in the case of working directors an individual does not qualify for retirement relief until he/she has been a working director of the new company for at least 10 years.

However, where there is a reconstruction to which *Sections 587 and 615 TCA 1997* applies, Revenue will accept that provided all other conditions are satisfied, the period for which the individual was a working director of the original company will be taken into account for any claim to retirement relief, as appropriate.

VAT RETURNS

VAT Returns made by Agents (*Section 106 TCA 1997*)

VAT legislation required the VAT return to be made by the taxable person. While, in practice, Revenue has been prepared to accept VAT returns from agents in some instances, VAT repayment claims could only be processed on foot of a return signed by the taxable person.

Section 106 has now formally amended the VAT legislation to allow a third party, acting under the authority of a taxable person, to make the VAT return on behalf of that taxable person. This will allow agents to furnish VAT returns on behalf of their clients. When availing of this possibility, agents should ensure that they hold an appropriate written authority from the relevant client. The VAT return itself should be signed by a person of responsibility within the firm/practice and the name of the firm/practice should be indicated in block capitals.

Demutualisation of Scottish Provident

Arising from the demutualisation of Scottish Provident, members have the option of receiving either cash or loan notes. The mechanism to achieve this is that policy holders will first receive shares in Scottish Provident. The holders of these shares will then be offered either cash or loan notes, by a subsidiary of Abbey National, in exchange for the shares. The cash received is taxable to CGT as it is a disposal of shares. There is no base cost. The receipt of loan notes is relieved by *Section 586 TCA 1997*. CGT arising on the loan notes is therefore deferred until they are redeemed. Again there will be no base cost.

Revenue

CONVERSION RATES



Irish Pound Indicative Rates Based On Euro Conversion Rates as supplied by the Central bank

	1999/00 - 2001	
Deutschmark	2.4833	
Belgian franc	51.22	
French franc	8.3289	
Dutch guilder	2.7981	
Italian lira	2458.56	
Spanish peseta	211.267	
Portuguese escudo	254.56	
Finnish markka	7.5495	
Austrian schilling	17.47	
	2000/2001	2001
Greek drachma	429.81	432.66

- Following the introduction of the euro, the exchange rate for the participating currencies (Irish pound, Deutschmark, French franc, Belgian/Luxembourg franc, Dutch guilder, Italian lira, Spanish peseta, Portuguese escudo, Finnish markka and Austrian schilling) against each other were irrevocably fixed.
- For the period 1 January 1999 to 5 April 1999 and for each subsequent tax year, a fixed bilateral rate applies for each participating currency against the Irish pound. This is calculated by dividing its irrevocable conversion rate against the euro by the irrevocable conversion rate for the Irish pound against the euro (0.787564).
- Following the Greek drachma joining the EMU on 1 January 2001, the fiscal year average was calculated using daily reference rates as published by the European Central Bank for the period 5 April to 31 December 2000 and for the period 1 January to 6 April 2001 an irrevocable conversion rate for the Greek drachma of 340.75.

Irrevocable EUR Conversion Rates as Adopted By The EU Council

1 euro =	40.3399	Belgian franc
	6.55957	French franc
	40.3399	Luxembourg franc
	1.95583	German mark
	166.386	Spanish peseta
	0.78756	Irish pound
	1936.27	Italian lira
	2.20371	Dutch guilder
	13.7603	Austrian schilling
	200.482	Portuguese escudo
	5.94573	Finnish markka
	340.750	Greek drachma

Council regulation (EC) No. 1103/97 of 17 June 1997 states: "Monetary amounts to be converted from one national currency unit into another shall first be converted into a monetary amount expressed in the euro unit, which amount may be rounded to not less than three decimals and shall then be converted into the other national currency unit. No alternative method of calculation may be used unless it produces the same results"

Average Market Mid-Closing Exchange Rates v. Irish Pound as Supplied by the Central Bank

	1999/00	2000/01	2001
U S dollar	1.3093	1.1511	1.1252
Sterling	0.8128	0.7801	0.7850
Danish krone	9.4444	9.4706	9.4571
Japanese yen	145.73	127.638	137.75
Swiss franc	2.0342	1.9534	1.9087
Swedish krona	11.0248	10.9017	11.8583
Norwegian krone	10.3975	10.3306	10.1508
Canadian dollar	1.9262	1.7327	1.7481
Australian dollar	2.0323	2.0790	2.1916
Greek drachma	416.91		

The above chart shows the average market exchange rates supplied by the Central Bank for the 2 years ended 5 April 2001 and for the Tax Year 2001. The rates applied commercially to private customers by the associated banks may differ depending on individual circumstances.

On making a return of foreign income to the Inspector of Taxes, the taxpayer should in strictness, use the actual rate of exchange obtained by him/her in respect of the foreign currency. Alternatively the above average rates of exchange may be used.

Whichever method of conversion is used by the taxpayer in making his/her returns it should be used on a consistent basis.



Conversion Rates

Continued

Average Market Mid-Closing Exchange Rates v. Euro as Supplied by the Central Bank

	2001
U S dollar	0.8861
Sterling	0.6182
Danish krone	7.4481
Japanese yen	108.48
Swiss franc	1.5032
Swedish krona	9.3392
Norwegian krone	7.9945
Canadian dollar	1.3767
Australian dollar	1.7260

LLOYDS CONVERSION RATES

Years ended 31 December 1994 to 31 December 1997:

For members of Lloyds resident in the Republic of Ireland, in respect of accounts closed in the calendar years 1994 to 1997, the conversion of sterling to IR£'s should be calculated by reference to the sterling commercial selling rate on the last market day of the calendar year in which the account is closed. Rate for year ended 31 December:

1994	Stg £1 = IR£0.9995
1995	Stg £1 = IR£0.9687
1996	Stg £1 = IR£0.9926
1997	Stg £1 = IR£1.1416

Years ended 31 December 1998 and later:

For accounts closed in the calendar year 1998 and later, the conversion of sterling to IR£'s should be calculated by reference to the sterling mid-closing exchange rate as supplied by the Central Bank.

1998	Stg £1 = IR£1.1164
1999	Stg £1 = IR£1.2668
2000	Stg £1 = IR£1.2619
2001	Stg £1 = IR£1.2942

PROFESSIONAL SERVICES WITHHOLDING TAX

Issue 44 - June 2001 of *Tax Briefing* included an article on the effect of the change to a calendar year basis on claims for credit for Professional Services Withholding Tax [PSWT]. This article illustrates how the credit for PSWT will be affected in the most likely scenarios.

In general, persons who pay a substantial part of their income tax liability by way of PSWT credit made up their accounts to 31 March each year. Where they continue to do so, the credit for PSWT will be as follows:

Year	Basis Period - year ended:	Credit for PSWT deducted in year ended:
2000/01	31 March 2001	31 March 2001
2001	31 March 2002	31 March 2002
2002	31 March 2002	None ¹

If, in order to avail of the credit for PSWT on a current basis, the taxpayer changes the accounting date to 31 December, the result will be as follows:

Year	Basis Period - year ended:	Credit for PSWT deducted:
2000/01	31 March 2001 31 Dec 2001 x 74%	Year ended 31 March 2001 Period 1 April 2001 to 31 Dec 2001
2002	31 Dec 2002	Year ended 31 Dec 2002

The change in accounting date for 2001 will mean that the basis period for 2000/01 may change to the year ended 31 Dec 2000 [the corresponding period - see pages 15 - 17, *Tax Briefing* Issue 45 - October 2001]. Strictly, the credit for PSWT should also change to the PSWT related to that period. However, in practice, the PSWT credit already allowed for the year 2000/01 will not be changed.

¹ Basis period year ended 31 March 2002 is treated for PSWT purposes as the basis period for 2001 only



QUALIFYING RESORT AREAS

Qualifying Resort Areas Chapter 4 Part 10 Taxes Consolidation Act 1997 (Sections 351-359 TCA 1997)

Treatment of income arising from the letting of holiday cottages

A scheme for the renewal and improvement of certain resort areas was introduced by the Finance Act 1995 (now *Chapter 4 Part 10 Taxes Consolidation Act 1997*)

The qualifying period for this scheme is the period from 1 July 1995 to 30 June 1998. This period was extended to 31 December 1999 where the relevant local authority certified on or before 30 September 1999 that at least 50% of the total cost of the project was incurred by the end of June 1999. Under *Sections 352 and Sections 353 TCA 1997* capital allowances are, subject to all the relevant conditions being met, available in respect of expenditure incurred **in the qualifying period** on the construction of certain buildings and structures, including registered holiday cottages and tourist accommodation facilities that include listed holiday cottages, in qualifying resort areas. The capital allowances available are:

Owner-Occupier

Up to 75% Free Depreciation or 50% initial allowance in year 1, and 5% annual allowance thereafter to a maximum of 100%.

Lessor

50% Initial Allowance in year 1 and 5% annual allowance thereafter to a maximum of 100%.

Section 354 TCA 1997 provides for a double rent allowance where a person pays rent under a qualifying lease in respect of a qualifying premises, which includes registered and listed holiday cottages, occupied by the lessee for the purposes of a trade.

By virtue of *Section 355 TCA 1997* both double rent allowance and capital allowances, subject to certain exceptions, cannot be claimed in respect of a holiday cottage in a qualifying resort area. If the lessee wishes to claim double rent allowance then the investor must disclaim all capital allowances due in respect of the expenditure on the construction/refurbishment of the holiday cottage. This restriction does not apply to certain transitional projects:

- Where before 5 April 1996
 - A binding contract in writing had been entered into for the acquisition or construction of the holiday cottage
 - An application for planning permission for the construction of the holiday cottage had been received by a planning authority
 - An opinion in writing had been issued by the Revenue Commissioners to the effect that *Section 408 TCA 1997* would not apply in relation to capital allowances to be made in respect of expenditure incurred on the holiday cottages
- Or where before 5 April 1996
 - The person who incurred the expenditure on the construction of the holiday cottage had incurred expenditure on acquiring the land on which the holiday cottage is to be constructed, or
 - A binding contract in writing was entered into for the acquisition of that land by that person

and that person can prove that plans had been prepared and that discussions had taken place with a planning authority between 8 February 1995 and 5 April 1996 and that the planning authority can give an affidavit to this effect.

The treatment of the income arising from the letting of holiday cottages is a significant factor in determining what allowances may be claimed in respect of registered /listed holiday cottages in qualifying resort areas. If the income is regarded as rental income then free depreciation cannot be claimed nor is there any entitlement to the double rent allowance. If the income is regarded as trading income and assessable under Case I then subject to the owner occupying the cottages for the purposes of the trade free depreciation may be claimed. Subject to disclaiming capital allowances, if appropriate, the double rent allowance will be available to the lessee where the income is regarded as trading income and the cottages are occupied for the purpose of the trade by the lessee.

Since 1994 Revenue has consistently held the view that the letting of holiday cottages is not a trade within Case I Schedule D. The income arising is assessable under Case V Schedule D. Consequently free depreciation and double rent allowance would not be due for the holiday cottages located in the qualifying resort area. Prior to 1994 Revenue accepted Case I treatment where a scheme of holiday cottages satisfied the requirements of Bord Failte registration. It is accepted that the combination of earlier Revenue practice and legislative provisions may have created an impression that the operation of schemes of holiday cottages in Qualifying Resort Areas which would be capable of registration by Bord Failte would qualify for Case I treatment. In the circumstances Revenue will not seek to challenge claims for accelerated capital allowances or double rent allowances in respect of schemes of holiday cottages within the qualifying resort areas where projects proceeded in good faith, on a genuine expectation of the availability of these allowances. The possibility of such



Resort Areas

Continued

expectation would arise only in relation to the larger schemes of holiday cottages that would satisfy the Bord Failte registration requirements i.e. those schemes that had in the past been accepted by Revenue as coming within Case I. Apart from satisfying the specific Bord Failte requirements the operators of such schemes would typically provide services such as

- ◆ Marketing
- ◆ Reservations
- ◆ Attention at check in/check out
- ◆ Daily checks by manager
- ◆ Cleaning services
- ◆ Provision of fresh bed linen.

It must be emphasised that the accelerated capital allowances and the double rent allowance will only be available to schemes of holiday cottages located in the qualifying resort areas and to which the provisions of *Chapter 4 Part 10 TCA 1997* apply.

Many holiday cottage investments within the qualifying resort area proceeded on the basis that the income from the letting of the holiday cottages was rental income assessable under Case V of Sch. D. These cases will not be re opened.

BUSINESS EXPANSION SCHEME

Extension of limits for the Business Expansion Scheme

With reference to the extension of the BES until 31 December 2003 and to the increase of the company limit to €750,000 companies and practitioners should be aware of the possible application of *Section 501 TCA 1997* to companies who have previously raised funds through BES and now intend to raise more.

Section 501 provides that capital repayments by a BES company to some person other than an individual claiming BES relief will result in the amount of relief due to that individual being reduced or eliminated entirely. Where it is

proposed to avail of the increased company limit and raise further capital for a company through a fresh issue of BES shares, practitioners and promoters should be particularly aware of any Put and Call options already in place with previous investors. If these provide for the buy back of the shares by the **BES company**, then the provisions of *Section 501* may come into play in respect of any new share issues following the redemption. Where a person other than the BES company purchases the shares or where the new shares are issued more than 2 years after the redemption of the other shares, *Section 501* will have no effect.

INTEREST CHARGES

Change in relation to interest charges for Late Payment (*Sections 108 and 129 TCA 1997*)

Currently interest is charged on the late payment of tax at a rate of 1% per month or part of a month. With effect from 1 September 2002, this will be changed to a rate of 0.0322% per day or part of a day. The purpose of this change is to ensure that an interest charge more accurately reflects the actual delay in payment. Where a delay in a tax payment does

arise, it will be to the customers benefit to pay the tax liability at the earliest possible date.

The existing practice by the Collector-General's Office of allowing some small leeway after the due date before raising interest charges will continue. This leeway is to allow for any payment processing delays that might possibly arise and in that way to ensure that interest charges are only raised in cases where the payment is definitely late.



A GUIDE TO CUSTOMS & EXCISE AUDIT

What is a Customs & Excise Audit?

A Customs & Excise audit is a process of verifying the compliance of a business with the relevant legislation and Revenue requirements through an examination of the accounts and other records of that business.

Why is there a Customs or Excise audit?

In the case of Customs the Electronic Paperless Declaration facilitates importers and exporters by relieving them of the obligation to lodge documents at a Customs Station. The Revenue Commissioners assume that all declarations made are correct. However, due to the possibility of misdeclarations it is necessary to validate a selected number of declarations by audit, to confirm compliance.

For Excise audits, the position is that from 1 June 1999 most businesses dealing in excise goods are responsible for declaring their individual liabilities to excise duty. The purpose of an Excise audit is to verify the accuracy of the declared liabilities.

Who is liable to audit?

All businesses whose trade includes imports and/or exports from/to a non-EU country may be subject to a Customs audit. Equally, any business, which has been given the facility to declare its own excise duty liability, may be subject to an excise audit.

What are the obligations of a business if selected for audit?

The obligations under the relevant law are to produce all supporting documents for any Customs and/or Excise Declarations requested, allow Revenue personnel to inspect business premises, commercial records whether electronically held or not, any manufacturing process (where applicable), or certain items of machinery or stock.

What notice is given prior to an audit?

At least three weeks notice will be given in writing detailing:

- ▼ The name(s) of the official(s) who will carry out the audit
- ▼ The date and time of the audit
- ▼ The trading period to be audited.

What if the proposed date does not suit?

The Revenue Commissioners seek to minimise inconvenience to traders. Should the chosen date not suit for some good reason, contact the auditor to discuss an alternative date.

What preparation is required for an audit?

The auditor(s) will provide details of the trading period to be audited, the audit period, and, for customs related audits, with an initial list of SAD (Single Administrative Document - Customs Declarations) numbers. Arrangements should be made to have the full original supporting documentation for these declarations made available for the audit.

While it is not exhaustive, the following list of records should also be made available to the auditor:

- ▼ Sales and purchase orders, invoices and delivery notes
- ▼ Sales and purchase ledgers
- ▼ Stock records
- ▼ Import and export licenses
- ▼ Import and export approvals.

Where will the audit take place?

Audits usually take place at the principal place of business.

What form will the audit take?

Typically, an audit involves a series of steps, the sequence of which are set out below.

- On arrival, the auditor will give an indication of the length of time he/she expects to spend on the premises

- To get a better understanding of the business the auditor may ask questions about book-keeping practices and how the business operates

- The auditor examines the books and records, to validate the records against declarations made for Customs and/or Excise purposes

- If the auditor finds that adjustments are required the details of these will be discussed with the appropriate person and the business will also be notified in writing. Where shortcomings are identified in the control systems the auditor will outline the issues and discuss proposals to correct these.

How long will the audit take?

In general an audit will last no more than one week depending on the type and volume of Customs or Excise declarations relating to the business. The audit of businesses involved in Customs Procedures with Economic Impact (e.g. Inward/Outward Processing) may take longer.

How many years will the auditor check?

Under Customs legislation a Revenue officer may request any documentation relating to Customs import or export declarations made in the preceding three years. In an Excise audit the Revenue Officer is not limited to a maximum audit period. However, in both cases an auditor will ordinarily select an audit period of between three and six months within that time. In certain cases, where the audit highlights discrepancies it may be necessary to increase the scope of the audit to include further declarations either side of this period.



C & E Guide

Continued

What are the time limits for payment of duties owing?

Under EU legislation any Customs debt must be paid within 10 days of the communication of the debt to the debtor. In practice this means there will be ten days from the date of issue of the written notification to pay any monies identified as owing as a result of the audit.

In the case of an Excise debt payment is required immediately. Additionally, any VAT liability arising is also payable immediately.

Is there right of appeal, if dissatisfied with the auditor's findings?

Yes. First of all, explain the position to the auditor. If disagreement still exists appeal the decision. An internal review conducted by a senior official of the Revenue Commissioners who was not involved in any way in the audit will be granted. If the matter is still not resolved an appeal to the Appeal Commissioners who are independent of Revenue can be lodged. The auditor will outline the steps involved in these two courses of action and will provide a copy of the information leaflet, which details the appeal procedures.

TAX CLEARANCE

FA 2002

The *Finance Act 2002* extended the tax clearance requirement to a number of new areas as well as making a number of other changes in relation to tax clearance.

Extended coverage

Section 41 provides for a scheme of tax relief for donations to certain sports bodies for the funding of capital projects. The sports body must possess a valid tax clearance certificate. The provision will come into effect from 1 May 2002.

Section 84 provides that a tax clearance certificate must be produced by an applicant for a permit to operate amusement machines in public places. This requirement applies in respect of permits commencing on or after 1 July 2002.

Section 86 provides that a tax clearance certificate must be produced when applying for any of the following intoxicating liquor licences:

- A manufacturer's licence required by
 - A brewer of beer for sale
 - A distiller of spirits
 - A rectifier or compounder of spirits
 - A maker for sale of sweets.
- A beer retailer's on-licence
- A cider retailer's on-licence
- A sweets retailer's on licence
- A cider retailer's off-licence
- A sweet retailer's off-licence
- A railway restaurant car licence
- A passenger vessel licence (annual)
- A passenger vessel licence (one day), or
- A passenger aircraft licence.

This requirement applies in respect of any of these licences commencing after enactment of the *Finance Act*.

Section 93 provides that repayments of mineral oil tax under the passenger road services scheme will be confined to applicants who have a current tax clearance certificate. This section will come into operation by a commencement order to be made by the Minister for Finance.

Other tax clearance changes

Section 127(a) makes a number of "enabling" legal changes to the existing tax clearance legislation. The purpose of these changes is to allow the tax clearance procedure to be handled electronically (rather than the current paper based system). The intention is to develop such a possibility (e.g. using the ROS system) and further information will be provided on this initiative once the technical requirements are in place.

To further facilitate customers it is also the intention, subject to the customer's agreement, to publish tax clearance certificates on a secure website where relevant public bodies can be authorized by the customer to view the certificate. This will be helpful, for example, to a customer bidding for Government contracts since it will avoid the necessity of producing the hard-copy certificate on each occasion. Again, further information will be provided once the technical requirements are in place.

Section 127(b) amends existing tax clearance legislation to provide for a "generic" tax clearance provision. This change will enable a tax clearance certificate to be issued to any compliant taxpayer who requests it and follows a recommendation by the Joint Oireachtas Committee on the Strategic Management Initiative (SMI).

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TAX CLEARANCE

(Continued from page 23)

How to apply for a tax clearance certificate

Customers requiring a tax clearance certificate can obtain the required application form by contacting:

Office of the Collector-General,
Sarsfield House,
Francis Street,
Limerick

Telephone LoCall 1890 203070

Fax 061 - 410866

email cg@revenue.ie

The application form will also be available shortly for download from Revenue's website www.revenue.ie

A Tax Clearance Certificate can only be issued where a person's tax affairs are up to date. Applications continue to be received where this is not the case and these applications are creating unnecessary delay and expense for all concerned.

Agents should advise any client requiring a tax clearance certificate to ensure their tax affairs are in order before submitting an application for a Tax Clearance Certificate. Agents registered with the Revenue Online Service can check the status of their clients tax affairs using the ROS Customer Information Services.

Any further information in relation to Tax Clearance can be obtained from:

Tax Clearance Section,
Office of the Collector-General,
Sarsfield House,
Limerick,

Phone: Lo call 1890 203070.

HEALTH EXPENSES

Maternity care

The Finance Act 2001 amended Section 469 TCA 1997 to provide for income tax relief on "routine maternity care" with effect from 6 April 2001. Prior to this amendment "routine maternity care" did not qualify for relief.

Revenue practice was to treat expenditure incurred on a caesarean section operation as outside the scope of the relief for years prior to 2001.

Following a review of the position, income tax relief will be granted for expenditure incurred in relation to caesarean section operations carried out prior to 6 April 2001.

The normal time limits for repayment claims will apply to any claim made for years of assessment prior to 2001.

VAT

Increase in the standard rate of VAT

The standard rate of VAT was increased from 20 to 21 per cent with effect from 1 March 2002.

Issue of credit notes following the increase in the standard rate of VAT

VAT regulations relating to the issue of credit notes provide that any credit note issued to VAT-registered traders*, on or after the date of a change in rate, should show VAT at the new rate even if the original invoice showed VAT at the old rate.

Accordingly, credit notes **properly issued** on or after 1 March 2002 to VAT-registered traders*, should show VAT at the new rate of 21 per cent.

As regards credit notes issued, on or after the date of a change in rate, to persons who are *not VAT-registered*, such credit notes should show VAT at the same rate as that shown on the original invoice.

Accordingly, credit notes properly issued on or after 1 March 2002 to persons who are *not VAT-registered*, in respect of a supply of goods or services on which VAT at 20 per cent was properly charged, should show VAT at the old rate of 20 per cent.

Queries about the increase in the standard rate of VAT and/or credit notes

Any further queries about the increase in the standard rate of VAT and/or the issue of credit notes following that increase, should be addressed to your local tax office.

* Revenue has agreed, on a concessional basis, that where VAT at the rate of 20 per cent was properly charged on a supply of goods or services made on or before 28 February 2002 to VAT-registered traders who are entitled to recover only part of the VAT incurred on their inputs, credit notes **properly issued** on or after 1 March 2002 in relation to such supplies may show VAT at the rate of 20 per cent.



ERRORS ON COMPLETION OF FORMS CT1

Finance Act 2001 introduced a number of changes to the Corporation Tax provisions and in particular Small Companies Relief and the reduction in the standard rate of Corporation Tax. Many practitioners are experiencing difficulties in completing returns for accounting periods ending in 2001, which are due for submission this year.

The following are some of the most common errors made in completing the annual return form - **Form CT1**.

Forms completed covering periods in excess of 12 months

Where accounts are prepared for a period more than 12 months two returns are required.

Example

Accounts prepared for 14 months ended 30/6/01, two Forms CT1 are required viz.

- ♦ CT1 for the period 1/5/00 to 30/4/01 (first 12 months of the accounts)
- ♦ CT1 for the period 1/5/01 to 30/6/01 (balance of the period of accounts)

Each accounting period on Form CT1 has its own return filing date and Preliminary Tax due date.

Trade Profits (Code D1)

Incorrectly, Losses are entered here. Enter only:

- ♦ Trade Profits per accounts as adjusted but before Capital Allowances
- ♦ Enter **Nil** where a loss occurs.

Losses (Code H1) and Group Relief (Code H7)

- ♦ Enter full amount for the entire accounting period i.e. amount before ringfencing.

Capital Gains Tax (Code G8)

- ♦ Enter **Net Gain** figure, i.e. total gains less allowable losses. Do not enter here the appropriate tax figure or the re-grossed figure. This results in incorrect amounts being assessed.

Excepted Trade (Code D2)

- ♦ Enter the appropriate profits per accounts from this trade net after related losses, charges, group relief, capital allowances and balancing charge.
Note: This code is not to be used as a working total for the previous ingredients entered at **D1, B1, S1, etc..** Any amount entered at code **D2** will be assessed in addition to amounts at other codes. Enter **Nil** where a loss occurs.

Small Companies Relief (Code R5)

Incorrect computation of this relief is the most frequent error encountered on Form CT1. As the relief is given in

terms of tax, the amount of income qualifying for this relief should not be entered at this code.

In computing this relief, agents are advised to divide the accounting period into two parts, i.e. the part up to 31/12/00 and the part after 1/1/01. The small companies relief appropriate to each part should then be computed and the total of both parts entered at code **R5**.

The following examples illustrate the position:

Example 1

Accounting Period year ended 30/6/01 -

Trade Profits £40,000

1/7/00 to 31/12/00 = 184 Days	1/1/01 to 30/6/01 = 181 Days
$£40,000 \times 184/365 = £20,164$	$£40,000 \times 181/365 = £19,836$
Limits: $(£50,000 \times 184/365 = £25,205)$ $£75,000 \times 184/365 = £37,808$	$(£200,000 \times 181/365 = £99,178)$ $£250,000 \times 181/365 = £123,972$
As income qualifies for S.C.R. Relief is $£20,164 \times 11.5\% = £2,318.86$	As income qualifies for S.C.R. Relief is $£19,836 \times 7.5\% = £1,487.70$

R5 entry: $£2,318.86 + £1,487.70 = £3,806.56$

Example 2

Accounting Period year ended 30/6/01 -

Trade Profits £70,000

1/7/00 to 31/12/00 = 184 Days	1/1/01 to 30/6/01 = 181 Days
$£70,000 \times 184/365 = £35,287$	$£70,000 \times 181/365 = £34,713$
Limits: $(£50,000 \times 184/365 = £25,205)$ $£75,000 \times 184/365 = £37,808$	$(£200,000 \times 181/365 = £99,178)$ $£250,000 \times 181/365 = £123,972$
As income qualifies for Marginal Relief Relief is $£37,808 - £35,287 \times 23\% = £579.83$	As income qualifies for S.C.R. Relief is $£34,713 \times 7.5\% = £2,603.47$

R5 entry: $£579.83 + £2,603.47 = £3,183.30$

In general, practitioners provide Corporation Tax computations with the Forms CT1. Frequently these computations differ from the Notice of Assessment due to incorrect completion of the Form CT1. To avoid this and the resultant unnecessary work to rectify the matter, practitioners are asked to pay particular attention to the items mentioned above.



INCOME TAX LOSSES

Case I & II

Case I & II Losses

This article deals with the provisions affording income tax relief for losses sustained in a trade or profession under:

- **Section 381 TCA 1997: current year loss relief for losses sustained in a trade or profession or employment - available against all profits/gains**
- **Section 382 TCA 1997: any loss not utilised under Section 381 can be carried forward against future profits/gains of the same trade or profession**

General Rules

- ▼ Relief is not given more than once for the same loss whichever form of loss relief claim is made. This prevention of double relief rule is relevant due to the special rules that apply for the basis of assessment arising from the changeover to the calendar tax year, as part of the basis period in which the loss is incurred may be included in the basis period for a later tax year.
- ▼ It is the responsibility of the taxpayer to claim whichever form of available loss relief he/she requires, but in practice the inspector may grant carry forward relief even if no specific claim is made. Any other relief must be specifically claimed.

Current Year Loss - Section 381 Claim

Strictly it is the adjusted loss as actually sustained in the year of assessment and not the loss of the basis period that is the subject of a *Section 381* claim.

Revenue accepts that in the case of a continuing business the loss for the basis period for the year of assessment may be taken as the loss of the year of assessment. This does not apply in respect of a tax loss in the opening years of a new business or in the case of a business, which has been permanently discontinued.

Particular difficulties may arise in relation to losses of the years of assessments 2000/2001, 2001 and 2002, in view of the change to the calendar year basis.

For the short tax year 2001 Revenue will accept a claim for loss relief under *Section 381* based on 74% of the losses of a basis period ending in that tax year. However, where the basis period for 2001 ends in the period 1 January 2002 to 5 April 2002, a claim under *Section 381* for 2001 will be based on the actual losses of the tax year 2001. These will be arrived at by apportionment of the losses of that basis period.

Example

Basis period y/e 31/3/2002 Loss €10,000

Loss for 2001:
€10,000 x 9/12 €7,500

Where the assessment for the preceding year of assessment falls to be increased, either because of a change in basis periods or a mismatch in corresponding periods [see *Tax Briefing* Issue 45, pages 16 and 17], the basis period for the preceding year changes. The amount of the loss for the year will also change where the basis period method is used. For this reason, it may simplify matters if loss relief claims for these years are based on the losses of the tax year in question.

Computation of Section 381 loss:

- The amount of the loss available for set off against other income is the tax loss for the tax year or its basis period computed under the rules of Schedule D Case I or II in the same manner as any taxable profits would be computed: *Section 381(4)*
- The loss is taken before giving effect to any capital allowance or balancing charges
- The taxpayer has the option of claiming under *Section 392 TCA 1997* to have the loss increased by the appropriate capital allowances less any balancing charges for the year of loss.

Who can claim the loss?

Any person sustaining a loss in a year of assessment in the carrying on, either solely or in partnership, of any trade, profession (including vocation) or employment is entitled to relief in respect of a loss in that activity.

Availability of loss relief

- The availability of loss relief is restricted or ring-fenced in the case of certain trades and activities. This may involve allowing the loss to be offset against income arising to the person from the same trade or activity.
- The restriction can also apply where the losses are created or increased by the use of capital allowances, e.g. *Section 403 TCA 1997* restricts the use of capital allowances for certain leased assets.
- Loss relief is not available in respect of a loss sustained by the owner or by the part owner of a stallion from the sale of services of mares by the stallion or from the sale of rights to such services: *Section 381(2) TCA 1997*.



INCOME TAX LOSSES

Case I & II

- Special provisions also apply on the way losses may be used where they arise in a trade of farming or market gardening (*Sections 661 and 662 TCA 1997*).
- If a trade or profession is permanently discontinued any tax loss and/or unused capital allowances may be carried back for set off against unrelieved taxable profits of the trade assessable in any of the three tax years prior to that in which the trade is permanently discontinued: *Section 385 TCA 1997*.
- ▼ Loss relief is not available in respect of a loss sustained in an activity that has been completely disregarded for the purposes of the Income Tax Acts e.g. losses arising from the occupation of woodlands managed on a commercial basis and with a view to a realisation of profits: *Section 232 TCA 1997*.

How is this Section 381 Loss Relief Granted?

- The taxpayer must make a claim for the relief
- Relief for any such loss is granted to a taxpayer by deducting the amount of the loss from the taxpayer's income from all sources for the year in question i.e. the deduction is to be made in arriving at total income
- Where this recalculation reveals an overpayment of income tax, the overpayment is repaid.

Order of relief against taxpayer's income

Section 381 Loss Relief is granted in the following order:

- Against the income of the individual which is of the same class as the type of income, which could have arisen from the business in which the loss is sustained, had a profit rather than a loss been made
- Against the other income of the individual
- Against income of the individual's spouse, which is of the corresponding class
- Against other income of the spouse.

Normally, income of the corresponding class will be earned income and, accordingly, the loss will be set off in the order of (i) own earned income, (ii) own unearned income, (iii) spouse's earned income, and (iv) spouse's unearned income. Unearned income can be income of a corresponding class where the loss arises in a business where, for instance, the claimant is a sleeping partner. In such a case the order of set-off is (i) own unearned income, (ii) own earned income, (iii) spouse's unearned income, and (iv) spouse's earned income. For this purpose the income of the spouses must be assessed on the aggregation basis.

Section 382 TCA 1997

Where an individual in any trade or profession sustains a loss in respect of which relief has not been given under *Section 381*, relief may be carried forward and set against future profits of that trade or profession. Relief will be given as far as possible for the first subsequent year of assessment and in so far as it cannot be so given, for the next year of assessment and so on.

Examples:

(Assume all amounts in Euro)

Ongoing Business computation of Section 381 loss

Example 1: No prior year review

Mr. King who has traded for many years had the following trading results:

12 months to 31/12/2000	Case I	20,000
12 months to 31/12/2001	Case I	(8,000)
12 months to 31/12/2002	Case I	20,000

He also has the following Case V, rental income:

2000/01	12,000
2001	10,000
2002	12,000

Relief for the trading loss is as follows:

Year 2000/2001

Case I [basis period 31/12/2000]	20,000
Case V	<u>12,000</u>
Assessable Income	32,000

2001

Rental income	10,000
Less <i>Section 381</i> loss relief	
(8,000) x 74%	<u>(5,920)</u>
Assessable income	4,080

Loss available for relief under *Section 382* for 2002 (2,080)
i.e. 8,000 less 5,920

2002

Case I basis period 31.12.2002	20,000
<i>Section 382</i> (8,000) x 26%	<u>(2,080)</u>
Assessable	17,920
Case V	<u>12,000</u>
Assessable Income	29,920



INCOME TAX LOSSES

Continued from page 27

Example 2: No prior year review

Mr. Long who has traded for many years had the following trading results:

12 months to 31/03/2001	Case I	15,000
12 months to 31/03/2002	Case I	(8,000)
12 months to 31/03/2003	Case I	20,000

He also has the following Case V, rental income:

2000/01	12,000
2001	10,000
2002	12,000

Relief for the trading loss is as follows:

2000/2001

Case I basis period 31/03/2001	15,000
Case V	<u>12,000</u>
Assessable Income	27,000

2001

Case I basis period 31/3/2002 is the basis period for 2001 and 2002 but the loss can only be relieved once, i.e. the actual loss of 8,000 sustained.

Rental income	10,000
Less <i>Section 381</i> loss relief	<u>(5,920)</u>
(8,000) x 74%	
Assessable income	4,080

Loss available for relief under *Section 381* for 2002 (2,080) i.e. the loss of 8,000 for the basis period 31/03/2002 less the loss of 5,920 already utilised from the basis period 31/03/2002 in year of assessment 2001.

2002

Rental income	12,000
<i>Section 381</i> (8,000) x 26%	<u>(2,080)</u>
Assessable Income	9,920

2003

Case I basis period 31/3/2003	20,000
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Example 3 - Prior year review 2000/2001 + change of accounting date

Ms. Dobbs has traded for many years and had the following results:

Case 1	
Year ended 30/4/2000	Loss (15,000)
Year ended 30/4/2001	Profit 12,000
Period ended 31/12/2001	Profit 30,000
Year ended 31/12/2002	Profit 40,000

She also had the following Case V, rental income

2000/2001	12,000
2001	10,000
2002	15,000

2000/2001

Basis period year ended 30/04/00

Case 1	Nil
Case V	12,000
Less <i>Section 381</i> loss	<u>(15,000)</u>
Assessable income	Nil

2001

Basis period year ended 31/12/01 x 74%

Case 1 12,000 x 4/12 + 30,000	34,000
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As there has been a change in the basis period, the Case 1 assessment for 2000/2001 falls to be reviewed.

2000/2001 Review

Case 1 originally assessed	Nil
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Profits of corresponding period i.e. y/e 31/12/00:

Loss (15,000) x 4/12	<u>(5,000)</u>
Profit 12,000 x 8/12	<u>8,000</u>
Additional Profits	3,000

As the profits of the corresponding period exceed the profits charged to tax the assessment for 2000/2001 is increased to:

Case 1	3,000
Less <i>Section 382</i> loss forward	<u>(3,000*)</u>
Case V	<u>12,000</u>
Assessable Income	12,000

2001

Case 1 (as above)	34,000
Less <i>Section 382</i> loss forward	<u>(7,000*)</u>
Case V	<u>10,000</u>
Assessable income	37,000

*As (10,000) of the losses incurred refer to the year 1999/00 i.e. (15,000) x 8/12 = (10,000), relief is allowed under *Section 382* (Losses carried forward).

Terminal Loss Relief (*Section 385 TCA 1997*)

Terminal Loss Relief may be claimed in respect of a loss incurred in the last 12 months of a trade or profession. The amount of the terminal loss may be deducted from or set off against the amount of profit or gains on which the individual was charged to income tax in respect of the trade or profession, for the 3 years of assessment, prior to the year of assessment in which the discontinuance occurs.



PENSIONS

(PRSA)

Personal Retirement Savings Account (PRSA's) Pensions (Amendment) Act 2002

A PRSA is a long-term personal retirement account introduced by the Pensions Act 2002. It is designed to enable people, especially those with no pension provision, to save for retirement in a flexible manner. A PRSA will be a contract between an individual and a PRSA provider in the form of an investment account. Subject to age-based limits, tax relief will be given for contributions to a PRSA.

PRSA products will be approved by the Pensions Board and the Revenue Commissioners. Prudential supervision of PRSA providers will be within the jurisdiction of existing regulators. The Pensions Board will be responsible for supervision of a provider's activities in respect of its PRSA products.

Employers, who do not provide an occupational pension scheme for their employees, will be obliged to provide access to at least one Standard PRSA.

It is expected that the PRSA products will not be available until late 2002 or early 2003.

Tax Rules relating to Personal Retirement Savings Accounts

Tax relief on contributions

Contributions paid into a PRSA will benefit from tax relief at an individual's marginal income tax rate. There will also be relief from PRSI and the health levy for employees. Where PRSA contributions are deducted by an employer, the net pay arrangement will apply.

Details of this tax relief

The maximum annual tax deductible contributions are based on a percentage of the individual's net relevant earnings. The allowable percentages rise with age.

Members of an occupational pension scheme or of a statutory pension scheme may pay AVC PRSA contributions. Separate rules apply to such contributions - see paragraph on PRSA's and AVC's.

Relief is allowed against relevant earnings i.e. earnings from a trade, profession, office or employment. Earnings as a proprietary director or proprietary employee of an investment company are not relevant earnings. Net relevant earnings are relevant earnings less losses, capital allowances and certain payments which reduce a person's income for tax purposes such as tax effective covenants.

The maximum allowable contributions are as follows:

Age	% of Net Relevant Earnings
Under 30	15%
30 - 39	25%
40 +	30%

Thus, for example, an individual aged 35 can gain tax relief on the lower of :

- ◆ 25% of net relevant earnings or
- ◆ The contribution paid in that year.

The 30% limit will apply, irrespective of age, to certain categories of person who typically retire earlier than usual, such as athletes, jockeys and so on.

Except in the case of an employee who is a member of an occupational pension scheme or of a statutory pension scheme, a taxpayer is entitled to tax relief on a contribution of €1,525 paid even if this exceeds the normal income-based limit.

For example, if an individual aged 23 earns €9,525, the normal limit on the tax deductible contribution is 15% of €9,525 being €1,430. If this individual pays €1,600, relief of €1,525 will be allowed, rather than the earnings based limit of €1,430.

An earnings cap of €254,000 will apply also to PRSAs as in the case with Retirement Annuity Contracts [RAC] for the purposes of tax relief. Thus, for example, where a person is aged over 40, the maximum tax relieved contribution is €254,000 x 30% = €76,200 per year.

Contributions paid in any year in excess of the maximum tax deductible contribution may be carried forward and claimed in future years subject to the annual limit for those years. Similarly, contributions paid while out of the workforce may be carried forward and claimed against future earnings on return to paid employment subject to the annual limits.

The tax relief is non-transferable between spouses in line with existing rules for RAC and occupational pension scheme contributions.

Contributions paid after the end of the tax year and before the return filing date for that year may be claimed for that tax year. The return filing date is 31 October following the end of the tax year - for example for the tax year 2002, the return filing date will be 31 October 2003.

Contributions made by an employer to a PRSA on behalf of an employee are treated as a benefit in kind of the employee. Such contributions are treated for relief purposes as made by the employee.

For example, where an employee aged 29 contributes 5% of his or her earnings to a PRSA and the employer contributes a further 10%, the employee is treated as making a total contribution of 15% in aggregate. The employee is charged on the employer's contribution as a benefit in kind and must include this in his or her return of income.



PENSIONS

Continued from page 29

Employer PRSA contributions on behalf of employees will be fully deductible for tax purposes in arriving at the profits or gains of a trade or profession or in a calculating management expenses of an investment company.

Contributions to both an RAC and a PRSA

Contributions to an RAC and a PRSA will be aggregated when calculating the maximum tax relief.

For example, a person aged 45 who gets tax relief on 25% of their earnings on contributions to an RAC may contribute an extra 5% to PRSAs making up 30% tax relief in aggregate.

PRSA's and AVC's

Employees in an occupational pension scheme or a statutory scheme may use a PRSA as an 'AVC' vehicle, in other words, additional voluntary contributions may be made to a PRSA. The PRSA must be established under a rule of the main scheme or under a separately arranged scheme, approved by the Revenue Commissioners, which is associated with the main scheme.

The following age related limits will apply to the total of employee contributions to an occupational pension scheme and the 'PRSA-AVC':

Age	% of Earnings
Under 30 years of age	15%
30 - 40 years of age	20%
40 - 50 years of age	25%
50 years and over	30%

Such employees also benefit from the 'tax-free' employer contribution to the occupational pension scheme which is limited by funding requirements.

Refunds of Contribution from Occupational Pension Schemes

Refunds of contributions (with interest where applicable) paid out from occupational schemes may be transferred to a PRSA without a tax charge to encourage pension funding - otherwise such refunds are charged at the standard rate [currently 20%].

Tax regime in Funding Period

The existing tax regime for pension business will apply to PRSA business, i.e. there will be tax free growth during the funding period.

Position on Retirement

Benefits can usually be provided at age 60, subject to the same 'early' retirement rules that exist at present for the self-employed and employees respectively.

The options available on retirement are similar to the options introduced for RAC holders and certain other persons in Finance Act 1999. Thus a PRSA holder on retirement may take 1/4 of the fund as a tax free lump sum and may:

- ◆ Invest the balance in an Approved Retirement Fund (ARF) subject to a minimum investment in an Approved Minimum Retirement Fund (AMRF)
- ◆ Withdraw the balance in cash subject to a minimum investment in an AMRF
- ◆ Invest the balance in an annuity.

The ability to invest in an ARF is subject to the individual having a guaranteed pension or annuity from another source of at least €12,700 a year for life. If this is not the case, €63,500 or the balance in the PRSA fund if less, must be transferred to an AMRF or used to purchase an annuity payable immediately. The capital in the AMRF cannot be withdrawn until the individual reaches the age of 75.

Similarly, the ability to withdraw the balance in the PRSA fund in cash is subject to the individual having a guaranteed pension or annuity from another source of at least €12,700 a year for life. If this is not the case, €63,500, or the balance in the PRSA fund if less, must be transferred to an AMRF or used to purchase an annuity payable immediately. The capital in the AMRF cannot be withdrawn until the individual reaches the age of 75.

Where the PRSA is used as an 'AVC' vehicle the maximum lump sum and pension must be in line with the occupational pension scheme rules.

There is no tax charge where the balance is transferred to an ARF. Instead any withdrawals from the ARF will be subject to PAYE at the marginal rate of tax for the year in which the withdrawal is made.

Taxation of Benefits

PAYE will apply to all annuities and other withdrawals from a PRSA other than

- ◆ A tax free lump sum [25% of the fund]
- ◆ A transfer to an ARF/AMRF

or

- ◆ A transfer to another PRSA, to an occupational pension scheme or to a statutory scheme.

Death prior to retirement

Where the contributor dies pre-retirement i.e. before benefits are taken from a PRSA, the PRSA fund may pass in its entirety to the estate of the deceased person, free of income tax. Inheritance tax will apply as per the usual rules.



PENSIONS

Continued

Death post retirement

Where the contributor dies after benefits have commenced, the taxation rules for the PRSA fund will be similar to the taxation rules for an ARF on death.

Interface with RACs

Transfers from an RAC to a PRSA will be allowed.

Interface with Occupational Pension Schemes

Transfers from an occupational pension scheme or a statutory scheme to a PRSA will be allowed where the member has been in the scheme for 15 years or less and either

- ◆ The scheme is being wound up or
- ◆ The member is changing employment.

The value of AVC contributions to an occupational pension scheme may be transferred to a PRSA without regard to the foregoing restrictions.

VAT ON PROPERTY

Multiplier for Valuation of Interest in Immovable goods, Regulation 19 (1) of Value-Added Tax Regulations 1979.

The following are details of the Government Security applicable from 29 January 2002

Date of Issue	Title of Stock	Redemption Date	Purchase Price	Rate of Interest	Redemption Yield	Multiplier of Annual Rent 100 Redemption Yield
29 Jan 2002	5% Treasury Bond 2013	18 April 2013	€98.76	5%	5.14	19.45

The operative date for the new multiplier is the 29 January 2002.

Any VAT invoices issued on or after the 29 January 2002 using the old multiplier, may be adjusted by way of credit note, where required. Full details of such adjustments should be advised to the Inspector of Taxes dealing with the lessor.

Any leases correctly dealt with by the Form 4A/4B procedure require no adjustment.

*VAT Interpretation,
Indirect Taxes Division,
Dublin Castle,
Dublin 2.*

AGENT CLIENT LISTS

In the December issue of **Tax Briefing** practitioners were advised that client lists based on their TAIN would shortly be available. This facility is now available and lists have been issued to those agents who had submitted requests. Lists of clients have also been issued to all of the large tax practices. If you require a list of clients for your practice please forward your request to the Taxes Central Registration Office at tcro@revenue.ie

CHANGE OF ADDRESS

If you have changed address and wish to continue to receive **Tax Briefing** you should advise Aisling Malone, Customer Service Unit, Office of the Chief Inspector of Taxes, 4th Floor, Setanta Centre, Dublin 2

SHAREFISHING

The High Court on 2 October 2001 issued judgements in the cases of **Francis Griffin v The Minister for Social, Community and Family Affairs** and **William Deasy v The Minister for Social, Community and Family Affairs**. We reproduce two Fact Sheets on this topic. The first is a Revenue Fact Sheet on the tax implications while the second is a Department of Social, Community and Family Affairs on the PRSI implications.



“Clarification of the tax implications for boat owners/skippers/sharefishermen/women arising out of the High Court judgements of 2 October 2001

Introduction

There have been contacts with tax offices for clarification of the tax implications for boat owners/skippers and sharefishermen/women following the High Court decisions of 2 October 2001 in the cases of **Francis Griffin v The Minister for Social, Community and Family Affairs**, and **Wm. Deasy v The Minister for Social, Community and Family Affairs**.

There appears to be confusion as to the tax implications for the sharefishing sector arising out of the above judgements. This Fact Sheet is intended to provide this clarification. It also supercedes any earlier instructions for tax purposes relating to sharefishing relationships.

Consideration of the High Court Judgements relating to Tax Issues

It is difficult, and indeed can be misleading, to try to give a synopsis of a court decision. This Fact Sheet is meant to be a brief outline of the implications of the judgements. From contacts with tax offices it appears that the ramifications of the judgements and that of the earlier judgements i.e. **McLoughlin** and **Griffiths** are not fully appreciated.

In the course of the **Griffin** and **Deasy** hearings Ms Justice Carroll indicated that the 1986 tax case of the **DPP v Martin McLoughlin** and the 1992 Social Welfare case of **The Minister for Social Welfare v John Griffiths** “represented Irish Law applicable to Sharefishermen in similar circumstances”.

The decisions in the four cases are similar in that their effect is to state that sharefishermen were not employees of the boat owner but in **partnership** with him.

The four boats were similar in most respects. There were generally five crewmembers on the **McLoughlin** and **Griffin** boats. It is not clear how many were on the **Deasy** or the **Griffiths** boats but it would appear that the number of crewmembers and also the size of the boats were similar. In the course of the **Griffin** and **Deasy** hearings evidence was introduced on the working relationship between the owner and the crewmembers.

Essentially, Ms. Justice Carroll laid emphasis on the fact that the considerations and findings of Mr. Justice Costello in the earlier **Mc Loughlin** case should have been matched against the circumstances of both cases in coming to a conclusion.

In his decision in the **Mc Loughlin** case Mr. Justice Costello considered some indicators of the existence of employment and partnership relationships. He ultimately came down in favour of partnership status for the boat owner and the crewmembers in the specific circumstances of the case for the following reasons:

- *“It is true that the defendant (the owner) exercised a large measure of control over the manner in which each member of the crew performed his work but the right to do so arose as much from the nature of the operations being carried on as from the contractual relationship which existed and is a factor which is consistent both with the existence of a contract of service and an agreement of partnership.*
- *It is also true that the defendant engaged the other members of the crew for each voyage but, again, this is consistent both with an employer/employee relationship and an agreement in the nature of a partnership, that is one in which the defendant agreed to provide the vessel and its equipment for the voyage whilst each crew member agreed to provide his labour and skills.*
- *The strongest elements of the case in support of the DPP’s submissions are that the proceeds of the sale of the catch were paid directly to the defendant and that he dispersed them even making in some instances payments to members of the crew of what were termed ‘subs’ when no profit was made and the crew bore no losses.”*

SHAREFISHING

He continued

“But these factors seem to me to be outweighed by the cumulative effect of three others:

- ▼ *Each weekly voyage was a separate venture and no crewmember had a contract, which entitled him to take part in any subsequent voyages*
- ▼ *When he participated in an expedition he was not paid any wages but became entitled to a share in the net profits (if any)*
- ▼ *And, most importantly, although he engaged each crew member the defendant did not himself determine what the rate of remuneration would be; this was determined partly by custom (namely 50% of the profits being allotted to the boat) and partly by agreement between the crew themselves in consultation with the defendant”.*

He went on to say-

“These factors, it seems to me, strongly suggest that the skipper and his crew were partners in a joint adventure”.

Implications arising from the Judgements

General

Whether or not a partnership exists on any boat is a question of fact. Consequently, in order to establish the factual position on any boat it is necessary to compare the situation with the circumstances of the **Mc Loughlin** case.

The position is that there are a number of boats, which should be operating in what has been decided by the Courts to be a **partnership**. Where this is the case Partnership Law, including the **Partnership Act of 1890**, will govern the relationship between owner/skipper and crew.

For Corporation Tax, Income Tax and PRSI, the rules of self-assessment will apply. The partnership may also need to register for VAT and for PAYE/ PRSI where they have employees.

There may be other boats where the circumstances are different when compared with the circumstances of the **McLoughlin** case. The indicators may be that an employer/employee relationship exists. For such boats tax and PRSI should continue to be collected from crew members through the PAYE system and remitted monthly to the Collector-General by the employer.

Boat Owner/Skipper: Partnership and Personal Tax Returns

Where a partnership relationship exists the owner/skipper, whether a company or an individual, is the precedent acting partner of the partnership ‘firm’. Consequently there are obligations imposed on him/her by the Tax Acts. The precedent acting partner is obliged, under the rules of self-assessment, to submit an annual account of the activities of the partnership. The precedent acting partner is obliged to identify the partners and include details of the division of the profits/losses and of capital allowances.

There are special commencement and cessation rules for new partners and partners leaving partnerships.

In addition to the above obligations, the owner is obliged to file his/her personal tax return and to calculate and pay his or her tax under the new Pay and File provisions.

Similar provisions apply for corporation tax purposes under the rules of self-assessment where the boat owner is a Limited Company.

There are significant additional charges for non-compliance - see references below to crewmembers.

Capital Allowances

Where an employer/employee relationship exists the boat owner/employer is entitled to claim the full capital allowances on the boat and equipment for tax purposes. Crewmembers who are employees have no entitlement to claim a share of the capital allowances for personal tax purposes.

Where a partnership exists, the capital allowances relating to the boat and equipment become the capital allowances of the partnership and not of the boat owner because the boat is used in the joint enterprise with the other crewmember partners. The capital allowances must be apportioned between the individual partners for personal taxation and PRSI purposes in the same way as for any other partnership - in the same ratio as the net profits from the partnership to which each member of the partnership is entitled.

The following example illustrates the effect of the apportionment of capital allowances between the partners. The figures used in the example are for illustration purposes only. The actual position will depend on individual circumstances and agreements, etc.

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SHAREFISHING

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Example:

Boat owner is skipper with three other crewmembers. Annual capital allowances due on the boat and equipment is €140,000. Proceeds of the catch, after meeting the cost of fuel, food, etc. are divided 60% to the boat and 40% to the crew.

Proceeds of sale of fish	€1,100,000
Fuel, food, etc.	€100,000
Profit for distribution	€1,000,000

Divided: Boat €600,000 Crew €400,000.

Owner's Account

Gross income	€600,000
Less: Interest, repairs, other.	€300,000
Owner's net profit	€300,000

The total net profit is crew €400,000 plus owner €300,000 equals €700,000. Capital allowances are due as follows:

Crew: $\frac{400,000}{700,000} \times 140,000 = €80,000$

Owner: $\frac{300,000}{700,000} \times 140,000 = €60,000$

Crew Members

Personal Tax Returns:

If a crew member has always been a partner based on the **1986 Mc Loughlin** decision, he should already be registered for tax purposes as self-employed.

If the crew member became a partner in the business due to the October 2001 High Court decisions contact should be made with his local tax office without delay.

The onus is on a crewmember under the *Taxes Acts* to file annual tax returns under the rules of self-assessment. There are also obligations to make appropriate preliminary tax payments and pay the balance of any tax due. There are specific time limits for return filing, significant interest charges, surcharges and penalties for late payments, late filing and non-filing of returns. The recently introduced Pay and File procedures will also apply. Information on self-assessment, etc. can be obtained on request from the local tax office.

The crew member/partner is also entitled to the appropriate share of the capital allowances due on the boat and other equipment, which should be shown on his or her tax return.

It may be necessary to cease tax deductions under the PAYE system unless the owner wishes to continue to operate the PAYE system voluntarily. PRSI Class A will cease to apply to be replaced by PRSI Class S. Should any partner wish to contribute to Class P, such payments should be made directly to the Department of Social, Community and Family affairs. If a partnership is using this voluntary form of PAYE, capital allowances can be claimed at the year end on filing a Return of Income.

Partnership Law

Where a partnership exists the **Partnership Act of 1890** will govern that relationship. Among other matters provided for in the Act are:

- ▼ Individual and collective responsibility for the debts and obligations of the partnership
- ▼ Sharing of capital and profits and contributions towards losses in equal measure subject to any agreement
- ▼ Rules relating to partnership property
- ▼ Dissolution of partnerships.

It would be advisable for boat owners/skippers and crewmembers and their advisers to familiarise themselves with their responsibilities under the Act.

Conclusion

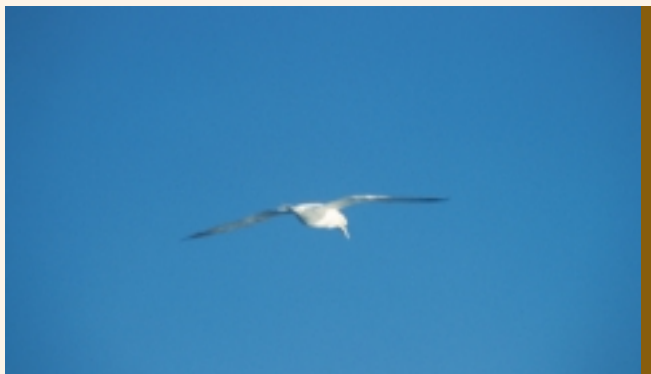
This Fact Sheet attempts to deal with the main aspects of the High Court decisions and some of their implications for boat owners and fishermen engaged in sharefishing for tax and partnership law purposes. The issues are complex. The Fact Sheet gives only a brief outline of the issues arising, which hopefully will help to dispel some of the confusion that has arisen.

For boat owners and crewmembers trying to establish their own position, it should be borne in mind that the implications may be significant individually and collectively under tax and partnership law.

If it becomes necessary to arrange further exploratory discussions to bring finality to the issues involved contact can be made initially with: Bob Dowdall, Chief Inspector of Taxes Office, Setanta Centre, Nassau St., Dublin 2 at 01 - 6470764 and Kieran O'Connell, District Manager, Letterkenny Tax District at (074) 69400. "

SHAREFISHING

PRSI Information



“PRSI Information for Share Fishermen / Women

This Fact Sheet is being issued to clarify the employment status and PRSI position of Share Fishermen/Women following recent High Court decisions.

What is “Share fishing”?

In the fishing industry, one of the traditional methods of payment to crewmen/women working on board fishing vessels is by ‘share’ of the value of the catch. If you work in the fishing industry and are *paid solely* by ‘share’ of the catch you are a Share fisherman/woman and should note the contents of this Fact Sheet.

Employed or self-employed? - High Court Judgement (2 October 2001)

The Class of PRSI you pay depends on whether you are employed or self-employed. Employed contributors are generally insurable at the PRSI Class A rate which provides cover for all benefits and pensions while self-employed contributors are insurable at PRSI Class S rate which provides cover for limited entitlements.

In a judgement dated 2 October 2001 the High Court ruled that two named Share fishermen were *not* employed under contracts of service (i.e. as employees) by the boat-owners/Skippers (William Deasy -V- Minister for Social, Community and Family Affairs and Francis Griffin -v- Minister for Social, Community and Family Affairs.)

The judge relied on the previous High Court case of DPP -V- McLoughlin (1986) in coming to her decision. The main factors in that case which determined that a crew were not employees of the boat owner but partners in a joint adventure were: -

- ▼ That each weekly voyage was a separate venture and no crewmember had a contract that entitled him to take part in any subsequent voyages
- ▼ Crewmembers did not receive payment of wages for participating in a fishing expedition but became entitled to a share in the net profits (if any), and

- ▼ Most importantly, although the boat-owner / skipper engaged each crewmember he did not decide what the rate of remuneration would be; this was determined partly by custom (50% of the profits being allotted to the boat) and partly by agreement between the parties.

It follows from this judgement that Share fishermen/women working in circumstances where the three factors mentioned above apply and are paid solely by share of the value of the catch are *likely* to be self employed and insurable at PRSI Class S rate of contribution provided that they have reckonable income of €3,174 (£2,500) or more per annum.

*[It is important to note that the High Court judgement **only** applies to Share fishermen/women who are paid **solely** by share of the value of the catch. A Fisherman/woman who is paid a fixed basic wage or salary is more likely to be an employee of the boat-owner or Skipper (Class A rate of PRSI). If in doubt about the Class of PRSI payable contact Scope Section, Dept of Social, Community & Family Affairs, 2/3 Parnell Square East, Dublin 1 for a decision - Telephone (01)-8044409].*

Registering as Self-employed for Income Tax and PRSI purposes

For boats on which an employer/employee relationship continues to exist, tax and PRSI will continue to be collected from crew members through the PAYE system and remitted monthly to the Collector General by the employer.

If you are a self employed Share Fisherman/woman and are not currently registered for tax and PRSI as a

self-employed individual you should contact your local Income Tax Office immediately. The self-assessment system (which includes payment of preliminary tax, filing of annual returns, etc.) applies to you.

A Revenue Fact Sheet on the tax and other implications of being a self-employed share fisherman/woman is available on request from the tax office.

Class S entitlements

The Class S rate of PRSI provides cover for Widow's or Widower's (Contributory) Pension, Orphan's (Contributory) Allowance, Old Age (Contributory) Pension, Bereavement Grant, Maternity Benefit and Adoptive Benefit.

Optional Class P Contributions

Class S contributions do not provide cover for short-term benefits. However, self-employed Share Fishermen/women may opt to pay an additional Class P contribution which gives full cover for Treatment Benefits and limited cover for Unemployment Benefit (13 weeks)

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SHAREFISHING

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and Disability Benefit (52 weeks). More information on Class P contribution system is available from:

*Self Employed Section,
Department of Social, Community &
Family Affairs,
Cork Road
Waterford*

Telephone 051 - 356000.

Summary

- ◆ Share Fishermen/women are insurable at the PRSI Class S rate of contribution
- ◆ Share Fishermen/women who have not already done so should register as self-employed for Income tax and PRSI purposes at their local Income Tax office
- ◆ Self employed Share fishermen/women may also opt to pay Class P contributions.

This article summarises the main implications of the recent High Court Judgment on the PRSI position of share fishermen/women who are paid solely by share of the value of the catch.

As some issues of detail are in the process of finalisation, it may be necessary at a later stage to issue a further Fact Sheet(s) and to meet with representatives of the fishing industry. ”

Revenue News

New and Updated Leaflets

Environmental Levy on Plastic Bags

A new leaflet has been produced in conjunction with the Department of the Environment and Local Government. The leaflet is also available on the Revenue website at www.revenue.ie

Enquiries in relation to the new environmental levy on plastic bags should be made to:

*Levy Section, Collector-General,
Sarsfield House,
Limerick.*

LoCall: 1890 20 30 70
e-mail: el Levy@revenue.ie



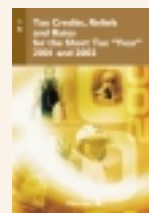
The guidelines are available on the Revenue Commissioners' website: www.revenue.ie under 'Publications' and 'Technical Guidelines'.

Any questions on the content of these guidelines may be referred to:

*Direct Taxes International and Administration Division,
Financial Services Unit,
Blocks 8 - 10, Dublin Castle,
Dublin 2.*

Telephone 01 - 6748018
Fax 01 - 6793314

Leaflet IT 1 - Tax Credits, Reliefs and Rates for the Short Tax "Year" 2001 & 2002. This Leaflet has been updated and is available from local tax offices, the *Revenue Forms & Leaflets Service* at LoCall: 1890 306 706 and on the Revenue website at www.revenue.ie



The following leaflets have been updated on the Revenue website at www.revenue.ie and will be available shortly at local tax offices:

Leaflet IT 2 - Taxation of Married Persons

Leaflet IT 7 - Covenants to Individuals

Leaflet IT 8 - Tax Exemption and Marginal Relief for 2002

Leaflet IT 9 - One Parent Family Tax Credit

Leaflet IT 13 - Personal Injury Compensation Payments

Leaflet IT 46 - Dependent Relative Tax Credit

Leaflet IT 47 - Employed Person Taking Care of Incapacitated Individual

Leaflet IT 66 - Home Carer's Tax Credit

Res 1 and Res 2

Revised editions of the Res 1 and Res 2 leaflets (revised in January 2002) are available in electronic format on the Revenue website at www.revenue.ie/pdf/res1.pdf and www.revenue.ie/pdf/res2.pdf respectively. The Res 1 leaflet which is entitled "Going to work abroad" outlines the rules of residence, ordinary residence and domicile for tax purposes and answers some income tax questions which an individual going to work abroad might have. The Res 2 leaflet which is entitled "Coming to live in Ireland", provides information in a similar format on residence and related issues for individuals coming to live in Ireland. These leaflets are available from the *Revenue Forms & Leaflets Service* at LoCall: 1890 306 706

New Guidelines

The Revenue Commissioners have issued new guidelines for calculating tax due and for completing declaration forms for -

- ◆ Investment Undertakings, and
- ◆ Life Assurance Companies

Employee's Motoring Expenses

Tax Briefing 46 (December 2001) outlined details of Employees' Motoring Expenses. The Euro rate for engine capacity up to 1200cc with official mileage in a calendar year of up to 4000 miles should read 76.86 cent.