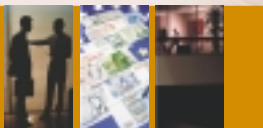


TAX BRIEFING



Letter to tax practitioners from Revenue Chairman, Frank Daly

Dear Practitioner,

In this first issue of **Tax Briefing** for 2003, I wanted to say 'thank you' to all tax practitioners and to your representatives for your co-operation in responding to the major tax changes which came into effect in 2002.

Last year was, by any standards, a demanding year for everybody involved in tax administration. The main impact on practitioners was undoubtedly the move to 'Pay and File' for income tax self-assessment, and the need to file two tax returns in the one year. While everybody agrees that this is a change for the better, the first year was always going to be testing. In the event I am delighted to say that Pay and File 2002 was a great success.

On top of that, there was the changeover to a calendar year basis and the introduction of advance preliminary tax for corporation tax. And of course the euro changeover had to be dealt with.

I want to particularly thank those practitioners who filed clients' returns through our Revenue On-line Service (ROS). The feedback from those who used the ROS facility has been overwhelmingly positive and we are confident that the vast majority of practitioners will file through ROS in 2003.

Thank you again for your co-operation and efforts last year. They are much appreciated.

Yours sincerely,



Frank M. Daly
Chairman

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Bogus Non-Resident Accounts

Increase in the Reduced Rate of VAT

P35 End of Year Return

Integrated Taxation Process - RCT

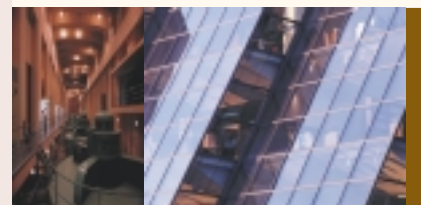
Preliminary Income Tax "Top Up Payments"

Transfer of a Business

Losses, Charges & Group Relief

Topical Questions

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While every effort is made to ensure that the information given in this publication is accurate, it is not a legal document. Responsibility cannot be accepted for any liability incurred or loss suffered as a consequence of relying on any matter published herein.

KEY DATES

January

- 14 PAYE/PRSI**
P30 monthly return and payment for December
- 14 DWT**
Return and payment of DWT for December
- 14 RCT**
RCT30 monthly return and payment for December
- 19 VAT**
VAT 3 return plus any payment for the period November/December
- 1-28 Corporation Tax**
2nd Instalment PT for Aps ending between 1-31 July 2002
1st Instalment PT for Aps ending between 1-28 February 2003
- 1-31 Corporation Tax**
Returns for Aps ending between 1-30 April
- 1-31 Corporation Tax**
Returns of Third Party Information for APs ending between 1-30 April

February

- 14 PAYE/PRSI**
P30 monthly return and payment for January
- 14 DWT**
Return and payment of DWT for January
- 14 RCT**
RCT30 monthly return and payment for January
- 15 RCT**
Rct35 return for year ended 31 December 2002
- 15 PAYE/PRSI**
Issue P60 to each employee
- 15 PAYE/PRSI**
Due date submission of Form P35 for year ended 31 December 2002
- 1-28 Corporation Tax**
2nd Instalment PT for APs ending between 1-31 August 2002
1st Instalment PT for APs ending between 1-31 March 2003
- 1-31 Corporation Tax**
Returns for APs ending between 1-30 May
- 1-31 Corporation Tax**
Returns of Third Party Information for APs ending between 1-30 May

March

- 14 PAYE/PRSI**
P30 monthly return and payment for February
- 14 DWT**
Return and payment of DWT for February
- 14 RCT**
RCT30 monthly return and payment for February
- 19 VAT**
VAT 3 return and payment for period January/February
- 1-28 Corporation Tax**
2nd Instalment PT for APs ending between 1-30 September 2002
1st Instalment PT for APs ending between 1-30 April 2003
- 1-31 Corporation Tax**
Returns for APs ending between 1-30 June
- 1-31 Corporation Tax**
Returns of Third Party Information for APs ending between 1-20 June
- 31 Income Tax**
Deadline for claiming Separate Assessment
- 31 Income Tax**
Deadline for nominating Assessable Spouse



CHANGE OF EDITORIAL TEAM

Due to recent changes in assignments this issue sees the introduction of a new editorial team. I would like to take this opportunity to offer my thanks to Niall Cody, former Editor, and Anne Ryan, former Assistant Editor, and to wish them every success in their new appointments in the Dublin Region Project Team and Personnel and Management Services, respectively. **Tax Briefing**, under their management continued to be an important and high quality publication, which provided a timely and comprehensive information service for both practitioners and Revenue alike.

Niall and Anne would like to thank contributors from all areas within Revenue for their assistance during their period in **Tax Briefing**.

Bernard King, who has taken over as Assistant Editor and I look forward to the continued publication of timely, informative articles on issues of current interest. We also look forward to the continued support and feedback of practitioners. We particularly welcome feedback which helps to ensure that the articles published are both topical and relevant.

Eugene Lucey

BUDGET 2003

Summary

Tax Credits and Exemptions

PAYE Tax Credit increased from €660 to €800 for 2003. Exemption Limit for Single/Widowed persons 65 years of age and over increased from €13,000 to €15,000 and from €26,000 to €30,000 for Married Persons for 2003.

Mortgage Interest Relief for First Time Buyers

The annual ceiling on the amount of interest that can be allowed will be raised from €3,175 single and €6,350 married to €4,000 and €8,000, respectively. In addition, the period for which the relief is available will be extended from 5 years to 7 years. This increase takes effect from 1 January 2003. The extension will not apply to mortgages taken out before 6 April 1998.

Benefit-in-Kind

Preferential Loans:

The "specified" rate in respect of home loans is being reduced from 5% to 4.5%. The specified rate for other loans is being reduced from 12% to 11%. These changes are effective from 1 January 2003.

Application of PAYE, PRSI and Health Contributions to Benefits-in-Kind

With effect from 1 January 2004, PAYE, PRSI and the Health Contribution will apply to all benefits-in-kind. All deductions will be made at source by the employer through the PAYE system.

Contributions to Pension Schemes

A single earnings cap of €254,000 is being introduced in respect of aggregate relief for all pension contributions [RAC, PRSA or Occupational Pension Scheme (OPS)]. The ceiling will not apply to employers' contributions to an OPS. Where a contributor's income for pension relief purposes exceeds this figure, the relief will be calculated by reference to an income of €254,000. The single earnings cap will not apply to contributions made before 4 December 2002. Relief for such contributions will continue as before.

Tax Incentive Schemes

The table below lists the range of tax incentive schemes in the property and film sectors which will terminate on 31 December 2004.

Scheme
Urban Renewal Scheme*
Rural Renewal Scheme
Town Renewal Scheme
Living Over the Shop Scheme
Multi-Storey Car Parks Scheme
Park and Ride Scheme
Student Accommodation Scheme
Buildings used for Third Level Purposes
Film Relief Scheme

*Urban Renewal:

The final date for incurring 15% of the total project cost is extended from 31 December 2002 to 30 June 2003.

Continued on page 4



BUDGET 2003

Continued from page 3

Capital Allowances

All changes referred to below take effect on and from 4 December 2002. Transitional provisions will apply in certain circumstances.

Plant and Machinery and Business Motor Vehicles:

The write-off period is extended from 5 to 8 years - 12.5% per annum over 8 years. Taxis and short-term hire vehicles are not affected.

Hotels:

The special capital allowances write-off period is extended from 7 to 25 years - 4% per annum over 25 years.

Holiday Cottages:

Capital Allowances are abolished.

Corporation Tax

The standard rate of Corporation Tax for trading income is being reduced from 16% to 12.5% from 1 January 2003.

Pay and File will apply to companies for accounting periods ending on or after 1 January 2003. Any balance of tax will be due at the same time as the return, i.e., 9 months after the end of the accounting period. The arrangements concerning Preliminary Tax remain unchanged.

Capital Gains Tax (CGT)

Payment Date:

For disposals on or after 1 January 2003 the payment date will depend on when the disposal is made, as follows:

Disposal	Tax Due By
on or before 30 September in the tax year	31 October in that tax year
from 1 October to 31 December in the tax year	31 January in the following tax year

Indexation:

For future disposals, indexation relief will apply for the period of ownership of an asset up to 31 December 2002 only.

Roll-over Relief:

For disposals on or after 4 December 2002 roll-over relief is no longer available for re-investment of business and other assets or to disposals to authorities possessing compulsory purchase powers.

'Paper for Paper' Transactions:

The relieving provisions deferring a charge to CGT on certain 'paper for paper' transactions, insofar as they relate to the issue of debentures or similar securities, are abolished for transactions occurring on or after 4 December 2002.

Value Added Tax (VAT)

The lower rate of VAT will be increased from 12.5% to 13.5% with effect from 1 January 2003.

Vehicle Registration Tax (VRT)

With effect from 1 January 2003 the 30% rate of VRT will apply to all cars of 1901cc and over.

'Hybrid' Motor Vehicles:

This scheme of refund of VRT, which was due to expire on 31 December 2002, will be extended for a further 2 years until 31 December 2004.

Excise Duty

Tobacco:

The excise duty on a packet of 20 cigarettes is increased by 50 cent (including VAT) with a pro-rata increase on other tobacco products.

Auto Diesel:

The mineral oil tax on auto diesel is being increased by 3 cent per litre (including VAT).

Alcohol:

The excise duty on a standard measure of spirits is being increased by 20 cent (including VAT). The duty on spirit-based "alcopops" is being increased by approximately 35 cent per bottle (including VAT).

All the above changes are effective from midnight on 4 December 2002.

Stamp Duty

Stamp Duty on Non-Residential Property:

The stamp duty rates and thresholds for transfers, conveyances and leases of non-residential property are changed. The table below sets out the old and the new stamp duty structures.

Previous Thresholds €	Rate	New Thresholds €
Up to 6,350	Exempt	Up to 10,000
6,351 - 12,700	1%	10,001 - 20,000
12,701 - 19,050	2%	20,001 - 30,000
19,051 - 31,750	3%	30,001 - 40,000
31,751 - 63,500	4%	40,001 - 70,000
63,501 - 76,200	5%	70,001 - 80,000
Over 76,200	6%	80,001 - 100,000
Not applicable	7%	100,001 - 120,000
Not applicable	8%	120,001 - 150,000
Not applicable	9%	Over 150,000

The new rates and thresholds will apply to instruments executed on or after 4 December 2002 subject to certain transitional arrangements.



BUDGET 2003

Other changes in relation to Stamp Duty:

- Cheques increased from 8c to 15c per cheque
- ATM Cards increased from €6.25 to €10 per annum
- Laser Cards introduced at €10 per annum
- Combined ATM/Laser Cards increased from €6.25 to €20 per annum
- Credit cards and charge cards increased from €19 to €40

All these changes are effective from midnight on 4 December 2002.

Existing exemption for transfers of land to **Young Trained Farmers** will continue until 31 December 2005.

Anti Avoidance

Capital Gains Tax - Temporary Non-Residence:

Tax rules, which at present allow certain individuals to avoid a capital gains tax charge by selling assets during a period of temporary residence abroad are being changed.

Restriction of Reliefs for Passive Investors:

Where an individual carries on a trade of electricity generation or supply without actively participating in the day to day operation of the trade, and is effectively a passive investor, any relief due in the tax year 2002 or a later year in respect of losses and capital allowances will only be allowed against income from that trade.

These changes take effect on and from 4 December 2002.

PRSI & Health Contributions

From 1 January 2003 the contribution ceiling for employees' PRSI is increased from €38,740 to €40,420.

The reduced employers' PRSI rate of 8.5% for class AO employees remains unchanged.

Class A (Normal rate at which contributions are made)

Income (€)	Employer	Employee
Up to 40,420	10.75%	6% (includes 2% Health Contribution)
Over 40,420	10.75%	2% (Health Contribution)

Employees will continue to be exempt from PRSI on the first €127 p.w. (The weekly exemption of €26 for employees on a modified PRSI rate also remains unchanged).

Employees earning less than €287 p.w. will be exempt from PRSI and those earning less than €356 p.w. will be exempt from the Health Contribution of 2%.

Class S (Self-Employed)

Income (€)	Rate
All income	5% (includes 2% Health Contribution)

Self employed persons are exempt from the Health Contribution of 2% where the annual income is less than €18,512. Minimum annual PRSI contribution is €253. ■

TAX CLEARANCE CERTIFICATES

CGT



Applications for CGT Clearance Certificates

Section 980 TCA provides for a deduction of an amount in respect of capital gains tax from the

purchase price of certain assets by the purchaser (referred to as "withholding tax") where a tax clearance certificate is not provided. The purchaser is then required to forward this sum to the Revenue Commissioners along with information regarding the acquisition.

Where the vendor produces a clearance certificate (Form CG50A) from the inspector, the vendor is entitled to obtain payment in full. Revenue will only accept an original application for a CGT clearance certificate (Form CG50).

In future where:

- The signing and closing of a contract are scheduled to occur on or about the same time, and
- A draft Form CG50 and draft contract are submitted by fax not later than 5 days prior to the closing date

Revenue will examine and process the application, and prepare a Form CG50A for issue. On production of the original CG50 and a copy of final contract, providing both are unaltered from the faxed versions, Revenue will, where appropriate, issue the Form CG50A. ■



PAY AND FILE

2003

On the cover page of this edition of *Tax Briefing* Mr Frank M. Daly, Chairman of the Revenue Commissioners has already referred to the success of Pay and File for 2002 for Income Tax Self-Assessment customers. This article deals with some of the issues arising for 2003 Pay and File. In addition, Revenue is currently reviewing the outcome of the Pay and File operation for 2002 in consultation with practitioners representative bodies with a view to enhancing and improving the operation for the current year where possible. Future editions of *Tax Briefing* will carry further articles on Pay and File for 2003 having regard to the outcome of this review and ongoing developments, including the Finance Act 2003 in due course.

2003 Pay and File Income Tax Self- Assessment Returns

The 2003 Pay and File Income Tax Returns are currently being issued to self-assessment customers - see separate article on page 19.

Early Filing

The introduction of Pay and File last year saw a welcome change in the pattern of filing where there was a shift towards early filing. This was in part due to the commitment given by Revenue to issue those who submitted their return before 31 August with a timely final notice of assessment to enable them meet their payment obligations on 31 October. This saved practitioners from having to do the calculations and gave certainty in the amount of tax to be paid, including Preliminary Tax. For 2003 we again promote early filing and also give a commitment to 'early filers' (i.e. those who file on or before 31 August 2003) that we will issue timely final assessments to enable you and your clients pay the correct liabilities by 31 October 2003. Early filing does not

mean your clients have to pay their tax early; where relevant, the due date remains 31 October 2003. Furthermore, where you are using the Single Debit Authority (SDA) method of payment, the payment will not be deducted before 31 October 2003, irrespective of when the SDA is submitted.

Revenue On-Line Service (ROS)

A speedier and simpler method of having Revenue do the calculations for you is to avail of ROS. ROS will provide you with an instant calculation, again providing certainty in the amount of tax your client has to pay. Also, ROS has a number of methods of electronic payments available and the payments will not be deducted from your client's account before 31 October 2003. For further information on ROS contact the ROS Helpline at 1890 20 11 06.

Capital Gains Tax

In the recent Budget the Minister for Finance announced the bringing forward of the payment date for 2003 capital gains tax. This includes a requirement to pay capital gains tax (on disposals arising in the period on or before 30 September 2003) by 31 October 2003, i.e., the same date as the Pay and File deadline for the 2002 tax return, 2002 income tax balance and 2002 CGT tax due. Further details will issue later when the Finance Act is passed.

Corporation Tax - Pay and File

The Minister for Finance also announced in the Budget that he was extending Pay and File to companies for accounting periods ending on or after 1 January 2003. Any balance of tax will be due at the same time as the return i.e., 9 months after the end of the accounting period. Further details on the operation of this will be covered in later editions of *Tax Briefing*.

FAMILY TRADING COMPANIES

Partition of Family Trading Companies

Tax Briefing issue 44 explains the relief available in the case of a partition of a family trading company together with the circumstances in which the relief may be granted. Essentially the article outlines how precedent 701* is to be applied, particularly the conditions which must be satisfied and the specific method to be adopted to achieve partition. Revenue will nevertheless accept that where partition is achieved by means of a capital reduction resolved and passed at an extraordinary general

meeting and confirmed by the High Court pursuant to *Section 72 Companies Act 1963*, precedent 701 may have application. For relief to be granted, all other conditions, as outlined in *Tax Briefing* issue 44, must be satisfied. ■

★ Precedent 701 reads:

"Where a family trading company (or group of companies) is broken up into separate individual trading companies, such an event will not be regarded as a disposal for CGT purposes provided that the value of each individual's holding in the company or group remains strictly unaltered and also provided certain other conditions are met."



BOGUS NON-RESIDENT ACCOUNTS

Non Co-operation

Bogus Non-Resident Accounts Consequences of Non Co-operation

Introduction

The first phase of Revenue's response to the uncovering, since 1998, of detailed information on the use of bogus non-resident accounts for tax evasion purposes was about recovering unpaid deposit interest retention tax (DIRT). This phase was successfully completed in 2000 with the recovery of £173 million (€220 million) in unpaid DIRT, interest and penalties.

Phase 2 was unveiled in Revenue's Statement of Practice (SP Gen 1/01) released in May 2001 and is concerned with the recovery of tax liabilities behind the funds deposited in bogus non-resident accounts. People who held bogus non-resident accounts were given the opportunity, in May 2001, to come forward to Revenue and pay the full amounts due. They were given until 15 November 2001 to do so, and avail of the advantages provided for in the Statement of Practice, i.e., a cap on interest and penalties, no investigation with a view to prosecution and no publication. Many took this opportunity and payments of €227 million were made.

Action after the 15 November Deadline

Immediately after the 15 November deadline, work commenced on the pursuit of taxpayers who held bogus non-resident accounts and did not avail of the voluntary disclosure scheme in 2001. In addition to identifying taxpayers from information obtained in the DIRT audit of the financial institutions, Revenue used new powers to get High Court orders requiring financial institutions to supply information about bogus non-resident accounts. There are currently 17 High Court orders in place. Due to takeovers and amalgamations, these court orders cover the non-resident deposit books of 23 different deposit takers.

Revenue set out in *Tax Briefing* Issue 49 (August 2002) how it intended to deal with bogus account holders who did not avail of the 15 November 2001 disclosure scheme.

Arising from the information supplied to date by financial institutions under Section 908 TCA 1997 High Court orders, Revenue enquiry letters issued on the 11 October 2002 to almost 30,000 of these individuals inviting co-operation by paying any underpaid tax, interest and penalties by 17 December 2002. Letters did not issue in

cases where Revenue considered investigation with a view to prosecution as a first option.

Following the issue of this enquiry letter, payments of about €100 million have been received from bogus non-resident account holders, bringing to €119 million the amount which has been received since 15 November 2001. The names of all of these taxpayers, where the settlement exceeds €12,700, will be published.

Revenue auditors in each region will examine a small representative selection of disclosures that have been made in response to the enquiry letter that issued on the 11 October 2002.

Consequences where no response received to 11 October Enquiry Letter

Lists of all the account holders who were issued the 11 October enquiry letter and did not respond to it are being examined for follow up. A number of these have now been selected for immediate investigation with a view to prosecution. Revenue officers will shortly commence visiting the remainder to decide if an investigation with a view to prosecution or the exercise of Revenue powers, including assessment, is the appropriate course of action to advance these cases. The opportunity of mitigation of penalties of up to 30% is no longer available to these account holders (there is, of course, no penalty mitigation in any event for 1990/91 and prior).

Issue of Enquiry Letter - 20 January 2003

On the 20 January 2003, Revenue issued enquiry letters to a further 40,000 individuals inviting co-operation by the payment of all underpaid tax, interest and penalties. Account holders who receive these enquiry letters have to contact Revenue and make a payment before the 27 March 2003 if they wish to avoid the prospect of being investigated with a view to prosecution. The names of all cases, where the settlement exceeds €12,700, will be published.

Information under High Court orders will continue to become available on a phased basis to Revenue during 2003. Further issues of enquiry letters will take place throughout this year.



INCREASE IN THE REDUCED RATE OF VAT



The reduced rate of VAT increased from 12.5 per cent to 13.5 per cent with effect from 1 January 2003.

Amongst the **goods** affected are fuels (electricity, gas, oil, coal, peat and other solid fuels), immovable goods, certain concrete blocks and ready to pour concrete, certain printed matter (including newspapers, periodicals and brochures), photography and photographic prints, nursery or garden centre stock, certain bakery products, live poultry, and antiques and works of art.

Amongst the **services** affected are the provision of hotel and guesthouse accommodation, restaurants, cinema/theatre admissions, sports facilities, waste disposal, agricultural

services, development of and work on immovable goods, car-hire and the hire of pleasure boats, mobile homes and caravans, repair and maintenance of movable goods (including dry cleaning and shoe repair), driving instruction, and care of the human body (including hairdressing).

Sales of certain goods by means of vending machines are also subject to the new 13.5 per cent rate and traders may have needed to adjust their machines accordingly.

Issue of credit notes following the increase in the reduced 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 January 2003 to VAT-registered traders*, should show VAT at the new rate of 13.5 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 January 2003 to persons who are *not VAT-registered*, in respect of a supply of goods or services on which VAT at 12.5 per cent was properly charged, should show VAT at the old rate of 12.5 per cent.

* Revenue has agreed, on a concessional basis, that where VAT at the rate of 12.5 per cent was properly charged on a supply of goods or services made on or before 31 December 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 January 2003 in relation to such supplies may show VAT at the rate of 12.5 per cent.

Further queries

Any further queries about the increase in the reduced rate of VAT, and/or the issue of credit notes following that increase, should be addressed to your local Inspector of Taxes. ■

PRELIMINARY INCOME TAX

"Top up payments" for 2002 preliminary Income Tax

Subject to certain conditions and limits, *Section 958(3A) TCA 1997* allows a customer to pay a balance of income tax ("top up payment") for tax year 2001 prior to 31 December 2002. This is to cater for the situation where a customer has already paid his/her 2001 balancing payment under pay and file arrangements but an assessment subsequently issues showing a marginally higher amount actually due for 2001.

Where a "top up payment" is made to 2001 income tax in accordance with *Section 958(3A)*, there is also

provision under *Section 958(4A)* to make a "top up payment" to the preliminary income tax for 2002. This is to take account of the fact that the 2002 preliminary tax payment will often be based on the final liability for the 2001 tax year.

The legislation provides that the two "top up payments" should be for the same amount. However, because 2001 was the short tax year the preliminary tax payment for 2002 should be equivalent to 135% (rather than 100%) of the tax liability for 2001. In these circumstances Revenue accepts that the 2002 preliminary tax "top up payment" (under *Section 958(4A)*) can be for an amount equivalent to 135% of the

"Top Up Payments"

"top up payment" for 2001 income tax (under *Section 958(3A)*).

Details of this possibility have already been notified to tax practitioners and agents via the Tax Administration Liaison Committee (TALC) and this article is simply by way of official confirmation of the position. If a taxpayer has already availed of the possibilities of *Sections 958(3A)* and *958(4A)* and the two "top up payments" were for the same amount, there is no objection at this stage to an additional preliminary tax payment for 2002 being made (equivalent to 35% of the "top up payment" for 2001 income tax). ■



P35 END OF YEAR RETURN

2002

All registered employers will by now have received their P35 return for completion for the tax year ended 31 December 2002. **The closing date for receipt of P35 Returns is 15 February 2003.**

P35 Help-line

The P35 Help-line is available again this year to assist employers and agents in dealing with any queries or problems that they may have completing the returns. The Help-line number is 1890 25 45 65 (ext. 63811) and calls are charged at local call rates. The Help-line will remain open until 8pm Monday - Friday during weeks commencing 3 February and 10 February 2003.

Accurate Completion

Agents and employers should make every effort to ensure that the P35 is fully and accurately completed and that all the information required on the P35 has been provided. An incomplete return does not fulfil an employer's legal obligation to make a return. Furthermore, these returns can cause considerable hardship for employees in obtaining their social welfare entitlements. Agents and employers who fail to provide proper and complete P35 returns may be required to re-complete the returns and in the process may risk a penalty.

Revenue is using the most up to date technology to capture and process data, and the accurate and timely processing of returns will be greatly improved by agents and employers adhering to the following:

- **Ensuring that the forms and giro are only used for the employer to whom they are issued.** This is because each form is pre-coded with details that are unique to that employer.
- **Returning the original forms.** The technology used by Revenue to process returns is designed to operate with original forms. The forms should be completed clearly

and legibly in accordance with the instructions provided.

Photocopies should not be used. Additional stationery is available from the Employers P35 Unit by calling the Help-line number - 1890 25 45 65 ext. 63811.

- **Ensuring that each employee's PPS No. is included.** The employee PPS No. is of the utmost importance in ensuring that employees can claim their social welfare benefits. If in exceptional cases, the employee's PPS is not available, the employee's name, address, and date of birth must be included on the return. In the absence of this information employees will face severe difficulties in claiming their benefits.

- **Fully completing each form.**

Replacement of Preformatted Disk Package

The Preformatted Disk Package, which had been available for the past five years, has now been replaced by a more advanced system. Users of the system have been notified of the change. The new system is part of the Revenue On-Line Service (ROS), which provides the facility to submit P35 Returns on-line. ROS provides the facility to complete the P35 declaration form on-line and the employee details on-line or off-line. When completed off-line, the main difference from the pre-formatted diskette package is that details are uploaded and transmitted to Revenue via a secure internet connection rather than having to be copied to diskette and forwarded by post. It also provides the facility to print P60s for employees and copies of the P35 Declaration and employee details. Stationery will be provided to ROS customers for printing of P60's by contacting the P35 Help-line or e-mail p35help@revenue.ie. The "rollover" feature, which enables all relevant data from the previous year to be automatically pre-filled on the

return for the current year, is available on the ROS system.

Revenue On-Line Service (ROS)

ROS provides customers with the facility to submit P35 Returns on-line.

ROS has numerous benefits for customers including:

- Access to Revenue on a 24 hour, 365 day basis
- Confidential and secure channel for the electronic filing of returns and payment of liabilities due
- Instant acknowledgement of returns
- Faster and more efficient service.
- Simple user friendly forms
- Instant and accurate calculation of liability
- On-line and off-line filing facilities
- Savings in time and money
- No duplication of work
- Facility to print P60s for employees and copies of P35 Declaration and employee details.

The Customer Information Facility in ROS enables customers to view details of their Revenue Account including details of returns and payments. In order to register for ROS all you need to do is select the ROS link from the Revenue home page at www.revenue.ie. From the ROS home page click on "How to become a ROS customer" and simply follow the instructions. The number of the ROS Information Desk is 1890 20 11 06 or e-mail ros@revenue.ie. Staff at the desk will answer your queries on any issues concerning ROS, such as how to register, etc. Practitioners can explore a number of features of ROS including demos and Frequently Asked Questions from the ROS home page without any requirement to register.

Continued on page 10



P35 END OF YEAR RETURN

Continued from page 9

Employers with Computer Payrolls

The vast majority of employers with computer payrolls are now forwarding their employee details on disk. Employers with computer payrolls who have not previously returned on disk have been written to and have been advised of the facilities available to return electronically via ROS or disk. Feedback has been very positive.

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

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

We are again asking those employers with computer payrolls who have not yet started returning electronically to do so. Further information on the diskette system can be obtained from Caroline Jones on 1890 25 45 65 (ext. 63172).

In addition to the facility whereby employee details can be returned on disk, ROS provides a specification to software payroll providers, which enables them to render their software compatible with the ROS system. Once enabled, employers and agents who have completed their return using the software, can upload it through ROS. The specification is available from the Revenue web-site www.revenue.ie under 'Publications/Revenue On-Line Service'.

Employers with Manual Payrolls

The completion of the P35 form has been simplified considerably in recent years for manual payroll users. It is now only in the case of the actual P35 liability that a breakdown needs to be shown between PAYE and PRSI. In the case of all other entries on the Declaration and giro a total figure need only be provided.

This change is of considerable benefit to agents and employers in the completion of the return.

As stated earlier all employers will by now have received their P35 forms for the 2002 tax year. Practitioners are advised to get the original forms from their clients in good time to complete the returns and file them by the February 15th deadline. Where large numbers of requests for additional and replacement stationery are made close to the deadline, practitioners and employers may experience some delay in receiving these forms and, as a consequence, miss the deadline.

P35 Returns for employers with manual payrolls can also be returned electronically via ROS.

Employers with no Employees

A return indicating zero liability must be made for registered employers who had no employees during the tax year. The guidelines provided on the reverse of the P35 declaration forms should be followed in these cases.

Supplementary P35 Returns

A supplementary P35 return is required where an employee is not listed on the original P35 Return. A Supplementary Return should not be submitted in advance of the original P35 Return.

When submitting a Supplementary P35 Return it is important to ensure that:

- The correct stationery is used,
- 'Supplementary' is clearly written on the Declaration,
- The Declaration is fully completed, and
- A P35L/P35LT form is completed for all supplementary returns.

Amendments to P35 Returns

An amendment changes the P35 declared liability and/or the employee details entered on the original P35 Return.

When submitting an amendment to a P35 Return it is important to ensure that:

- The tax year is specified
- The employers registration and employee PPS number are quoted
- The request is signed.

Interest

Interest charges are payable where an employer has been underpaying PAYE/PRSI liability throughout the year and thus gaining an unfair cash flow advantage over those employers who make timely returns/payments (See **Tax Briefing** Issue 46). In deciding whether to apply interest charges Revenue will have regard to the nature of the balance paid with the P35. Situations involving minor adjustments, where the bulk of the liability has been properly paid throughout the year, will, as in previous years, not be subject to interest charges.

Penalties

Employers who fail to return their P35 by the 15 February deadline are liable to a penalty of €630, and this penalty increases by €630 per month that the return remains outstanding subject to a maximum of €2,535. These penalty provisions will be vigorously applied in the case of non-compliant employers.

Those employers who fail to meet their P35 obligations are now very much in a minority. Revenue maintains a comprehensive record of those employers who fail to comply and will be corresponding with these employers in relation to their failure to meet their obligations. With a deadline of 15 February there is no justification for employers failing to make their return on time. Any employer who fails to return on time faces a real risk of being penalised and the possibility of a tax audit. In addition, the names of all non-compliant employers who have penalties imposed by the Courts are published. ■



INTEGRATED TAXATION PROCESSING

RCT



Integrated Taxation Processing: Relevant Contracts Tax

Relevant Contracts Tax (RCT) will be incorporated into Integrated Taxation Processing (ITP) on a phased basis from December 2002. ITP forms part of Revenue's significant investment in improving our computer systems and details of the project were set out in **Tax Briefing**, Issue 35 (March 1999).

The incorporation of RCT follows on the successful integration of PAYE/PRSI (Employers) in 1999, VAT in 2000, and the collection of Income Tax, Corporation Tax, Capital Gains Tax and several minor taxes including the Environment Levy in 2001.

How RCT operates

RCT applies to payments to self-employed subcontractors in the Construction, Meat Processing and Forestry Industries. Principal contractors are obliged to deduct tax at 35% from all payments to subcontractors in these industries unless the principal contractor has received a Relevant Payments Card in respect of a subcontractor. Application for a Relevant Payments Card is made jointly by the principal contractor and the subcontractor to the principal contractor's local Inspector of Taxes. To apply, the subcontractor must hold a current C2 certificate of authorisation. A principal contractor who deducts tax during a month is obliged to make a return to the Collector-General and remit the tax deducted within 14 days after the end of the income tax

month. A principal contractor who has received a monthly RCT 30 return form from the Collector-General is obliged to make a return, whether or not tax has been deducted in the previous month.

When incorporated into ITP, RCT will enhance the service provided for customers and agents. Repayments and offset of credit will be processed much quicker. Customers and agents who are registered for the Revenue On-line Service (ROS) will be able to file returns and view their RCT position over the internet. Revenue will have access to a wider range of data across taxes, which will improve our compliance management techniques.

Monthly Collection

Section 18 FA 1999 amended Sections 530 and 531 TCA 1997 and placed an obligation on a principal contractor to make a monthly RCT30 return to the Collector General and enabled Revenue to issue monthly estimates of RCT.

ITP will bring RCT in line with the collection procedures already in place for other taxes. From January 2003

- A new style RCT30 Return will issue each month in advance of the due date for payment
- Customers will be able to make a payment either by cheque, directly from a bank account using Single Debit Authority, or on-line through ROS. RCT30 return will include payment instructions.
- Revenue will monitor the receipt of returns and payments on a monthly basis
- Monthly estimates, reminders or demands will issue, as appropriate, where either a return or payment is not received for any month. Every principal contractor is obliged to submit an RCT 30 return, even where no tax was deducted from sub contractors during the month.
- Failure to pay a monthly tax liability, or to pay on time, could result in enforced collection
- There will be no provision, on the RCT35 annual return, for the payment of an annual tax balance - the customer will be expected to pay tax due on a monthly basis.

All notifications issued will advise the customer which Revenue office to contact for assistance.

Benefits for customers and agents

The inclusion of Relevant Contracts tax (RCT) in the ITP environment will extend the benefits already realised for PAYE/PRSI, VAT and Self-Assessed Taxes customers. Improvements to the service in the first phase will include:

- Procedures for processing refunds /repayments and credits will be streamlined and enhanced
- Transactions such as transfers and offsets of credits arising from RCT claims or overpayments against other outstanding liability, which previously took a considerable amount of time to arrange, will now be applied on-line and will have immediate effect on a customer's account
- A consolidation of financial records which will enable Revenue staff to access comprehensive information across different taxes to deliver faster and more comprehensive responses to customer and agent enquiries
- Comprehensive statements of account will be available to customers and agents for all the major taxes
- A wider range of payment options will be provided - cheque, direct debit through the Single Debit Authority, or on-line through ROS
- The ITP platform will enable customers and agents to file returns and payments, to access account details and exchange information with Revenue electronically at any time, via ROS.



INTEGRATED TAXATION PROCESSING

Continued from page 11

Enhanced Processing

The first phase also provides Revenue with an enhanced RCT collection and compliance process through the ITP system. In particular it supports the provisions of the *Taxes (Offset of Repayments) Regulations 2001* and the *Income Tax (Relevant Contracts) Regulations 2000* relating to the raising of estimates. It will allow Revenue to 'look across' all the major taxes before issuing a tax refund. Enhanced processing will:

- Facilitate automatic processing of a credit (overpayment or repayment claim) occurring in a customer's account by either setting the credit against other liabilities (subject to provisions of *Section 1006A TCA 1997*) or making a direct refund/repayment. The credit may be offset against an underpayment in any tax - RCT, Employer's PAYE, VAT, Corporation Tax, Income Tax, and Capital Gains Tax. If a credit is offset against unpaid tax Revenue will issue the customer with a statement identifying details of the offset
- Facilitate analysis of the status of returns before issuing a refund. A refund may be held pending receipt of overdue returns. If a refund is held Revenue will issue the customer with a notice detailing overdue returns.

Next steps

Further phases planned for 2003 will provide for

- Automation of the RCT 2 application and renewal processes
- Issue of all forms through the ITP system
- Fully automated processing of credits remaining in a customer's account, subject to pre-defined rules
- Filing the Form RCT 35 through the Revenue On-line Service.

Further information

The Collector-General is issuing an information leaflet with the Form RCT30 for January 2003 and copies will be available on the Revenue website www.revenue.ie. Information on the Revenue On-line Service developments is available at www.ros.ie. Copies of the Regulations are also available on the Revenue website or from the Government Publications Office, Molesworth Street, Dublin 2.

The *Income Tax (Relevant Contracts) Regulations 2000 (S.I. No. 71 of 2000)* came into effect on 6 April 2000. ITP will support the enforcement of these regulations and in particular:

Regulation 13 provides for a monthly estimate of tax due by a principal contractor in respect of RCT deducted from subcontractors. The estimate will be raised by the Collector-General and will apply where a principal contractor fails to remit tax deducted or fails to make a monthly return to the Collector-General, on form RCT 30, or both. The principal contractor may appeal to the Appeal Commissioners within 30 days of the notice of the estimate or may displace the estimate by making a return for the month and paying the tax due in accordance with that return. Where court proceedings for recovery of tax charged in an estimate have commenced or where the tax charged has been referred to the county sheriff or registrar for collection, the estimate may not be displaced unless the Revenue Commissioners otherwise direct, until the collection action has been completed.

It should be noted that every principal contractor is now obliged to submit an RCT 30 for each month, even where no tax was deducted during the month. Failure to do so will result in estimates being raised. Each Form RCT 30 will be issued out of ITP with a payslip that refers to that customer only and should be used only as that customer's return.

Regulation 14 provides for an annual estimate to be made on principal contractors by the Inspector of Taxes or other nominated officer. Self-assessment procedures are now applied to any such estimate. In particular, a principal must make all returns due and pay any tax due in accordance with that return for the period of the estimate before an appeal can be made. The Inspector, in accordance with *Section 955 TCA 1997*, may amend the estimate. It may be made during a tax year and may also extend to two or more tax years.

Regulation 15 provides for computer-produced estimates in accordance with *Regulations 13 or 14*. The regulation is similar to *Section 959(2) TCA 1997* which applies in relation to self-assessment.

The incorporation of RCT into ITP will enable the issue of computer produced estimates as provided for in *Regulation 15*, and ITP will automate the issue of follow up demands and notices. It is important therefore that all forms RCT 30 and RCT 35 are completed accurately. ■



TRANSFER OF A BUSINESS

VAT

VAT treatment of certain matters arising after the Transfer of a Business in accordance with Section 3(5)(b)(iii) VAT Act 1972

Revenue has recently reviewed the VAT treatment of certain matters arising after the transfer of a business, specifically regarding the matters of credit notes, costs incurred fulfilling outstanding obligations, e.g., warranties, and bad debts.

Credit notes

Where the transferor of the business issues an invoice to a customer and, subsequent to the transfer of the business, the goods were proved to be faulty and returned (or where a discount or rebate was due to the customer against the price originally charged for the goods), then technically speaking, the transferor would be obliged to issue a credit note in respect of this transaction in accordance with Sections 10(3)(d) and 17(3)(b) VAT Act 1972, together with regulation 8 VAT Regulations, 1979.

However, on a concessional basis and on condition that the transferor had no tax liabilities outstanding in respect of the business or part thereof which had been transferred in accordance with Section 3(5)(b)(iii) VAT Act 1972, Revenue would be prepared to allow the transferee, rather than the transferor, to issue a credit note in respect of the transaction in question.

Costs incurred fulfilling outstanding obligations, e.g., warranties

Where the transferor of the business supplies goods issued under warranty and, subsequent to the transfer of

the business, the customer returned the goods to the transferee for repair/replacement, again technically speaking, the transferee would not be entitled to recover VAT incurred on expenditure relating to the fulfilment of the warranty on the basis that this expenditure would not relate to any taxable supplies made by the transferee.

However, on a concessional basis and on condition that the transferor had no tax liabilities outstanding in respect of the business or part thereof which had been transferred in accordance with Section 3(5)(b)(iii) VAT Act 1972, Revenue would be prepared to allow the transferee to claim input credit in respect of expenditure incurred by him/her in relation to the fulfilment of the warranties issued by the transferor.

Bad debts

Where, as part of the transfer of the business in accordance with Section 3(5)(b)(iii) VAT Act 1972, the transferor of the business transferred debts which, subsequent to the transfer, were determined to be 'bad debts' (i.e., wholly irrecoverable debts), then technically speaking, an adjustment in respect of the VAT already accounted for by the transferor in respect of these bad debts remains a matter for the transferor. Revenue would **not** be prepared to consider allowing the transferee to make any adjustment to his/her VAT liability in respect of these debts.

Further queries

Any further queries on these matters should be addressed to the local Inspector of Taxes. ■

FOREIGN EFFECTIVE RATES

Belgium	49%
Canada	37%
France	45%
Germany	37%
Italy	46%
Japan	44%
Luxembourg	40%

NOTE

Ireland's Double Taxation Conventions with Cyprus, Pakistan, Russia and Zambia also provide for credit for tax paid in respect of the profits out of which dividends are paid to Irish portfolio investors (credit for underlying tax). Due to the number of potential rates of withholding tax/underlying tax applying in those countries, it is not possible to publish an effective rate for them. ■



LOSSES, CHARGES & GROUP RELIEF

CT

Relief for certain losses on a value basis (Section 54 Finance Act 2002)

This article sets out the position in relation to the offset of charges, losses and group relief following the enactment of *Section 54 FA 2002*.

Introduction

Section 54 FA 2002 modifies the ring fencing rules, which apply with effect from 6 March 2001 to trading losses, charges on income and group relief for trading losses and charges. The section provides relief for losses and charges on income on a value basis. In other words the relief available is calculated by reference to the corporation tax rate applying to the activity in which the loss/charges were incurred. For example, if a loss is incurred in an activity which is taxable at the 10% rate, relief for the loss will be given by reducing the tax payable for the accounting period by 10% of the actual loss. If the company has other income taxable at the 25% rate, that income will be taxed at 25% and the tax arising will be reduced by the relief for the losses.

Pre Section 54 Finance Act 2002

The general rule in relation to trading losses is that a loss incurred in an accounting period can be offset against profits of that accounting period and the previous accounting period of corresponding length (*Section 396*). That rule is subject to certain restrictions where the loss is incurred in an activity which qualifies for the 10% corporation tax rate. Losses in such an activity can only be offset against income from activities also within the 10% corporation tax rate (*Section 455*).

Further restrictions were introduced by *Section 90 FA 2001*. That amendment provided that, where losses and charges are incurred in a trade taxable at the standard rate, they may only be offset against trading income other than income which is chargeable to tax at the 25% rate. This prevents their offset against either non-trading income, e.g. income chargeable under Cases III, IV and V or excepted trade income.

In addition, it was confirmed that charges and losses incurred in trading activities, the income from which is taxable at the 10% rate of corporation tax, may only be offset against income taxable at 10%. However there will be no barrier to the offset of such 10% losses and charges against income taxable at the 12½% rate from 2003.

The effect of these rules is that a "10% loss" or a "16% loss" (2002) ("12½% loss" for 2003) cannot be off-set against non-trading income or against excepted trading income both of which are liable at 25%.

See *Tax Briefing* Issue 44 (June 2001) for an article on *Section 90 Finance Act 2001*.

The purpose of the restrictions introduced in Finance Act 2001 was to ensure that companies could not shelter income taxable at higher rates by offsetting losses arising from activities which are themselves taxable at lower rates. However, these restrictions also resulted in a situation where a company which had incurred a trading loss in an accounting period and which had non-trading income or income from an excepted trade in that period was unable to get any loss relief in that period.

Post Section 54 Finance Act 2002

The amendment in *Section 54 FA 2002* modified the ring fence provisions introduced by Finance Act 2001 and provided that relief may now be given for certain trading losses and charges on income on a value basis. This means that corporation tax for the accounting period may be reduced by an amount determined by applying to the unused relevant trade charges or losses the corporation tax rate applicable to the activity in which they were incurred, i.e., the standard rate or the 10% rate as appropriate.

Section 54 FA 2002 inserted three new sections into the Taxes Consolidation Act 1997.

Section 243B

This section provides for relief for relevant trading charges on income paid in an accounting period, which have not otherwise been relieved. Relevant trade charges are the trade charges paid by the company other than those of an excepted trade.

The relief is given by reducing the corporation tax for the accounting period by an amount determined by applying the corporation tax rate applicable to the relevant trade (10% or 16% for 2002) to the amount of the unrelieved relevant trade charges on income.

Section 396B

This section provides relief for relevant trading losses in an accounting period, which have not otherwise been relieved. "Relevant trading loss" has the same meaning as in *Section 396A* (i.e., a loss incurred by a company in a trade other than an excepted trade). This is done by reducing the corporation tax for the accounting period by an amount determined by applying the corporation tax rate applicable to the relevant trade (10% or 16% for 2002) to the amount of the unrelieved relevant trade losses.

However, the relief is not available for losses in a leasing trade already ring-fenced under *Section 403(4)*.



LOSSES, CHARGES & GROUP RELIEF

Section 420B

This section provides relief for group relief for relevant trading losses (as defined in *Section 396B*) and relevant trading charges on income (as defined in *Section 243B*) of a surrendering company for an accounting period which have not otherwise been relieved. This is done by reducing the corporation tax of a claimant company for the corresponding accounting period by an amount determined by applying the corporation tax rate applicable to the relevant trade (10% or 16% for 2002) to the amount of the unrelieved relevant trade loss/charges on income available to be surrendered by means of group relief.

Accounting periods straddling 6 March 2001 (Section 55 Finance Act 2002)

Where an accounting period straddles 6 March 2001, the Finance Act 2002 amendment provides that, for the purpose of calculating the relevant losses or charges, the accounting period of the company is divided into two parts, one beginning on the date on which the accounting period begins and ending on 5 March 2001, with the other commencing on 6 March 2001 and ending on the date that the accounting period ends. It is important to note, however, that the splitting of the accounting period only applies for the purposes of determining the amounts which may be relieved under the section. Thus for example the loss available on a value basis is arrived at by apportioning the accounting period between the pre and post 6 March 2001 periods. However the loss relief thus computed may be claimed against the income of the whole accounting period.

Effective Date

The ring fence introduced by *Section 90 FA 2001* and the relieving provisions introduced by *Section 54 FA 2002* both take effect from **6 March 2001**.

Length of Accounting Period

In the case of losses, it is important to note that a company can only shelter liabilities arising in prior periods equal in length to the accounting period in which the loss arose. Where a previous accounting period falls partly within this corresponding period, the corporation tax liability for that period must be apportioned and only that portion falling within the corresponding period can be sheltered under *Section 396B(4)*.

Quantum of Relief

Where relief is being claimed in the prior period under *Section 396B* it is important to ensure that the correct tax rate is used in the calculation of the relief. For example, where relief is being claimed in 2002 for a loss arising in 2003 the correct rate to be used in the calculation is 12.5% and **not** 16%.

Order

Section 396B relief is reduced by amounts already set off under *Section 396* or *396A*. One would expect *Section 396A* claims to be made in priority to *Section 396B* claims but this is not compulsory. Equally a company may claim *Section 396B(3)(b)* relief, i.e., relief at the standard rate, in priority to *Section 396B(3)(a)* relief, i.e., relief for 10% losses. This will impact on the loss available for carry forward. However relief under *Section 396B* is to be claimed in priority to relief available in respect of non-trade charges, expenses of management or other amounts claimable against profits with the exception of excess Case V allowances.

Losses in a leasing trade

It is also important to note that relief cannot be claimed under *Section 396B* in respect of a loss subject to the ring fence provisions of *Section 403(4)*.

Order of Offset

The order of set-off of the relief is (i) *Section 243B* charges, (ii) *Section 396B* losses and (iii) *Section 420B* group relief.

Claims

How the losses, etc., on a value basis may be claimed in 2001 is dealt with in Tax Instruction 12.3.6. This instruction covers the situation in 2001 where the underlying computer programme applies the Finance Act 2001 ring-fence to relevant trade losses, charges and group relief but does not reflect the option for relief on a value basis introduced retrospectively by Finance Act 2002.

For 2002 the Form CT1 provides, at Part 8, for the option of claiming losses, charges and group relief on a value basis, i.e., *Section 396B*, *Section 243B* and *Section 420B*, and the underlying computer programme is fully compatible with this.

The operation of *Section 54 FA 2002* is best illustrated by means of examples:

Example 1

A Ltd. Results as follows:

12 months ended 31/12/2002

Case V	125,000
excess Manufacturing trade charges	(25,000)
excess "relevant trade" charges	(275,000)

CT Computations

Case V @ 25%	31,250
S. 243B(3)(a) relief (25,000 @ 10%)	(2,500)
S. 243B(3)(b) relief (179,687 @ 16%)	(28,750)
Net CT liability	Nil
Loss forward (300,000 - (25,000 + 179,687))	95,313

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LOSSES, CHARGES & GROUP RELIEF

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Example 2

C Ltd. Results as follows:

12 months ended 31/12/00

Case 1 (non-manufacturing)	50,000
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12 months ended 31/12/01

Relevant trade losses	(48,000)
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CT Computations:

Option 1 (S. 396A)

12 months ended 31/12/01

Case I Nil:	Liability	Nil
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12 months ended 31/12/00

Case I	50,000
S. 396(2) relief (48,000 x 2/12)	(8,000)
S. 396A relief (48,000 x 10/12)	<u>(40,000)</u>
Net	2,000
CT due @ 12.5% (Section 22A)	250

Loss forward (48,000 - (8,000 + 40,000))

Nil

Option 2 (S. 396B)

12 months ended 31/12/01

Case I Nil:	Liability	Nil
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12 months ended 31/12/00

Case I	50,000
S. 396(2) relief (48,000 x 2/12)	<u>(8,000)</u>
	42,000

Liability after S. 396(2) relief
(Section 22A applies) 42,000 @ 12 1/2 %

5,250

S. 396B relief 26,250 @ 20%

(5,250)

Liability

Nil

Loss forward (48,000 - (8,000 + 26,250))

13,750

Note: Because this is a company to which Section 22A relief applies a S. 396B claim may be preferred to a S. 396A claim and some of the loss may be preserved as a loss forward.

Example 3

C Ltd. Results as follows :

12 months ended 31/12/00

Case I (non-manufacturing)	500,000
----------------------------	---------

12 months ended 31/12/2001

relevant trade losses	(48,000)
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CT Computations:

Option 1 (S. 396A)

12 months ended 31/12/01

Case I Nil:	Liability	Nil
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12 months ended 31/12/00

Case I	500,000
S. 396(2) relief (48,000 x 2/12)	(8,000)
S. 396A relief (48,000 x 10/12)	<u>(40,000)</u>
	452,000

Liability 452,000 @ 24%

108,480

Loss forward

(48,000 - (8,000 + 40,000))

Nil

Option 2 (S. 396B)

12 months ended 31/12/01

Case I Nil:	Liability	Nil
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12 months ended 31/12/00

Case I	500,000
S. 396(2) relief (48,000 x 2/12)	<u>(8,000)</u>
	492,000

Liability after S. 396(2) relief
492,000 @ 24 %

118,080

S. 396B relief 40,000 @ 20%

(8,000)

Liability

110,080

Loss forward

(48,000 - (8,000 + 40,000))

Nil

Note: It can be seen that in a "full-rate" company S. 396B relief is unlikely to be preferred to S. 396A.

Example 4

X Ltd. results as follows:

12 months ended 31/12/02

Relevant Trade Loss	(400,000)
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9 months ended 31/12/01

Relevant Trade Profit	100,000
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Case III	60,000
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12 months ended 31/3/01

Relevant Trade Profit:	20,000
------------------------	--------

Case III	75,000
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CT Computations:

12 months to 31/12/02	Nil
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LOSSES, CHARGES & GROUP RELIEF

9 months to 31/12/01

Case I	100,000
Section 396A relief	<u>100,000</u>
Case III liability: 60,000 @ 25%	15,000
Section 396B relief 93,750 @ 16%	<u>15,000</u>

12 months to 31/3/01

Case I	20,000
Section 396A relief 20,000 x 3/12	(5,000)
Taxable Case I	15,000
Liability @ 12.5% (Section 22A)	1,875
(Note: No S. 396B relief claimed)	
Case III liability: 75,000 @ 25%	18,750
Relief under section S. 396B 18,750 x 3/12	<u>(4,687)</u>
Net Case III Liability	14,063
Total liability (1,875 + 14,063)	15,938

Notes:

Full relief is not available in respect of 12 months to 31/3/01 as only 3 months fall within preceding period of corresponding length to the period in which loss arose i.e., 31/12/02.

Loss Summary

Loss 12 months to 31/12/02 (400,000)

Used 9 months to 31/12/01

Section 396A	100,000
Section 396B	93,750

Used 12 months to 31/3/01

Section 396(A)	5,000
Section 396B (4,687/16%)	29,294
Loss forward	171,956

Example 5

F Ltd. Results as follows

12 months ended 31/12/03

Relevant trade (non-10%) loss	(500,000)
Case III	250,000
Non-trade charges	200,000

CT Computation:

Case I	Nil
Case III	250,000
Non-trade charges	(200,000)
Taxable Profits 50,000 @ 25%	12,500
S. 396B relief 100,000 @ 12.5%	12,500
CT Payable	Nil
Relevant trade loss forward (see over)	Nil

Loss summary

S. 396B relief claimed	100,000
------------------------	---------

However, in accordance with Section 396B(5)(c)(ii), the amount of losses treated as used will be the amount which would have been treated as used if there were no non-trade charges i.e.

Case III 250,000 @ 25%	62,500
(500,000 @ 12.5%)	62,500

Loss treated as used: 500,000

Loss forward	Nil
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Example 6

H Ltd. Results as follows:

12 months ended 31/12/02:

Relevant trade (non-10%) Profit	225,000
Case III	180,000
Trade charges	(75,000)

12 months ended 31/12/03

Relevant trade (non-10%) loss	(450,000)
Case III	180,000
Trade charges	(75,000)

CT Computation:

Year ended 31/12/2002

Case I	225,000
Trade charges	(75,000)
Net	150,000
Relief S. 396A	<u>(150,000)</u>
Case III	180,000
Taxable Profits 180,000 @ 25%	45,000
S. 396B relief 360,000 @ 12.5%	<u>(45,000)</u>
CT payable	Nil

Year ended 31/12/03

Case I	Nil
Case III	180,000
Taxable Profits 180,000 @ 25%	45,000
S. 396B relief 15,000 @ 12.5%	(1,875)
CT payable	43,125

Loss Summary

Loss 2003	(450,000)
Trade charges 2003	<u>(75,000)</u>
	(525,000)
Used S. 396A 2002	150,000
Used S. 396B 2002	360,000
Used S. 396B 2003	<u>15,000</u>
Total	525,000
No loss forward	

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LOSSES, CHARGES & GROUP RELIEF

Continued from page 17

Example 7

Year ended 31/12/01

Loss in a manufacturing trade	(240,000)
Case V	10,000

Apportion the Manufacturing Loss

1/1/01 - 5/3/01: 240,000 x 2/12 (Ring-fenced: Section 455)	(40,000)
6/3/01 - 31/12/01: 240,000 x 10/12 (Relevant trade loss: S. 396A & S. 396B)	(200,000)

CT Computation:

Case V 10,000 @ 25%	2,500
S. 396B relief 25,000 @ 10%	(2,500)
CT Payable	Nil

Loss Summary

Total Loss	240,000
Used S. 396B 2001	(25,000)
Balance Loss	215,000
Ring-fenced to 10% trade	(40,000)
Relevant trade loss available for carry forward under S. 396(1) or for carry-back to previous accounting period on value basis (S. 396B(3)) = (175,000)	

Example 8

Year ended 31/12/01

Relevant Trade Loss (100,000)	
Chargeable gain: 200,000	
(Regross 200,000 x $\frac{20\%}{20\%}$)	200,000*

Apportion

1/1/01 - 5/3/01: 100,000 x 2/12	16,667
6/3/01 - 31/12/01: 100,000 x 10/12	83,333

CT Computation:

Chargeable gain: 200,000 @ 20%	40,000
S. 396(2) relief	(16,667)
S. 396B relief (83,333 @ 20%)	(16,667)
Tax payable	6,666
Loss forward	Nil

*Regrossed at standard rate of CT in accordance with Section 78 TCA 1997

Example 9

Period 1/9/00 - 31/8/01

Case V	60,000
Relevant trade (non-manufacturing) loss	(24,000)

CT Computation:

Case V	60,000
S. 396(2) relief (period 1/09/00 - 5/03/01)	
24,000 x 6/12	(12,000)
Taxable	48,000
CT 48,000 @ 25%	12,000
S. 396B relief (period 6/3/01 - 31/8/01)	
24,000 x 6/12 @ 20%	(2,400)
Tax Payable	9,600

Loss Summary:

Used S. 396(2)	12,000	
Used S. 396B	12,000	(2,400 x 100/20)
	24,000	

TRADING LOSSES

Application of Section 54 Finance Act 2002 to IFSC/Shannon certified companies

Tax certificates issued by the Minister for Finance under Section 445(2) and 446(2) TCA 1997 to IFSC/Shannon companies contain a condition restricting the offset of losses to the trading activities referred to in the certificate. The Department of Finance has confirmed that Section 54 Finance Act 2002 may be applied to these companies on the same basis as it applies to non-certified companies.

Section 54 modifies the ring fencing rules, which apply in relation to trading losses, charges on income, and group relief. Previously, where such charges and losses were being set off in the accounting period in which they were incurred, they could only be offset against

trading income other than income chargeable to tax at 25 per cent rate. In addition, charges and losses incurred in trading activities, the income from which is taxable at the 10 per cent rate of corporation tax could only be set off against income taxable at that rate. Section 54 provides that relief may be given for the unused charges and losses on a value basis. This means that corporation tax for the accounting period concerned may be reduced by an amount determined by applying to the unrelieved charges, or losses, the corporation tax rate applicable to the activity in which they were incurred. For example a loss incurred in an activity in an accounting period, the income from which is taxable at 10 per cent rate, can be relieved by reducing corporation tax for the accounting period by 10 per cent of the loss. ■



SELF-ASSESSMENT TAX RETURN - INDIVIDUALS 2002

Introduction

Revenue gave a commitment last year that the 2002 self-assessment tax return would be available from 1 January 2003. This commitment has been met and returns are now available on request from Revenue's Forms & Leaflets service by phoning Lo-Call 1890 30 67 06, or on the Revenue website at www.revenue.ie, or from any Tax Office.

We are currently in the process of issuing in excess of 350,000 personalised returns for all self assessed taxpayers and this will be completed in mid February. Practitioners will continue to be sent returns for their clients in bulk as for earlier years.

We would like to remind practitioners who are not using the Revenue On-Line Service (ROS) or a third party software package that, where possible, the personalised return only should be used. Under no circumstances should a personalised return be used for any individual other than the individual named on the form. Incorrect use of personalised returns can result in the issue of incorrect assessments or delays in processing returns, etc.

Changes to the 2002 Tax Return

In producing the return of income for this year, we have made a number of important changes that you should be aware of. The main changes are:

- The incorporation of 'Accounts Menus' (extract from accounts) into the return in place of a requirement to submit full accounts of the business.
- The replacement of a number of forms [the Farm Profile Form (AG12), the Business Profile Form (BP1) and the Form 11 short(F11S)] with a single new form - Form 11E.
- The colour coding of the return into the different categories of income, tax credits, allowances, and reliefs, to make it more customer friendly.

Types of Form

A major change has been the reduction in the number of forms to two - Form 11 and Form 11E. As well as the reduction in the number of returns, there is a more uniform approach in the content of each of the two current returns. In effect, the main return form for self-assessed individuals for 2002 is the Form 11. The Form 11E follows the format of the Form 11, except that it requires less information, to reflect the circumstances of the individual customers.

Form 11E: This new form is being issued to self-assessment taxpayers who had previously received either a AG12, BP1, F11S.

On the Form 11E there is an opportunity to capture income, allowances, credits not otherwise specifically captured on that form. Such information may be returned in an 'Additional Items' panel at the end of the form - panel 63. If the space is insufficient, a Form 11 should be completed instead.

Note: The panels taken from the Form 11 and reproduced in the Form 11E retain the original panel numbers from the Form 11. As a result the sequence of numbers skips over the 'omitted panels'. By retaining the original panel numbers on the Form 11E the 'Guide to Completing Tax Returns for 2002' will both be easier to use and be of relevance, regardless of which return a customer is completing.

Electronic and Paper Returns

The introduction of electronic filing of returns through ROS brought a number of changes to the information requested from the taxpayer with their tax return. With the 2002 tax return we reviewed our requirements with regard to the filing of paper returns, and have mirrored as much as possible the ROS approach.

To do this, two major changes were brought to the paper return.

- The removal of the need for attachments to the return. Attachments previously sought now no longer need to be submitted with the return. There will, however, be a system of checking to validate a percentage of claims for allowances and reliefs on the returns. This system of checking will be carried out initially in the Processing Districts where the return is dealt with. The checks will be regarded as spot checks and not Verification Audits. The customer will be advised by way of correspondence of the check and will be required to submit the specific documentation at that time in order to substantiate his/her claim.
- The incorporation of the Accounts Menu (extract from accounts) into the return.

Accounts Menus

There were originally four sets of sole trader accounts menus (STAMs 1, 2, 3 & 4) available. With the inclusion of accounts menus into the 2002 Form 11/11E (at pages 5 and 6) there is now effectively only one Accounts Menu in use. The accounts menu included in the return is the STAM1. For 2002 the remaining three accounts menus are redundant.

The submission of accounts with the Form 11 or Form 11E is still required where the individual's turnover is in excess of €13,000,000.

Individuals trading in partnership should not enter details of the partnership accounts on these pages. Instead the accounts should be submitted with the partnership return, Form 1 (Firms), as before.

Forms No Longer in Use

As mentioned above, the Form 11E replaces the Form 11(S), AG12, and BP1. For the year 2002 these forms are not being produced, and they are not valid returns for that year. ■



TOPICAL QUESTIONS

Home Carer Tax Credit

Can employees working in Ireland on short term assignments claim the home carer tax credit in respect of a dependent child where the claimant is not in receipt of child benefit in this State?

The definition of "dependent person" in *Section 466A(1) TCA 1997* includes at (a) a child in respect of whom either the qualifying claimant or his or her spouse is, at any time in a year of assessment, in receipt of child benefit under *Part IV of the Social Welfare (Consolidation) Act, 1993*.

Individuals on short term assignments normally remain within their home country social security system for the duration of their assignment to Ireland. Such individuals do not therefore claim child benefit under *Part IV of the Social Welfare (Consolidation) Act, 1993*. In such circumstances, if the claimant is in receipt of a similar type payment in their home country, Revenue are prepared to accept that condition (a) in *Section 466A TCA 1997* is satisfied. The other conditions as set out in the section, e.g., child residing with the qualifying claimant, etc., must also be met.

Termination Payments and Legal Costs

What is the tax treatment of legal costs recovered by an employee from an employer as part of a court action to recover compensation for loss of office or employment, etc?

Any payment made by an employer in respect of an employee's legal costs is assessable to income tax under *Section 112 TCA 1997* or *Section 123 TCA 1997* in addition to the compensation payment itself. The question of assessment under *Section 112* or *123* will be determined by the nature of the compensation payment being made. However, if the following conditions are satisfied, Revenue are prepared to accept that no income tax charge will be imposed on the employee in respect of the payment of legal costs where the payment:

- Is made by the former employer directly to the former employee's solicitor
- Is in full or partial discharge of the solicitor's bill of costs incurred by the employee only in connection with the termination of his/her employment and
- Is under a specific term in the settlement agreement.

This treatment applies only to legal costs and applies to payments made either under a court order or where a settlement is reached outside of court. ■

REVENUE NEWS

Update

Clarification

Employer Paid Medical Insurance Premiums and Preliminary Corporation Tax

Tax Briefing Issue 49 contained an article on the treatment of Medical Insurance premiums paid by an employer. (This article clarified an earlier article on the subject, which was published in **Tax Briefing** Issue 43 (April 2001).)

The reference in the second paragraph of the article published in Issue 49 in relation to the due date for payment of the income tax by a company sets out the position that obtained prior to the introduction of *Section 58 FA 2002*. (This latter section amended *Section 958 TCA 1997*, which brings forward the date for payment of preliminary corporation tax.)

Tax Briefing Issue 48 contained a detailed article on the subject of the revised arrangements for payment of preliminary corporation tax following the introduction of *Section 58 Finance Act 2002*. The article set out the position in relation to income tax payable by a company under *Section 239 TCA 1997*, **post** Finance Act 2002. The payment of this income tax should be in accordance with the new preliminary tax and balancing payment rules for

the years 2002 et seq. Accordingly, income tax due by the company is treated as corporation tax for the purpose of the charge, assessment and collection of the tax and is therefore subject to the same preliminary tax and balancing payment rules.

Artist Exemption and VAT

The exemption under *Section 195 TCA 1997*, known as Artist exemption, disregards income from certain works for the 'purposes of the Income Tax Acts'.

Individuals qualifying should be aware that **no** exemption to VAT exists and therefore if the registration limits for VAT are exceeded then the individual is obliged to register and account for VAT.

New Leaflets

The 2003 Budget Leaflet is available in electronic format on the Revenue website at www.revenue.ie or from the Revenue Forms & Leaflets Service at LoCall 1890 306 706 ■

