

TAX BRIEFING

CORPORATION TAX



Revised Arrangements for Payment of Preliminary Corporation Tax

Introduction

Section 58 of the Finance Act 2002 (amending Section 958 TCA 1997) brings forward the date for payment of preliminary CT. The changes apply to CT due in respect of accounting periods ending on or after 1 January 2002. The general effect of the changes is that PT is due for payment one month before the end of the accounting period (previously six months after the end of the accounting period). The change is being introduced over a five year transition period during which the proportion of PT to be paid at the earlier date will be progressively increased. It will be fully effective for accounting periods ending after 2005.

Dates for Payment

During the transition period there will be three dates for payment of CT in relation to each accounting period:

- ▼ The first instalment of PT will be due thirty-one days before the end of the accounting period (but not

later than the 28th day of the month in which it is payable)

- ▼ The second instalment of PT will be due within six months after the end of the accounting period (but not later than the 28th day¹ of the month in which it is payable)
- ▼ Assuming the PT rules have been complied with, the balance of CT will be due one month after an assessment has been made (no change).

However there are two derogations from the rules outlined in the preceding paragraph:

As a transitional arrangement for 2002 only, the first instalment of PT is not payable before 28 June 2002. The practical effect is that, for all accounting periods ending between 1 January 2002 and 31 July 2002, the first instalment of PT will be payable on 28 June 2002. [Note: Companies with accounting periods ending 31 December 2001 will also be required to pay their PT on 28 June 2002, but this payment arises under the previous payment arrangements rather than the new arrangements outlined in this note.]

- *Where an accounting period is less than one month and one day* the due date for payment of the first instalment of PT is the last day of the accounting period (but not later than the 28th day¹ of the month in which it is payable).

When the transitional period has concluded (i.e. for accounting periods ending after 2005) all the PT payable will be paid in the first instalment and the second instalment will no longer apply.

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KEY DATES

July

- 14 PAYE/PRSI**
P30 monthly return and payment for June
- 14 DWT**
Return and payment of DWT for month ended 30 June
- 14 RCT**
RCT RCT30 monthly return and payment for June
- 19 VAT**
VAT 3 return and payment for period May/June
- 1-28 Corporation Tax**
1st instalment Preliminary Tax for APs ending between 1-31 August
2nd Instalment Preliminary Tax for AP's ending between 1-31 January
- 1-31 Corporation Tax**
Returns for APs ending between 1-31 October
- 1-31 Corporation Tax**
Returns of Third Party Information for APs ending between 1-31 October

August

- 14 PAYE/PRSI**
P30 monthly return and payment for July
- 14 DWT**
Return and payment of DWT for month ended 31 July
- 14 RCT**
RCT30 monthly return and payment for July
- 1-28 Corporation Tax**
1st instalment Preliminary Tax for APs ending between 1-30 September
2nd instalment for AP's ending between 1-28 February
- 1-30 Corporation Tax**
Returns for APs ending between 1-30 November
- 1-30 Corporation Tax**
Returns of Third Party Information for APs ending between 1-30 November

September

- 14 PAYE/PRSI**
P30 monthly return and payment for August
- 14 RCT**
RCT30 monthly return and payment for August
- 14 DWT**
Return and payment of DWT for month ended 31 August
- 19 VAT**
VAT 3 return and payment for period July/August
- 1-28 Corporation Tax**
1st instalment Preliminary Tax for APs ending between 1-31 October
2nd instalment Preliminary tax for AP's ending between 1-31 March
- 1-30 Corporation Tax**
Returns for APs ending between 1-31 December
- 1-30 Corporation Tax**
Returns of Third Party Information for APs ending between 1-31 December



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The due date for submission of the CT return remains nine months after the end of the accounting period.

First Instalment of Preliminary Tax

The amount to be paid in the first instalment of PT is as follows:

- ▼ For accounting periods ending in 2002, 18% of the tax liability for the chargeable period or, in the case of a small company,* 20% of the corresponding tax liability for the preceding chargeable period** if this is lower
- ▼ For accounting periods ending in 2003, 36% of the tax liability for the chargeable period or, in the case of a small company,* 40% of the corresponding tax liability for the preceding chargeable period** if this is lower
- ▼ For accounting periods ending in 2004, 54% of the tax liability for the chargeable period or, in the case of a small company,* 60% of the corresponding tax liability for the preceding chargeable period** if this is lower
- ▼ For accounting periods ending in 2005, 72% of the tax liability for the chargeable period or, in the case of a small company,* 80% of the corresponding tax liability for the preceding chargeable period** if this is lower
- ▼ For accounting periods ending in 2006 and subsequently, 90% of the tax liability for the chargeable period or, in the case of a small company,* 100% of the corresponding tax liability for the preceding chargeable period** if this is lower.

*The definition of a small company and **an explanation of corresponding tax liability for the preceding chargeable period are given later in this article.

Second Instalment of Preliminary Tax

The amount to be paid in the second instalment of PT is an amount that, when added to the first instalment of

PT is equal to 90% of the tax liability for the chargeable period.

Example:

For an accounting period ending in 2002, if the tax liability for the chargeable period is €100,000 and the first instalment of PT was €18,000, the second instalment would be €72,000.

For accounting periods ending in 2006 and subsequently, payment of the second instalment of PT will no longer arise.

Small Companies

As indicated earlier in this article, a small company has the option of basing its first instalment of PT on the corresponding tax liability for the preceding chargeable period, if it would be more advantageous to do so.

A small company is one where the tax liability for the preceding chargeable period does not exceed €50,000 provided the preceding chargeable period equals twelve months. Where the preceding chargeable period was less than twelve months, the liability has to be "annualised" to determine whether or not the company qualifies as a small company.

Example

If the preceding chargeable period was six months and the tax liability was €24,000, the company qualifies as a small company as the annual figure would be €48,000. If the tax liability was €26,000 the company would not qualify as a small company as the annual figure would be €52,000.

Depending on changes in CT liability from time to time, a company may qualify as a small company for some accounting periods and not for others.

Having determined that the company qualifies as a small company, the first instalment of PT can be based on the

corresponding tax liability for the preceding chargeable period. The concept of "corresponding tax liability" arises because the preceding chargeable period and the current chargeable period may be of different lengths. The corresponding tax liability is determined by the formula:

$$T \times \frac{C}{P}$$

where

- T is the CT payable for the preceding chargeable period
- C is the number of months in the current chargeable period and
- P is the number of months in the preceding chargeable period.

Examples:

Preceding chargeable period was six months, where the tax liability was €10,000. Current chargeable period is twelve months, so the corresponding tax liability is determined as follows:

$$€10,000 \times \frac{12}{6} = €20,000$$

Preceding chargeable period was twelve months, where the tax liability was €10,000. Current chargeable period is six months, so the corresponding tax liability is determined as follows:

$$€10,000 \times \frac{6}{12} = €5,000$$

Where the preceding chargeable period and current chargeable period are of the same length the tax liability for the preceding chargeable period equates to the corresponding tax liability.

The relevant percentage is then applied to the corresponding tax liability to determine the amount to be paid as the first instalment of PT. However, a company is not obliged to use this method if it would be more advantageous to base the first instalment on the tax liability for the current chargeable period.



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In the first accounting period a company has no preceding chargeable period and so cannot avail of the small companies preceding year rule in arriving at the first instalment of PT due. However, as a matter of practice where a company's first year's CT is not going to exceed €50,000, then a first instalment payment of "nil" PT would be accepted as meeting the PT obligations for the first instalment. The second instalment of PT would then have to amount to 90% of the total liability.

"Top-Up" Payments

Because the first instalment of PT has to be paid before the end of the accounting period, a special provision applies to cater for the situation where additional liabilities, in the form of chargeable gains on disposals, arise in the final month of the accounting period. Where this situation arises a company is permitted to make a further payment of PT a "top-up payment". Where such a company correctly pays the first instalment of PT (but disregarding the gains in the final month), and makes a top up payment one month after the end of the accounting period to bring total payments up to the required level, the company will be regarded as having met its PT obligations.

There is no provision for a top up payment in relation to close company loans to participators. Neither is there provision for a top-up payment in relation to medical insurance payments for employees.

Income Tax Payable by Companies

In relation to income tax on "perks", such payments which fall due by virtue of *Section 112A (3)* form part of the PT for the year by virtue of

Section 952(2) and hence are subject to the same rules in relation to timing as the rest of the CT payable for the period. The payment of this income tax should be in accordance with PT and balancing payment rules, for example for 2002 : 18% due with the first instalment of PT ; 72% due with the second PT instalment ; the balance of CT , 10%, due within 1 month of assessment date.

This applies also to all types of income tax payable by a company under *Section 239 TCA 1997* (e.g. income tax withheld on royalties paid). In accordance with *Section 239(11)(a) TCA 1997* the income tax due is treated as CT for the purpose of charge, assessment and collection and is therefore subject to the same PT and balancing payment rules.

Failure to Comply with Preliminary Tax Requirements

Where a company fails to comply with the PT requirements (either by failing to pay a sufficient amount or by failing to pay by the relevant due date(s)) the due dates for the payment of the CT liability for the chargeable period are brought forward as follows:

- ▼ For accounting periods ending in 2002, 20% of the liability on the due date for the first instalment of PT and 80% of the liability on the due date for the second instalment of PT
- ▼ For accounting periods ending in 2003, 40% of the liability on the due date for the first instalment of PT and 60% of the liability on the due date for the second instalment of PT
- ▼ For accounting periods ending in 2004, 60% of the liability on the due date for the first instalment of PT and 40% of the liability on the due date for the second instalment of PT

- ▼ For accounting periods ending in 2005, 80% of the liability on the due date for the first instalment of PT and 20% of the liability on the due date for the second instalment of PT
- ▼ For accounting periods ending in 2006 and subsequently, 100% of the liability on the due date for PT and interest charges will arise accordingly.

Issue of Preliminary Tax Reminder Letters

Following previous practice, PT reminder letters will issue to companies in advance of the due dates for payment of instalments of PT. These letters will incorporate the relevant payslips for payment of the PT. Companies should note, however, that these reminder letters will be based on the accounting period end date on record for each company. Where a company changes its accounting period, arrangements should be made to notify Revenue so that the reminder letters (and return form) can be issued at the appropriate time.

Submission of returns and payment of CT can also be made through ROS.

Further Information

Any further information required in relation to the operation of the revised rules for payment of preliminary corporation tax can be obtained by contacting:

*Technical Services,
Office of the Collector-General,
Sarsfield House,
Francis Street,
Limerick.*

Telephone: Locall 1890 20 30 70
Fax: 061-401012
email: cg@revenue.ie



PAY AND FILE

Q & A's



In the last edition of *Tax Briefing* (Issue 47, April 2002) the leading article sets out in detail the changes taking place this year as a result of the introduction of Pay and File. The article also detailed the special *transitional* arrangements that Revenue have put in place for 2002, the first year of Pay and File.

Summary of the Main Changes and Transitional Arrangements

- Under Pay and File, 31 October 2002 is the
 - Filing date for the 2001 Tax Return
 - Due date for any balance of tax due for 2001
 - Due date for any Capital Gains Tax due for 2001
 - Due date for Preliminary Tax for the current year 2002
- A new style payslip, accommodating each of the three required payments mentioned above, was attached to the personalised returns that issued to you for your clients
- If it is necessary to review the tax liability for the tax year 2000/2001 and this results in an additional liability, this additional tax due must also be paid by 31 October 2002 - see *Tax Briefing*, Issue 44 (June 2001), page 6 and Issue 45 (October 2001), pages 15-18
- A major part of the Pay and File provisions require that you, as agent, will now have to calculate your client's tax liability **before** you submit the tax return. There are two easy ways to meet this requirement and have certainty in calculations:
 - (1) File the return on or before 31 August 2002, in which case we will issue an assessment in plenty of time for you to meet the 31 October deadline, OR
 - (2) File electronically through the Revenue On-Line Service (ROS), anytime up to the filing deadline, where you will receive an instant calculation of the liability.

- Where you are not availing of either of the above and you are using your own calculations there is a 'top-up' facility whereby small errors in your calculations (resulting in additional liability being due) may be corrected and paid without incurring interest, provided the additional payment is made on or before 31 December 2002 - see *Tax Briefing*, Issue 44, pages 5 and 6 for more information on this
- The place of filing the tax return is now the Collector-General's in Limerick. Special postal arrangements have been put in place for the transitional year.
- The special transitional 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 in the April Issue of *Tax Briefing*. To get the benefit of the 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 in Limerick by 21 November.

Reminder: Do not use the personalised tax return or payslips for anyone other than the person they are printed for.

Pay and File Guide

Copies of the Pay and File guide have recently issued to every self-assessed customer. A copy was also sent to each individual tax practice. It is also available from our website (www.revenue.ie) or additional hard copies are available, on request, from the Revenue Forms and Leaflets Service at 1890 306 706. The issue of the guide was supported by newspaper and radio advertising, alerting all self-assessment customers to the changes and of the necessity to start early preparation of books, records, etc., to enable them meet their tax obligations on time.

Pay and File Seminars for Tax Practitioners

The April issue of *Tax Briefing* also gave an itinerary of Pay and File seminars for practitioners, held at a number of locations throughout the country. The seminars, numbering 28 in all, ran for a six-week period during April and May. The purpose of the seminars was primarily to alert practitioners to the changes taking place and to provide a platform for answering practitioners' questions/concerns on the changes. The seminars also had separate ROS demonstrations on the ROS customer information services, including demos on ROS sign-on procedures and on how to complete the electronic Form 11.



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The format of the seminars contained a short presentation on the Pay and File changes and the transitional arrangements being put in place by Revenue, followed by a 'question and answer' session. This was followed by practical ROS demonstrations, again with an opportunity to ask questions. The seminars were very well attended with over 2,000 people, representing almost 1,100 practices, attending over the six weeks.

Questions Arising at the Seminars

We undertook to repeat the more topical questions that arose during the course of the seminars in this issue of *Tax Briefing*. What follows is a summary of these questions and Revenue's response to these:

I note the current tax return has a personalised barcode. However, can I continue to use approved computer generated 'facsimile' returns for my clients?

Yes. However, we recently issued a letter to all tax practices giving details of their client's 'GCD' reference and requested that where they were using 'facsimile' returns, (or any other non-personalised returns e.g. "blank" returns) that in addition to inserting the client's PPS number, that they also insert their client's GCD reference, in the space provided on the front page of the return. Your co-operation here would be much appreciated and should help speed up the processing of the return.

What attachments must accompany 'paper' returns for 2001 (short tax year)?

The only attachments that must be submitted with the Form 11 for the short tax year 2001 are the Case I/II accounts and accompanying tax adjustment computations and the Form Med 1. The attachments should accompany the return which now goes to the Collector-General's Office. There is no requirement to submit Forms F45, P60, bank certificates, dividend counterfoils, rental computations, capital gains tax computations, etc. However, all supporting documentation must be retained for purpose of an audit or verification check. Also, for the short tax year 2001, you have the option of submitting completed 'paper accounts menus' (see *Tax Briefing* Issues 44 and 46) instead of attaching the full formal accounts. Copies of the accounts menus are available on the revenue website. Paper versions of the menus are now available on request from the *Revenue Forms and Leaflets Service* at 1890 306 706 or any tax office.

Do company directors who are issued with Form 12 Directors have to make their return to the Collector-General or their local tax office?

In general Form 12 Directors should be submitted to the local tax office as before, on the basis that all liability is covered under PAYE.

If I spot an error after the return has been sent to the Collector-General's office what office do I contact to put things right?

Contact the local Inspector of Taxes office as before, not the Collector-General's office.

If my client is a PAYE taxpayer but has CGT liability (i) where do I send the tax return and (ii) can my client avail of the extended filing and payment date for the payment of the CGT?

(i) Send the return to the PAYE Tax Office as before and (ii) Yes; your client can avail of the extra three-week period, provided he/she meets the requirements for the transitional year.

What if I file on time but fail to make payment - is that compliant?

Filing and non-payment means that there is no access to the special arrangements involving the three week extension to 21 November. While a timely return may eliminate the surcharge which applies to return filing only, normal interest provisions will apply to late payment of tax.

If I file the return to the Collector-General's on 31 October when will I get a notice of assessment?

As at present, the expected processing time for returns filed manually at peak filing dates is up to three months. Therefore the onus will still be on you to calculate final liability to meet the "top-up" provisions before 31 December 2002 (if applicable) - See *Tax Briefing*, Issue 45, pages 5 and 6.

If I'm filing early should I detach the payslip?

If you have already calculated the liability and are in a position to complete the payslip in full, you may complete it and send it with the return to the Collector-General's office. However, if you are relying on getting an assessment from the tax office before completing the payslip you can detach it and use it when you know the figures for input on the payslip. Remember, however, that the tax remains due on 31 October (or 21 November, if availing of the special arrangements) and, where you are paying by Single Debit Authority (SDA), it will not be deducted from your client's account before the due date.

Will these special provisions also be used for later years?

No. The special arrangements are to take account of the transitional nature of the changeover to Pay and File. The position will be reviewed for later years and instructions will issue in due course nearer the time.



PAY AND FILE

Q & A's

RAC'S

What is the payment date for additional Retirement Annuity Contributions where I am benefiting from the extended 21 November filing date?

If your client qualifies for the extended filing date, the final date for additional contributions under *Section 787(7) TCA 1997* is also extended to 21 November 2002.

Change in Accounts Year

Traditionally I have prepared Case I/II accounts for a twelve-month period ending 5 April (or 31 March) to 'correspond' with the 'old' tax year. I am now changing the accounts year to match the new calendar tax year / or because of the changeover to the euro, by preparing a nine month period of account to 31 December 2001 and thereafter for twelve-month periods ending 31 December. What is the basis of assessment for the short tax year and will it be necessary for me to review the Case I/II position for the previous year 2000/2001?

A number of points arise in these circumstances and you should bear these in mind before making a decision as to whether to change the accounting period. Firstly, the basis period for the short year is the twelve-month period ended 31 December 2001, (i.e. 9 months ended 31/12/01 + 3/12 a/c's year ended 31/3/01, or 5/4/01, as appropriate) multiplied by 74%, since we're dealing with the short tax year. Secondly, since there is a change in the accounting period it is necessary to look back at the previous year (i.e. 2000/2001) and review the Case I/II position. The 'corresponding basis period' for 2000/2001 is the year ended 31 December 2000 and so it is necessary to calculate the profits for that period (e.g. 3/12 a/c's year ended 5/4/00 + 9/12 a/c's year ended 5/4/01, for the 5 April year-end situation and similarly for 31 March year-end). If the resultant figure is greater than the figure previously assessed, additional liability may be due on the uplift. Thirdly, you must calculate this figure before submitting the tax return and show it at Panel 3 on the return. Finally, any tax attaching to the uplift is due and payable with the preliminary tax for 2002, balance of tax for 2001, etc.

Name: MR MICHAEL MURPHY		P&F Form 11		€ Payslip	
PPS No: 1234567A		Signature: <i>Michael Murphy</i>		Date: 13/10/2002	
Single Debit Authority Do not complete this authority if you are making payment by cheque. Please debit my account no earlier than 31 October 2002 with the single amount specified.					
Branch Sort Code	9 0 4 3 0 9	Income Tax Preliminary Tax 2002	, 4 , 5 0 0 .00		Tick box below if 2001 value is a refund <input checked="" type="checkbox"/>
Account Number	1 2 3 5 4 6 8 7	Income Tax Balancing Amount 2001	, , 8 0 0 .00		
€ DEBIT AMOUNT	, 4 , 2 0 0 .00	Capital Gains Tax 2001	, , 5 0 0 .00		
		TOTAL NET LIABILITY	, 4 , 2 0 0 .00		
		P&F11 02/1			

PAYSLIPS

Where can I get a payslip to pay 'Top-Up' or 'Review Year' payments?

A supply of non personalised payslips to cover top-up and review year payments will be issued to all tax practices over the coming weeks. Further supplies will be available from your local tax office.

[For information on 'top-up' payments, see *Tax Briefing*, Issue 44, pages 5/6 and for 'review year' (i.e. review of the preceding year, 2000/2001) see *Tax Briefing*, Issue 44, page 6 and Issue 45, pages 15 - 18.]

If my client did not receive a payslip, can I get a replacement?

If you are using facsimile software to produce returns or if you are using other non-personalised return forms, e.g., a 'blank' return or a copy of the Form 11 from the Revenue website, you may not have received a personalised payslip. For those facsimile users, who have asked not to be issued with tax returns for their clients, we have already issued personalised payslips. If for some reason your client did not receive a payslip, a supply of blank non-personalised payslips will be available from your local tax office. Note, however, that we will be issuing reminder personalised payslips in September.

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PAY AND FILE

Q & A's

I note that the payslip allows me to get credit for any tax overpaid for the short tax year. How will interest on the tax overpaid be dealt with?

Revenue will calculate any interest due and repay it separately.

Will a Preliminary Tax notice issue in September?

Preliminary tax notices will not issue, per se. However, notices in the form of a reminder Pay and File payslip will issue in September. A copy will issue to both agents and clients.

If I file early and I pay by SDA (\leq €5,000) or by ROS, will my account be debited immediately?

No. If you qualify for the 21 November payment date and you are paying either by SDA or ROS, your account will not be debited before 21 November.

If I am due to pay by 31 October by SDA ($>$ €5,000) and I am late, when will my account be debited?

In these circumstances, your account will be debited immediately and interest may accrue on the late payment.

What happens if I have Relevant Contracts Tax (RCT) to offset against my total net liability?

You should complete the total net liability for the full amount and pay the balance, net of the RCT offset. You should send a note with the RCTDC (C45), with details of how the RCT is to be offset.

What if a client is unable to pay the full amount of the total net liability?

Where a client is unable to make the full payment, the payslip should be completed with full amounts and the payment, whether through ROS, SDA or cheque should be for whatever amount the client can pay. It should be noted that late payments may be subject to interest charges.

What are the special Postal Arrangements?

Practitioners with a client base of 100 or more clients will shortly be issued with SDS postal labels for the transmission of bulk numbers of returns by post. For smaller practices making bulk submissions, SDS labels will be available on request. In addition, for other cases, special return envelopes are being made available on request. Exceptionally, because of the transitional nature of the changes this year, the date of postage will be accepted as date of receipt. Requests for either SDS labels or the special envelopes may be made to either the Collector-General's or to local tax offices.

How do I complete the payslip if I'm availing of the direct debit option to pay the Preliminary Tax for 2001? (See *Tax Briefing*, Issue 44, June 2001, page 6)

Ignore the Preliminary Tax part of the payslip and complete the remainder of the payslip. Contact the Collector-General's office at 1890 20 30 70 with any queries on Direct Debit for Preliminary Tax.

Do SDA's apply only to banks in the Republic, or can they be set up with accounts in Northern Ireland?

They may only be set up with banks in the Republic.

Can my client still pay by cheque or must I complete the SDA part of the payslip?

Yes, your client may still pay by cheque, which should be submitted with the accompanying payslip. You simply complete the right hand side of the payslip and leave the part dealing with the SDA blank. All cheque payments must be received by 31 October 2002 in order to avoid interest penalties arising.

What will happen if I complete the SDA but leave the amount 'blank'?

If you leave the amount on the SDA 'blank' we cannot act on the SDA, so it is crucial that you complete the amount to be debited from your client's account if you are using the SDA facility.

Can an overpayment for CGT be catered for on the payslip?

No. The payslip does not cover a CGT overpayment. If this arises you should leave the CGT part of the payslip blank and put a covering note with the payslip giving details of the CGT overpayment.

Question raised in the course of ROS presentations

Payments:

Is it envisaged that agents will arrange the payment on behalf of their clients?

This is a matter between the agent and the client. Agents should arrange for their client to complete a ROS Debit Instruction (RDI) as soon as possible to enable payments to be made from the client's bank account. The client may then instruct the agent to complete the relevant amounts when finalised. If a client has registered with ROS separately, they can sign up for the RDI on-line. There is a further facility on ROS to make payments by laser card. Later this year ROS will provide a facility to set up the Single Debit Authority and an online banking facility.



PAY AND FILE

All bank debit instructions made in advance of the due date on ROS will not be debited from the relevant bank account until the due date.

Is it possible to amend a ROS Debit Instruction (RDI) authorisation once it has been submitted?

Yes, it is possible to amend an RDI on confirmation from the specific customer or the customer's agent, e.g. adding additional tax heads to an existing RDI or making additional payments where underpayments have been discovered. However, if the amendment is in relation to a change of Bank, then a new RDI will be required.

Software Companies :

What is the position in relation to compatibility of software packages with ROS?

ROS has regular contact with all software developers to keep them apprised of developments in relation to ROS and the technical requirements to produce ROS compatible software. The technical specification for each form is made freely available at the earliest opportunity to all interested parties.

Currently we have commitments from a number of software developers that they will have ROS compatible packages available for their clients in time for the filing date this year.

We would also encourage ROS customers to engage in discussions with their software providers in relation to their specific needs without delay.

Does ROS carry forward Form 11 details from year to year?

There is no provision in ROS, at present, for any automatic carry forward except for the trade description field on the Form 11, and there are no plans to develop this feature. This facility will of course remain a feature of 3rd party software packages and is an issue for ROS customers to engage with their own software developers.

Accounts/Form Issues:

Where can I read more about the 'accounts menus' that I must complete when using ROS?

The lead article in the December 2001 issue of *Tax Briefing*, Issue 46, provides a good discussion on what is required when you are completing accounts menus and also gives practical examples (at pages 10 to 13) of typical sets of accounts and how they relate to the ROS menu.

How do you deal with Capital Allowances in ROS?

ROS requires the final figures only. All computations should however be retained for verification or audit purposes at a later date.

What attachments, if any, are required with the ROS Form 11?

In general ROS customers do not have to submit any attachments when filing electronically. However, such documents should be retained and may be required in the event of an audit or verification check.

Accounts with turnover of €13 million (IR £10m) or more must be submitted in paper format even where you file on-line.

Customer Information Services On ROS:

What information is available to agents/businesses on ROS Customer Information Service ?

All ROS customers can access information in relation to

- ◆ Payments
- ◆ Refunds/Repayments
- ◆ Charges and Collections
- ◆ Registration Details
- ◆ Event List
- ◆ Statement of Account requests

On-line up to date information under all these headings is available for the current year plus two previous years.

Agents can access this information for any of their clients. In addition agents also have a facility to request lists of outstanding returns for their entire client listing for any tax returns catered for by ROS.

An agent with an Income Tax customer can file returns, make payments and access information for Income Tax for that client. However, the agent is also allowed access to the client's details in relation to VAT and Employers PAYE in the ROS Customer Information Service if that client also has these tax registrations.

At present customer information is available for the current year and two previous years on ROS. Will this function be extended?

This is a matter which is under review at the moment and all ROS customers will be informed of any change in this facility.

Agent Services :

Can you access ROS on your PC in the office and from PC at home?

Yes you can, provided both PCs have internet access. Your digital certificate can be downloaded from your office PC onto a disk and used on another computer at another location to access ROS. However we would stress that you copy your digital certificate for your own use only.

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PAY AND FILE

Continued from page 9

Can messages in the inbox be retained until the member of staff it refers to has retrieved it?

Currently all inbox messages can be accessed by anybody with a digital certificate and the appropriate permissions. However, developments are ongoing to permit messages to remain in the customer's inbox until opened by the sender of the original electronic communication.

As an agent if I register for ROS are all my clients details available across the internet?

The only client information that comes across the Internet to ROS is the client's name and number. The agent ROS administrator can ensure that no further information is available. This is a matter of confidence between the client and the agent.

How long before the receipt of payment is sent to the inbox?

All ROS customers receive an instant acknowledgement of all payments/returns filed. The receipt is sent to the inbox once the payment is processed by Revenue. This would normally be the following day.

As an agent or a business do I need internet access on every PC in the office?

No - internet access is only required on the PCs that will actually access ROS for making customer enquiries or payments, or filing returns. Otherwise the off-line service may be utilised within the local office network and access to the internet is only required when actually signing and submitting payments and returns.

Is it possible to partially complete a return and save it on ROS?

Both online and offline versions of all ROS forms contain save functions which allow for the return to be saved at any stage in the completion and finalised at a later date.

Can anything be done to speed up Internet access?

This is a matter that should be taken up by you with your internet provider. ROS has undertaken to talk to the main internet providers concerning the expected increased demand around all filing dates.

PENSION SCHEMES

1/6th Rule

Occupational Pension Schemes

Section 10 Finance Act 2002 introduced age-related amendments to the existing employee contribution limit of 15% of remuneration in Sections 774(7) and 776(2) TCA 1997. (See **Tax Briefing** Issue No.47).

Following consultations with industry sources it has been agreed that the Revenue discretionary code of approval practice would be amended in relation to what became known as the 1/6th Rule (i.e. the requirement that the employer bears 1/6th of the total cost of member's benefits in occupational pension schemes). The change is necessary to ensure that scheme members will not be prohibited from availing of the proposed age-related limits subject, of course, to the applicable limits on scheme benefits.

As a consequence, a new paragraph 4.1 of Chapter 4 of the Revenue Pensions Manual is substituted for the existing paragraph. The new paragraph is applicable for the 2002 year of assessment and subsequent years of assessment.

The new paragraph reads as follows:

"It is a condition of approval of a scheme that the employer must contribute to it but, subject to the considerations mentioned in Chapter 5 and any funding requirements imposed by the Pensions Acts (as regulated by the Pensions Board), the timing of the contributions is a matter for the employer.

While Revenue will not insist that there be a stated minimum level of employer contributions, it will continue to be a requirement that such contributions be "meaningful" in the context of the establishment, operation of and the provision of benefits under a scheme. For instance, in the circumstances where an employer would bear the cost of the establishment of a scheme and the ongoing operating costs of the scheme in addition to meeting the costs of the provision of death in service benefits under the scheme, such overall contributions would generally be considered to be meaningful. In other circumstances, an employer's contributions, which would not be less than 10% of the total ordinary annual contributions to a scheme (exclusive of employee voluntary contributions), would always be considered to be meaningful.

It will always be open for employers and their advisers to approach the Retirement Benefits District to discuss the circumstances of particular schemes."

The content of this article has been superseded by new Revenue Technical Service Guidelines available on the 'Tax Practitioners' page of the Revenue website.



REVENUE OPINIONS

Guidelines



Seeking Revenue Opinions on Tax Consequences of Certain Complex or Unusual Transactions.

Guidelines for Taxpayers and Practitioners.

Introduction

The Revenue Commissioners have a range of services that enable practitioners and tax payers to obtain information on many areas of tax legislation. These services assist taxpayers and practitioner requirements for clarity on a wide range of issues, even complex ones. There should be a limited number of circumstances where a taxpayer or practitioner requires an opinion from Revenue in advance of a transaction actually taking place, given the volume of detailed information in the public domain.

The Revenue view is that the request for an opinion is appropriate only where the circumstances are complex or the transaction is unusual and the existing information services do not provide the clarity required. Queries or opinions should only be submitted or sought where information is not readily available from the applicant's own resources and the information is not in the public domain or available from the local tax office. For example, prior to contacting Revenue, it is expected that a detailed search of the published material under the Freedom of Information be undertaken on the subject.

Opinions will only be given in respect of certain transactions and the

purpose of this article is to outline the formal procedures for seeking such opinions. This article also outlines the range of information services available and the clearance given by Revenue where such clearance is provided for by statute.

In addition, where a taxpayer has a doubt about the tax treatment of a specific item he or she may take a view on the issue and express doubt on the tax return under *Section 955 TCA 1997* or *Section 8* of the Stamp Duties Consolidation Act 1999 and *Section 19B VAT Act 1972*, inserted by *Section 107 FA 2002*. A formal expression of doubt protects the taxpayer from interest and penalties should Revenue take a different view of the tax treatment of the transaction at a later date.

Revenue Information Services

Literature

Details of the policies and practices of Revenue as applied to particular areas of tax law are set out and clarified in a wide range of publications including *Tax Briefing*, information leaflets/booklets, the precedent database and the reference book published under the Freedom of Information Act. Booklets and guides are also available on a number of topics from Revenue Offices throughout the country and are reproduced on the Revenue website www.revenue.ie. A comprehensive list of Revenue publications is available on the Revenue website under "publications". This list is also available in *Tax Briefing* Supplement, which issued in June 2001.

Routine Queries

Where the available literature does not contain the information required and, in the case of practitioners, the information is not readily available from their own resources, the taxpayer or practitioner may obtain information on tax legislation by contacting Revenue directly by

phone, email or letter. Details of all Revenue offices throughout the country are available in all phone books under Government Departments. They are also reproduced on the Revenue Web Site under "Contact Us". In general, queries should be directed to the office dealing with the taxpayer's affairs.

Transactions requiring Statutory Clearance

In certain circumstances the governing legislation requires that Revenue clearance or approval be given before a tax relief applies. The issues listed below are dealt with by:

*Direct Taxes International and Administration Division,
Dublin Castle,
Dublin 2.*

- ▼ Requests for determination for the purposes of *Section 141 TCA 1997* (that dividends from patent royalty income derive from a patent taken out in respect of an invention which involved radical innovation)
- ▼ Requests for determination for the purposes of *Section 195 TCA 1997* (Artists Exemption)
- ▼ Requests for determination for the purposes of *Section 236 and 606 TCA 1997* (Loan of certain Art Objects)
- ▼ Relief for investments under Business Expansion Scheme
- ▼ Requests for determinations relating to public access to significant buildings for the purposes of *Section 482 TCA 1997*
- ▼ Relief for investment in films under *Section 481 TCA 1997*
- ▼ Relief for investment in Renewable Energy Projects under *Section 486B TCA 1997*
- ▼ Distribution Test - Offshore Funds: Distributing Funds *Part 1 Sch.19 TCA 1997*.

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REVENUE OPINIONS

Continued from page 11

Dealt with in the *Office of the Chief Inspector Of Taxes*:

- ▼ Approval of Profit Sharing and Share Option Schemes - *Sections 509-519D TCA 1997*.

Procedures for Requests for Opinions

The procedure is suitable for use where the issue is complex or unusual and cannot be dealt with under the existing information services and is also only available in respect of specific issues noted in this article. The particular offices providing the service are listed hereunder and the address and phone number of each office is listed in the table at the end of the article.

Issues Covered by this Procedure

Office of The Chief Inspector of Taxes:

- ▼ Certain transfers within a group involving a non-EU resident company
- ▼ Withholding Tax in respect of Professional Services - as regards its application to 'Accountable Persons'.
(Note: Queries in respect of taxpayers who have had withholding tax deducted should be made to the taxpayer's own tax office).
- ▼ Complex Restructuring and Re-organisations
- ▼ Permanent Establishment with regard to Double Taxation Agreements
- ▼ Partition of family trading company
- ▼ Foreign Dividends (Encashment Tax)

- ▼ Trade benefit test arising on the acquisition by a company of its own shares
- ▼ Capital allowance issues arising from incentives.

Direct Taxes International and Administration Division

- ▼ Issues arising on large investment projects including classification of income as trading
- ▼ Securitisation within the financial services industry.

Dublin Audit District 5 (DAD 5) (Financial Services, Banking, & Insurance)

There are comprehensive articles on the following topics in *Tax Briefing*:

- ▼ Captive Insurers in the IFSC - Issue 16
- ▼ EU Accounts regulations for Life Assurance - Issue 24
- ▼ New Life Assurance Tax Regime - Issues 41 and 43
- ▼ Deposit Interest Revenue Information Notice - Issue 44.

Queries on subjects relating to the financial services industry not dealt with in the above articles may be directed to DAD 5.

Capital Taxes Division

Capital Taxes Division deals with non-routine queries relating to Stamp Duties and Capital Acquisitions Tax. An informal pre transaction opinion or interpretation service is provided in respect of complex transactions relating to:

- ▼ Stamp Duty and Capital Duty aspects of company reconstructions and amalgamations - *Section 80 and Section 119 Stamp Duties Consolidation Act (SDCA) 1999*.

- ▼ Exemption from stamp duty on transfer of assets within a group (*Section 79 SDCA*).

- ▼ CAT Business Relief under the *Finance Act 1994 (Part VI)*

VAT

Based on specific information supplied, Chief Inspector of Taxes, VAT Technical Services and VAT Interpretation Branch will give an opinion on the correct VAT treatment of a complex transaction in accordance with EU and Irish VAT legislation. The issues that arise relate to:

- ▼ Property Transactions
- ▼ Share Dealings
- ▼ Apportionment of Input Credit
- ▼ The Place of Supply of a service
- ▼ The amount of the consideration applicable
- ▼ Intra Community Acquisitions and Supplies.
- ▼ VAT on financial services.

Customs and Residence Division

- ▼ Qualification for Charitable Tax Exemption - *Section 207 TCA 1997*
- ▼ Trading Activities by Charities and Qualification for Tax Exemption - *Section 208 TCA 1997*
- ▼ Eligibility of donations for Tax Relief under Donations Scheme for Charities - *Section 848A TCA 1997*
- ▼ Qualification for Sporting Tax Exemption - *Section 235 TCA 1997*
- ▼ Application of Withholding Tax or exemptions to relevant distributions (DWT)



REVENUE OPINIONS

Information Required

Where a pre-transaction opinion or interpretation is required in respect of any of the transactions specified in this article, it is essential that all information relevant to the case be submitted with the request. The quality of a pre-transaction opinion or interpretation will depend on the information contained in the request. Care should be taken to ensure that Revenue is fully apprised of all the facts and surrounding circumstances which may potentially impact on the tax status of the transaction. The submission should normally include the following:

- ▼ Name, Personal Public Service (PPS) number or Company Reference Number of the taxpayer/company and the tax office to which returns are made
- ▼ Name, PPS number and Company Reference Numbers of all other parties connected to the transaction
- ▼ A statement confirming that as far as the applicant is aware none of the specific issues involved in the Opinion/Interpretation, etc. are in respect of:
 - An earlier return made by the applicant
 - A specific issue that is being considered by another Revenue Office at the applicant's request or at Revenue's instigation
 - A related issue in the case which is:
 - Under appeal or before the courts
 - The subject of a previous request for opinion or
 - A matter that is currently being considered by another area in Revenue.
- ▼ A complete description of the facts and a complete description of each proposed transaction
- ▼ The business purpose behind the transaction and details of any prior or further steps involved
- ▼ Details of the relevant sections of the Act and the taxpayer's/practitioner's interpretation of the application of these provisions of the Act or Regulations
- ▼ Relevant Case Law should be quoted including cases that would not support the practitioner's contention
- ▼ The date it is intended to finalise the transaction
- ▼ The implications of the transaction for the liability to tax of the applicant under any tax head
- ▼ Any implications for international tax liabilities
- ▼ Aspects of the transaction about which the applicant is doubtful
- ▼ In respect of Sections 207 and 235 the following information is also required
 - Sight of the draft Governing Instrument
 - Short Statement of activities by the body to date, or if newly established a short statement of activities to be undertaken going forward
 - Full details of every Officer/Director/Trustee of the body including any connection or formal involvement with any other charity or sports body.

In addition, the letter of application should incorporate written confirmation to the effect that to the best of the taxpayer's/practitioner's knowledge all facts that are relevant to the request for the opinion have been given and that the request is in respect of a genuine proposed transaction. The application should be addressed to the relevant area mentioned above at the addresses listed over.

Tax Avoidance

An opinion will not be given, where Revenue, having considered all the documentation submitted, are of the view that the transaction(s) is part of a scheme or arrangement for the purposes of tax avoidance.

Status of Opinions

Opinions given by Revenue are not legally binding and it is open to Revenue officials to review the position when a transaction is complete, and all the facts are known. In this regard, it is important to disclose the full facts and circumstances surrounding the transaction as outlined in the section governing Information Required.

Time Frame

Where a transaction is subject to a particular deadline, Revenue will make every effort to ensure that a reply issues prior to the specified date. However, in order to ensure that an opinion is given in time, practitioners should endeavour, where possible, to submit the case and all requisite information at least six weeks before the proposed transaction date.

Change of Circumstances

Any opinion or interpretation given by Revenue is based on the specific facts relevant to that case and its particular circumstances only. Any material change in the facts or circumstances could affect an interpretation and taxpayers/practitioners are advised to draw any such changes to the notice of the office that gave the opinion or interpretation so that the case can be reviewed. An opinion given in relation to a specific case should not be relied on in other cases.

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REVENUE OPINIONS

Continued from page 13

Some opinions will arise from a unique set of circumstances. However, if an opinion is likely to have wider application Revenue will publish a practice note in *Tax Briefing*.

It should also be noted that an opinion will be given on the basis of the legislation as it exists at the time of the request. If this changes in advance of the completion of the transaction then the opinion may no longer be valid.

CONTACT ADDRESSES AND PHONE NUMBERS

Name	Address	Phone	Fax	e-mail
Chief Inspector of Taxes	1st Floor, Setanta Centre, Nassau Street, Dublin 2.	6470710	6716668	techtax@revenue.ie
Direct Taxes International and Administration Branch	Revenue Commissioners, Dublin Castle, Dublin 2	6475000	Incentives 6710012 Other Reliefs 6799287	dirtaxe@revenue.ie
DAD 5	Lansdowne House, Lansdowne Road, Dublin 4.	6689400	6604316	dubaudit5@revenue.ie
VAT Interpretation Branch	Dublin Castle, Dublin 2.	6748858	6795236	vatinfo@revenue.ie
Capital Taxes, Stamp Duty Technical Unit, CAT Technical Unit.	New Stamping Building Dublin Castle, Dublin 2.	6475000	Stamp Duty 6793261 CAT 6794115	captax@revenue.ie
Custom and Residence Division	Government Offices, Nenagh, Co. Tipperary.	1890 25 45 65	067 32916	charities@revenue.ie

Contact should only be made directly with those offices listed above when statutory clearance is required or, an opinion on a specific issue is being sought as outlined in this article.

LONG SERVICE AWARDS

Taxation of

Taxation of Long Service Awards

The tax treatment of long service awards was set out in the Topical Questions section of *Tax Briefing* Issue No 39 (March 2000). The purpose of this article is to set out the revised conditions and limits that apply with effect from 1 January 2002.

Where awards are made to directors or other employees as testimonials to mark long service, such awards are normally taxable. Where, however, an award takes the form of tangible articles of reasonable cost, tax will not be charged provided that:

- The cost to the employer does not exceed **€50** for each year of service
- The award is in respect of a period of service of not less than **20** years
- No similar award has been made to the recipient within the previous **5** years.

This treatment applies to awards made to directors as well as other employees. It does **not** apply where awards are made in **cash** or in the form of **vouchers, bonds**, etc.

CAPITAL GAINS TAX

Introduction

This article deals with 'paper for paper' transactions involving the exchange of shares and/or the transfer of business assets or undertakings in return for shares. The exchange of shares or transfer of assets are disposals for capital gains tax purposes. However, since there is often no actual cash passing hands the legislation provides for relief from capital gains tax.

The article deals primarily with the reliefs provided by *Section 586 TCA 1997* (Company amalgamations by exchange of shares) and *Section 587 TCA 1997* (Company reconstructions and amalgamations). It also deals with *Section 624 TCA 1997* (exemption from charge under *Section 623 TCA 1997* which provides for liability where a company ceases to be a member of a group) in the case of certain mergers. The article will be of benefit to those practitioners who deal with company reconstructions and amalgamations.

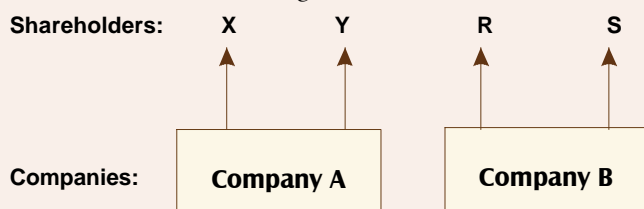
Company Amalgamations by Exchange of Shares (*Section 586 TCA 1997*)

The effect of this section is that where a company issues shares or debentures to a person in exchange for shares or debentures of another company, the exchange is treated as if the two companies were one and the same company and the exchange of shares was a reorganisation of its share capital. Thus, the exchange is not a disposal for capital gains tax purposes.

The section applies only where the company issuing the shares or debentures has or, in consequence of the exchange, will have **control** of the other company, or makes the issue as a result of a general offer to members of the other company or any class of them on condition that if it were satisfied it would have **control** of the other company.

For example:

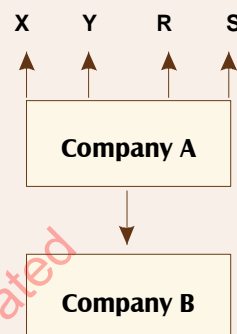
- Position before exchange of shares:



- Company A issues shares to the shareholders of Company B in exchange for their shares in company B
- Position, post exchange:

As a result X, Y, R & S are the shareholders of Company A and that company controls Company B.

Shareholders:



Examples of Control:

Examples of control would include where the issuing company:

- ▼ Acquires part or all of the minority share or debenture holdings in an existing subsidiary
- ▼ Makes a successful take-over bid for the other company
- ▼ Completes a successful take-over bid for the other company by acquiring the rest of its shares or debentures
- ▼ Has made unconditional a general offer which was previously conditional on its acquiring control of the other company. Thus, if X Ltd. as part of a take-over bid made an offer to acquire the shares of Y Ltd. on condition that the offer is accepted as to more than 50 per cent of that company's share capital and then, during the negotiations, makes the offer unconditional, the section applies even if the take-over bid fails.

The provisions of *Section 586* do not apply unless the exchange is for bona fide commercial reasons and is not part of a tax avoidance scheme.

Company Reconstructions and Amalgamations (*Section 587*)

Where, under a scheme of reconstruction or amalgamation, a company issues shares or debentures to the shareholders of another company in respect of and in proportion to their existing holdings in shares or debentures, those holdings being retained by them or cancelled, the transaction is treated as an exchange of shares. This comes within the rules applicable to a reorganisation of share capital so that the new holding is treated in the hands of the shareholder as if it were the original holding with no consequent charge to capital gains tax at the time of the exchange. For this purpose, "shares" include stock, debentures and interests in a company with no share capital, held by members of the company. It also includes options in relation to such "shares".

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CAPITAL GAINS TAX

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A **reconstruction** takes place where 'an undertaking' carried on by a company is in substance preserved and transferred to another company consisting substantially of the same shareholders ("substantial identity of shareholding"). It is only required that substantial identity of shareholding exists immediately after the transfer. It is not necessarily significant that as a next step the shares in the new company are sold. However, it is essential that the reconstruction must not be in any way contingent on the subsequent sale or transfer of shares. Furthermore, the contract for the sale of shares must not be in existence prior to the issue of shares by the new company.

Revenue will accept that the transfer of a 100% shareholding constitutes the transfer of an undertaking.

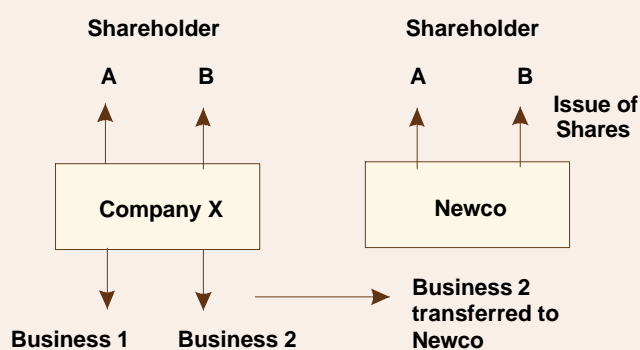
An **amalgamation** is the blending of two or more existing undertakings into one undertaking, the shareholders of each blending company becoming substantially the shareholders in the company, which carries on the blended undertaking.

A reconstruction or amalgamation would also take place where the transfer is a transfer of part of a business; provided that the part can exist as a business in its own right. However, there must be a segregation of trades or businesses and not merely the segregation of assets.

The basic philosophy behind schemes of reconstruction and amalgamation is that the original shareholders keep an interest in the original business.

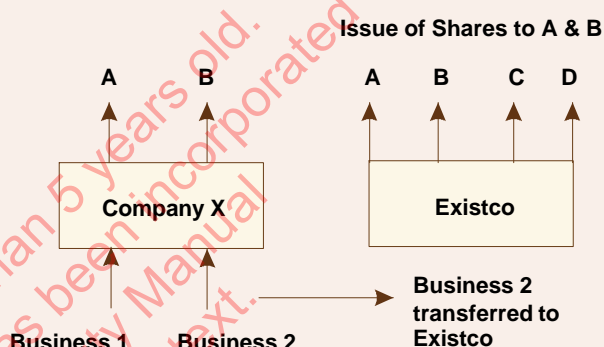
Example - Reconstruction:

Company X carries on two businesses. Its shareholders are A and B. Newco issues shares to the shareholders of Company X, in proportion to their existing shareholding, in exchange for the transfer of Business 2 to Newco. This constitutes a reconstruction since Business 2 is carried on by a company, which has the same shareholders as Company X.



Example - Amalgamation:

Again, Company X carries on two businesses. Its shareholders are A and B. An existing company (Existco), whose shareholders are C and D, issue shares to the shareholders of Company X in exchange for the transfer of Business 2 to Existco. This constitutes an amalgamation as Business 2 is carried on by a company, whose shareholders are an amalgamation of the participating companies.



Relief Shareholder

Section 587(2) provides that where in consequence of the arrangements referred to above, a shareholder or debenture holder in a company receives shares or debentures in the acquiring company and either retains his/her old shares or debentures or has them cancelled, he/she is deemed to have exchanged his/her old shares or debentures for his/her new holding. The original shares and the new holding are treated as the same asset acquired as the original shares were acquired as respects cost and date of acquisition. The consequence of this rule is that any gain or loss on the original shares is treated as accruing only when the new holding or part of it is disposed of.

Transfer of Business Assets

Section 615 operates where, on a reconstruction or amalgamation, a company takes over the whole or part of the business of another company and that other company receives no consideration for the transfer of the business other than the taking over of its liabilities. The section provides that no corporation tax is to be charged in respect of chargeable gains accruing to the transferor company, but the transferee company is to be treated as if it had acquired the assets at the time and the price at which they were acquired by the transferor company. This section does not apply to trading stock.



CAPITAL GAINS TAX

To qualify for relief under this section-

- ▼ The scheme must involve the transfer of the whole or part of a company's business to another company
- ▼ The acquiring company must be resident in the State at the time of the acquisition or the assets are chargeable assets in relation to that company immediately after the transfer
- ▼ The transferor company must be resident in the State at the time of the acquisition or the assets are chargeable assets in relation to that company immediately before the transfer
- ▼ The transferor company must receive no consideration for the transfer, apart from the other company taking over the whole or part of its business liabilities.

The transferor company is treated as having disposed of the assets with no loss or gain arising. The transferee company, for the purposes of calculating indexation relief on eventual disposal, is treated as having acquired the assets at the time and price at which they were acquired by the transferor company.

Consequently, when the acquiring company eventually sells the assets to some third party the gains made by both the first and the second companies will at that time be brought into charge and indexation relief applies accordingly.

Relief does not apply to the issue of shares by a company under a scheme of reconstruction or amalgamation unless that scheme is effected for bona fide commercial reasons and not as part of a tax avoidance scheme.

Where a bona fide reconstruction takes place to which the provisions of *Section 587* and *615* apply, it is not the practice of Revenue to invoke a distribution charge under *Section 130 TCA 1997*.

Transactions involving family company partitions are dealt with in **Tax Briefing** Issue 44.

Exemption from *Section 623 TCA 1997* for certain mergers (*Section 624 TCA 1997*)

Section 623 TCA 1997 sets out the charge to tax, on one or more group members leaving a group of companies, in respect of assets the company leaving the group acquired from other group companies within a period of 10 years immediately preceding the time the company leaves the group. The charge deferred under *Section 617 TCA 1997* is effectively reinstated.

Section 624 TCA 1997 provides that in order to facilitate company mergers, *Section 623 TCA 1997* is not to apply if all the following conditions are satisfied, when a company leaves the group as part of a merger

- ▼ There are bona fide commercial reasons for the merger

- ▼ Avoidance of tax is not the main or one of the main purposes
- ▼ The merger is within the definition in *Section 624(2)*.

For the purposes of this section a merger is an arrangement whereby:

- ▼ A company(ies) outside a group of companies acquires an interest in the whole or part of the business carried on by the company leaving the group (Company X) and
- ▼ The group of companies of which Company X was a member acquires an interest in the business carried on by each acquiring company or, in the case of a consortium operating through a joint operating company, by a company 90 per cent or more of whose ordinary share capital is owned by the acquiring companies.

In Addition

- ▼ Not less than 25 per cent by value of the interests acquired by each party are to be by way of ordinary share capital, the balance (as regards the acquisition by Company X or its group) being by way of debentures or shares
- ▼ The value or aggregate values of the interests acquired by both parties to the merger are to be substantially of the same value
- ▼ The consideration received by the group of companies of which Company X ceases to be a member is to be applied in the acquisition of the interest in the other group of companies. The words of the Act ensure that the consideration may be wholly in shares or partly in cash and partly in shares provided that the part in cash is applied to purchase the relevant shares.
- ▼ The acquisition must be otherwise than with a view to disposal
- ▼ For the purposes of *Section 624* a member of a group can be treated as carrying on as one business, the activities of the group
- ▼ In *Section 624* the word "company" can include a company not resident in the EU.

Advance Opinions

In any situation where you are in doubt about whether the particular provisions of either *Sections 586, 587* or *624 TCA* apply, Revenue will, on request, give an opinion on whether the proposed transaction comes within the legislation. (See pages 11 to 14.)

Requests, with full details, should be sent to:

Office of The Chief Inspector of Taxes,
Technical Services, CGT Unit,
Setanta Centre,
Nassau St.,
Dublin 2.



SHARE OPTIONS

Savings-Related Share Option Schemes and Unpaid Leave

Following a number of queries received, the Revenue Commissioners are prepared to accept that if, during a period of unpaid leave, an employee directs his or her contributions to the Savings Institution through the company payroll, then, paragraph 6 (d) of the Department of Finance, Specification for Certified Contractual Savings Schemes will continue to be complied with. This procedure will only apply so long as the participant remains an employee of the company, which established the scheme, or of a participating company.

PAYMENT DEFERRAL

Deferral of Payment of Income Tax under Section 128A TCA, 1997

Section 128A TCA 1997 makes provision for a taxpayer to elect to defer payment of the income tax payable on the gain arising on the **exercise** of a share option.

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

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

Where a charge to income tax has been deferred under Section 128A TCA 1997, it is necessary to identify the actual date of sale of the shares, on which the income tax has been deferred. This is the date used to establish when the deferred income tax charge becomes due

and payable and is also the date from which interest runs, if the shares are disposed of before the year of assessment which is 7 years after the year of assessment in which the **exercise** took place.

The first in first out basis will apply to shares acquired as a result of the exercise of a share option on which the individual has elected to defer the income tax under Section 128A TCA 1997.

This does not apply if the relevant shares are disposed of in the same year of assessment in which the option is exercised in respect of those relevant shares.

For identification purposes all the provisions in relation to capital gains tax will apply.

Previous articles are contained in **Tax Briefing**, Issues 40, 41 and 46.

REPAYMENTS

Tax Briefing, Issue 45 sets out the circumstances in which a refund is offset or withheld. In that article we state that "ITP does not carry out an offset if the outstanding liability is old. Old in this context means pre 1995 (this will be rolled forward each year)." [Now 1996] The same provisions apply to the withholding of a repayment. ITP does not automatically withhold a refund if the outstanding return is old (i.e. pre 1996).

DUAL HEMISPHERE OR SHUTTLE STALLIONS

Issue 33 of **Tax Briefing** issued in September 1998 outlined the position regarding the taxation of profits arising from the service of mares by, so called, dual hemisphere or shuttle stallions. These are stallions that normally stand in Ireland but are sent abroad to the Southern Hemisphere when the breeding season has finished in Ireland.

In the past, Revenue had accepted that the nomination income from a stallion that is ordinarily kept on land in the State and is temporarily exported for genuine commercial reasons and for a period which will not exceed 2 years will be regarded as exempt from tax in the State

[Tax Instruction 7.3.5]. It is accepted that dual hemisphere or shuttle stallions come within this description. This practice was changed with the publication of the article in **Tax Briefing** in September 1998.

With effect from 1 October 1998, only profits derived from the service of mares within the State by dual hemisphere or shuttle stallions are regarded as exempt from tax in accordance with Section 231 TCA 1997. The profits arising from the servicing of mares outside the State by these stallions are not regarded as exempt from tax under Section 231 TCA 1997. Such profits should be included in the return of income of the person entitled to them.



PROFESSIONAL SERVICE COMPANY SURCHARGE

Professional Service Company Surcharge

Section 441 TCA 1997 provides for a surcharge on certain undistributed income of service companies. The section defines a service company as including close companies where the principal part of the company's income is derived from:

- The carrying on directly of a profession
- The provision of professional services

Or a company

- Which has or exercises an office or employment.

Also included are:

- The provision of services or facilities to such companies, or
- The provision of services or facilities to an individual or partnership carrying on a profession. However, not included in the latter are genuine cases where the services or facilities are provided for persons not connected with the company.

As the tax acts do not define "profession" it must be given its ordinary meaning in accordance with the general principles of statutory construction. In the tax case of *CIR v Maxse*, 12 TC 41, it is stated that profession involves an occupation requiring either intellectual skill, as in painting, sculpture or surgery or skill controlled by the intellectual ability of the operator. It distinguishes this from an operation,

which is substantially the production or sale of commodities.

While certain activities clearly fall within this definition and are accepted as being the exercise of a profession, such as medicine or law, there may be questions about the status of others. Each case should be examined with regard to its own particular facts and the question of degree is important.

However the following are regarded as being professions and as falling within the provisions of Section 441:

Accountant
Actor
Actuary
Archaeologist
Architect
Auctioneer/Estate Agent
Barrister
Computer programmer
Dentist
Doctor
Engineer
Journalist
Management Consultant
Optician
Private School
Quantity Surveyor
Solicitor
Veterinary surgeon.

While the above are considered to be providing professional services, the list is not intended to be an exhaustive list of all possible professions.

The following activities are generally not considered to constitute the carrying on, of a profession:

Advertising Agents¹
Auctioneers of livestock in a cattle mart
Insurance brokers²
The operation of a retail pharmacy
Public relations companies
Stockbrokers.

Accountancy

It is also considered that whereas accountancy comes within the meaning of profession, bookkeeping, payroll and VAT compliance activities would not in themselves constitute a professional activity. Any business involving tax planning, be it investing or structuring, would come within the general heading of accountancy. It is considered that this encompasses financial services.

Insurance Brokers

It should be noted that while it is accepted that the Case 1 income of insurance broking companies is not within the scope of Section 441, deposit interest on deposits held by such companies are not regarded as arising in the course of the company's trade unless the company can satisfy the very high burden of proof that the deposits are integral to its trade. (See Revenue Information Notice "Deposit interest - Whether a trading receipt"). As such, therefore deposit interest is assessable Case III and is within the scope of the Section 440 surcharge on undistributed investment income.

¹Mac Giolla Mhaith v Brian Cronin & Associates Ltd. ITR III, 211.

²Durant V CIR 12 TC 245;

PRSI

Persons who cease to be covered by compulsory PRSI either as employees or as self-employed contributors (if under age 66) may opt to become insured on a voluntary basis and pay Voluntary Contributions. Subject to certain conditions, Voluntary Contributions may be made up to age 66 in order to qualify for a

Voluntary Contributions

Social Welfare Old Age Contributory Pension. Full details and all enquiries should be made to:

Department of Social and Family Affairs,
Cork Road,
Waterford.
Telephone:

051-356000.



REVENUE NEWS

New and Updated Leaflets

The following leaflets have been updated and are available from the Revenue Website at www.revenue.ie or from the Revenue Forms & Leaflets Service at LoCall: 1890 306 706

Guide to Completing Tax Returns for the period 6 April 2001 to 31 December 2001.

Leaflet IT12 - People with Disabilities & Income Tax.

Leaflet IT 30 - Relief for Expenditure on Approved Buildings and Gardens in the State. This leaflet has been updated to include new legislation and is available from:

Direct Taxes: Administration
Blocks 8/10
Dublin Castle
Dublin 2

Telephone: 6475000 Ext. 48011

Leaflet IT35 - Blind Persons' Tax Credits & Reliefs

Leaflet IT67 - First Job - A guide for first time entrants to the PAYE Tax System.

Leaflet IT 56 - Relief for Expenditure on Approved Objects on display in Approved Buildings and Gardens.

This new leaflet is available from:

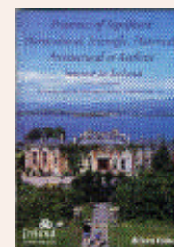
Direct Taxes: Administration
Blocks 8/10,
Dublin Castle,
Dublin 2.

Telephone: 6475000 Ext. 48011



Properties of Significant Horticultural, Scientific, Historical, Architectural or Aesthetic Interest in Ireland.

This booklet was compiled jointly by Bord Failte and the Revenue Commissioners and contains a list of those properties that are open to the public under *Section 482 TCA 1997*. It is available on the Revenue Website under Publications/Lists. The list is updated on a regular basis.



Pay and File Guide

This booklet is now available on the Revenue Website at www.revenue.ie or the Revenue Forms and Leaflets Service at LoCall 1890 306 706.



Error in Due Date on Some Notices of Assessment for the Short Tax Year 2001.

Due to a systems error, the due date on a number of assessments for the short tax year, which issued in recent weeks, was incorrectly shown as 31 December 2002. The correct due date should, of course have been, 31 October 2002. We are currently trying to identify the cases involved and propose to issue new assessments with the correct due date. Please accept our apologies for the inconvenience caused.

ROS Presentations

ROS presentations will be held in ROS Headquarters, Trident House, Blackrock, Co. Dublin in July. They will commence at 9.30am on Tuesday 9th, Wednesday 10th, Tuesday 16th and Wednesday 17th. If you would like to attend a presentation or require more information on ROS please email rosmanager@revenue.ie

Offline Form11

ROS customers can now access the Form 11 offline for the short tax year. If you do not already have a copy of the ROS CD which contains the offline launcher, you can request same from rosmanager@revenue.ie.