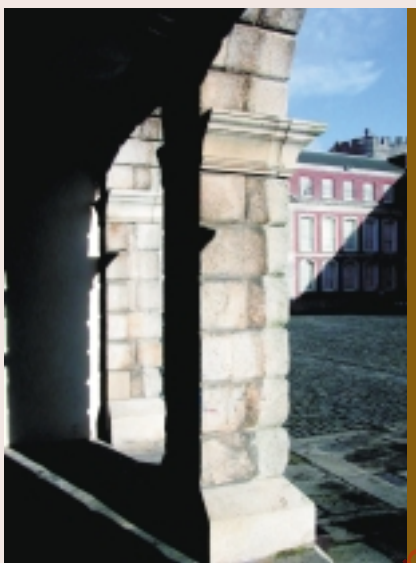


TAX BRIEFING

REVENUE'S NEW STRUCTURE



Introduction

Revenue is embarked upon the most far reaching and ambitious programme of change in our 80 year history. Through the implementation of a new organisational structure we will improve our efficiency and effectiveness both in tackling all forms of non-compliance and in delivering a quality service to compliant customers.

The change programme was first signalled in our Annual Report for 1999 when we outlined the broad shape of our new structure. Since that announcement, project teams within Revenue have been working to design in detail the role, functions and structure of the Divisions and Branches that make up that structure. The design process is now coming to an end and the roll-out of the structure is under way. This article is designed to give you an overview of our new structure. As developments take place, we will continue to keep

you informed through this and other media, so as to minimise any disruption to service over the change period.

Outline of New Structure

From an operational perspective, the new structure is designed around our customer base. Revenue Regions will be responsible for cases within their geographical area, except for large corporates and high net worth individuals. We are also streamlining our central functions, including our National Office and the policy, legislation and interpretation functions.

The Human Resources Division, Revenue Solicitor's Office, Collector General's Office and the Information, Communications Technology and e-Business Division will continue to exist as previously. All other existing groupings are being replaced by the following:

- Two new National Office divisions
- Four Revenue Legislation Service divisions
- Investigations and Prosecutions Division
- Large Cases Division, and
- Four new Regional Divisions.

Revenue Regions

Four new regional divisions will be established:

- **Border Midlands West** (Galway, Mayo, Sligo, Leitrim, Donegal, Louth, Monaghan, Cavan, Westmeath, Offaly, Longford & Roscommon)
- **Dublin**

IN THIS ISSUE

Share Options

Form 11 & CT1 Attachments

Pay and File (IT & CT)

Finance Act 2003

Capital Gains Tax

Correspondence
Rolled Over Gain
Part Disposal of Development Land
Losses

Relief for Tuition Fees

Sportspersons Employed by Clubs

VAT

Committee Guidelines

Late Payment in Commercial Transactions

...see inside for full listings

(Continued on page 3)



CONTENTS

Revenue's New Structure	1
Form 11 & CT1 (<i>Attachments</i>)	6
Euro (<i>Corporation Tax</i>)	6
Pay and File 2003 (<i>IT & CT</i>)	7
Finance Act 2003	8
Exchange Rates	16
Relief for Fees Paid for Foreign Language/I.T. Courses	16
Capital Gains Tax (<i>Correspondence</i>)	16
Sportspersons Employed by Clubs (<i>Expenses</i>)	17
Capital Gains Tax (<i>Development Land</i>)	18
Capital Gains Tax (<i>Losses</i>)	19
Retention of Records	19
VAT Committee (<i>Guidelines</i>)	20
Capital Gains Tax (<i>Rolled Over Gain</i>)	24
Late Payment in Commercial Transactions	25
Share Options (<i>Payment of Tax</i>)	26
Revenue On-Line Service (<i>Update</i>)	32
Revenue News (<i>Update</i>)	32

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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

April	
14	PAYE/PRSI P30 monthly return and payment for March 2003
14	DWT Return and payment of DWT for March 2003
14	RCT RCT30 monthly return and payment for March 2003
1-28	Corporation Tax 2nd Instalment PT for APs ending between 1-31 October 2002 1st Instalment PT for APs ending between 1-31 May 2003
1-30	Corporation Tax Returns for APs ending between 1-31 July 2002
1-30	Corporation Tax Returns of Third Party Information for APs ending between 1-31 July 2002
May	
14	PAYE/PRSI P30 monthly return and payment for April 2003
14	DWT Return and payment of DWT for April 2003
14	RCT RCT30 monthly return and payment for April 2003
19	VAT VAT3 return and payment for period March/April 2003
1-28	Corporation Tax 2nd Instalment PT for APs ending between 1-30 November 2002 1st Instalment PT for APs ending between 1-30 June 2003
1-31	Corporation Tax Returns for APs ending between 1-31 August 2002
1-31	Corporation Tax Returns of Third Party Information for APs ending between 1-31 August 2002
June	
14	PAYE/PRSI P30 monthly return and payment for May 2003
14	DWT Return and payment of DWT for May 2003
14	RCT RCT30 monthly return and payment for May 2003
1-21	Corporation Tax 2nd Instalment PT for APs ending between 1-31 December 2002 1st Instalment PT for APs ending between 1-31 July 2003
1-30	Corporation Tax Returns for APs ending between 1-30 September 2002
1-30	Corporation Tax Returns of Third Party Information for APs ending between 1-30 September 2002
July	
14	PAYE/PRSI P30 monthly return and payment for June 2003
14	DWT Return and payment of DWT for June 2003
14	RCT RCT30 monthly return and payment for June 2003
19	VAT VAT3 return and payment for period May/June 2003
1-21	Corporation Tax 2nd Instalment PT for APs ending between 1-31 January 2003 1st Instalment PT for APs ending between 1-31 August 2003
1-31	Corporation Tax Returns for APs ending between 1-31 October 2002
1-31	Corporation Tax Returns of Third Party Information for APs ending between 1-31 October 2002



REVENUE'S NEW STRUCTURE

Continued from page 1

- **East South-East** (Meath, Kildare, Wicklow, Wexford, Carlow, Waterford, Tipperary, Kilkenny & Laois)
- **South-West** (Cork, Limerick, Kerry & Clare)

These regional divisions subsume the traditional Tax Districts and Customs & Excise Collections. Except for cases dealt with by the Large Cases Division, each region will be responsible for the customer service, compliance and audit functions for the taxes and duties for all customers in its geographical area. New case allocation rules have been drawn up to manage the assignment of the customer base to the regions. For example, the region responsible for a trader's tax and duty affairs will be the region in which the trade is managed and controlled. PAYE cases will be primarily dealt with by the region in which the customer resides.

A region's customer base will be subdivided into Revenue districts, each fully responsible for customers in its area, and there will be special teams to identify and tackle Revenue risk in an intensive and co-ordinated way.

Large Cases Division

The Large Cases Division (LCD) is responsible for all the taxes and duties from our biggest customers regardless of geographic location. The division's responsibility includes both large businesses and high wealth individuals.

It will deliver benefits both to the large customers, in terms of improved customer service, and to Revenue, in terms of consolidated risk assessment and management of our largest taxpayers.

Investigations and Prosecutions Division

The **Investigations and Prosecutions Division** has a clear brief to advance prosecutions in cases of tax and duty evasion. The

establishment of this Division reflects the importance of prosecutions and the complexity of managing the associated legal requirements. The Division will also handle and co-ordinate certain tax and customs investigations and inquiries.

Legislation Services Divisions

Our existing **Legislation, Interpretation and Technical Services** will be rationalised into four new Divisions:

- **Direct Taxes Policy and Legislation Division** will carry out the policy and legislation functions for direct taxes including capital taxes
- **Direct Taxes Interpretation and International Division** will be the centre for interpretative and international functions for all direct taxes, including capital taxes
- **Indirect Taxes Division** will carry out the policy, legislation, interpretation and international functions for all indirect taxes
- **Customs Division** will carry out the policy, legislation and international functions for Customs including the FEOGA Audit function.

National Office Divisions

Strategic Planning Division will support the Board in setting and reviewing corporate strategy and performance, including research, risk, security, governance issues and co-ordination of the annual business plans. It also encompasses the **Accountant General's Office** in Ennis.

Operations Policy and Evaluation Division will co-ordinate the development of operational policy and support and guide the operational areas in the identification and dissemination of best practice.

Implementation of new Structure - Impact on our Customers

As of now, there is no change to the way our customers do business with Revenue. While the new Divisions are now established, they are largely on the basis of interim structures, i.e., with existing units, office locations and contact points.

However, the process of change has started and this will continue steadily. The process will be noticeable particularly in relation to contact points as we proceed to integrate our offices, locations and delivery of functions. Changes will be notified by way of regular briefings to customers, using all appropriate media including, of course, **Tax Briefing**.

We are committed to ensuring that day-to-day business for our customers continues in an efficient and effective manner throughout the implementation phase. Until you or your clients hear otherwise, please carry on your communications and transactions with your usual contact point.

We are confident that the benefits of the new structure will start to show themselves in the near future, for all concerned.

If you have queries in relation to the new divisions, the following contact points may be useful:

Customs Division:

Contact: Dermot Gilroy
at 01 674 8869
dgilroy@revenue.ie

Direct Taxes Policy & Legislation Division:

Contact: Joe Stone at 01 702 4118
jstone@revenue.ie

Direct Taxes Interpretation and International:

Contact: Geraldine Keegan-Power
at 01 702 4100
gkpower@revenue.ie

Continued on page 4



REVENUE'S NEW STRUCTURE

Continued from page 3

Indirect Taxes Division:

Contact: Gerry Lawlor
at 01 702 4222 (Excise)
gylawlor@revenue.ie

Dave Hardiman
at 01 674 8040 (VAT)
dhardima@revenue.ie

Border Midlands West:

Contact: Joe Howley at 091 536 330
jhowley@revenue.ie

Dublin Region:

Contact: Siobhan Callanan
at 01 647 0751
callanan@revenue.ie

East South-East:

Contact: Liz O'Sullivan
at 056 60826
liosulli@revenue.ie

South-West:

Contact: Angela McDonald
at 021 432 5364
mcdonald@revenue.ie

Large Cases Division:

Contact: Eoin de Buitlear
at 01 633 0827
edebuilt@revenue.ie

Investigations and Prosecutions Division:

Contact: Teresa Bailey at 01 674 8184
tebailey@revenue.ie

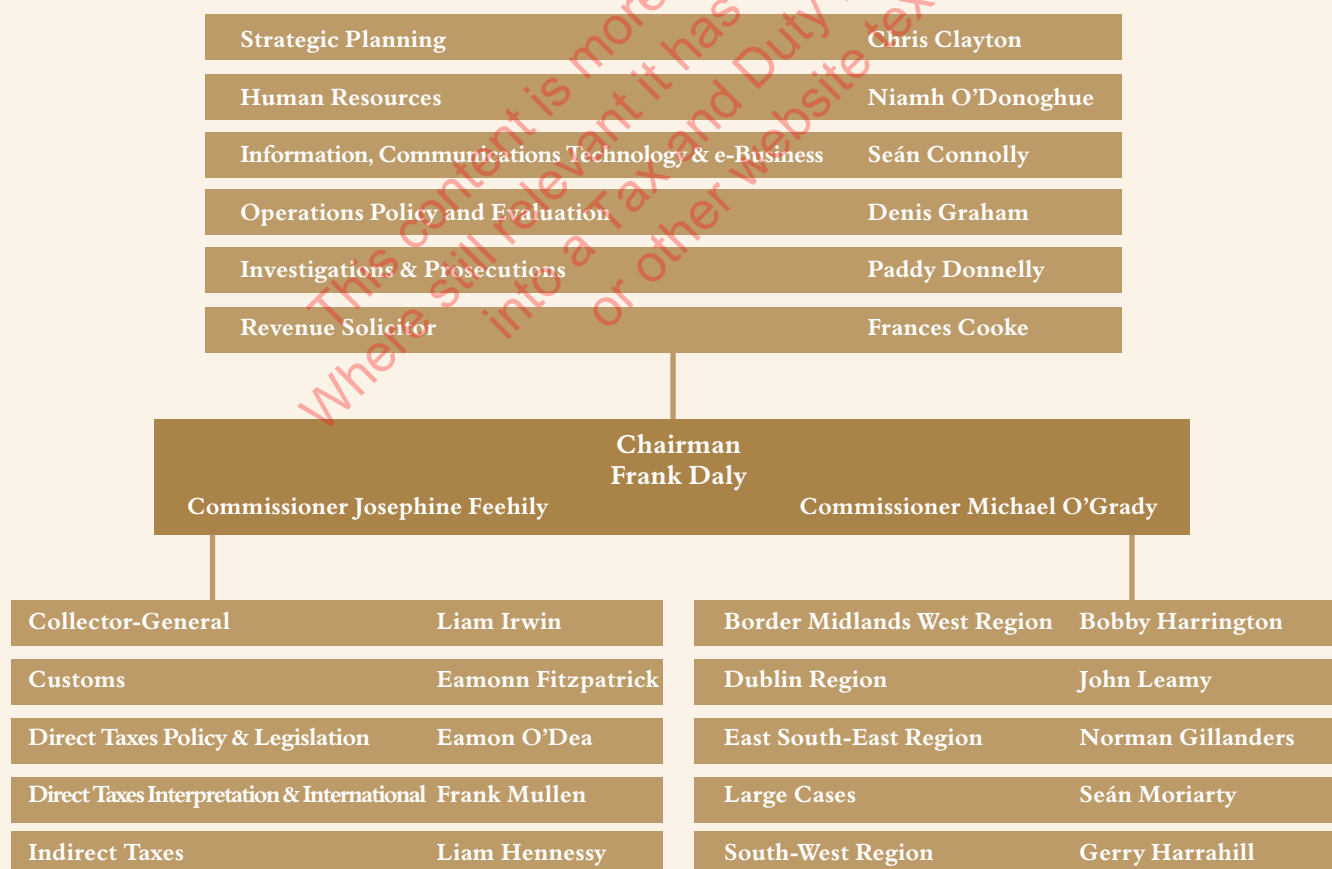
Operations Policy and Evaluation Division:

Contact: Rosemary Tiernan
at 01 674 8219
rtierna@revenue.ie

Strategic Planning Division:

Contact: Rosemary Tiernan
at 01 674 8219
rtierna@revenue.ie

Figure 1 - Revenue's New Organisational Structure and Reporting Relationships



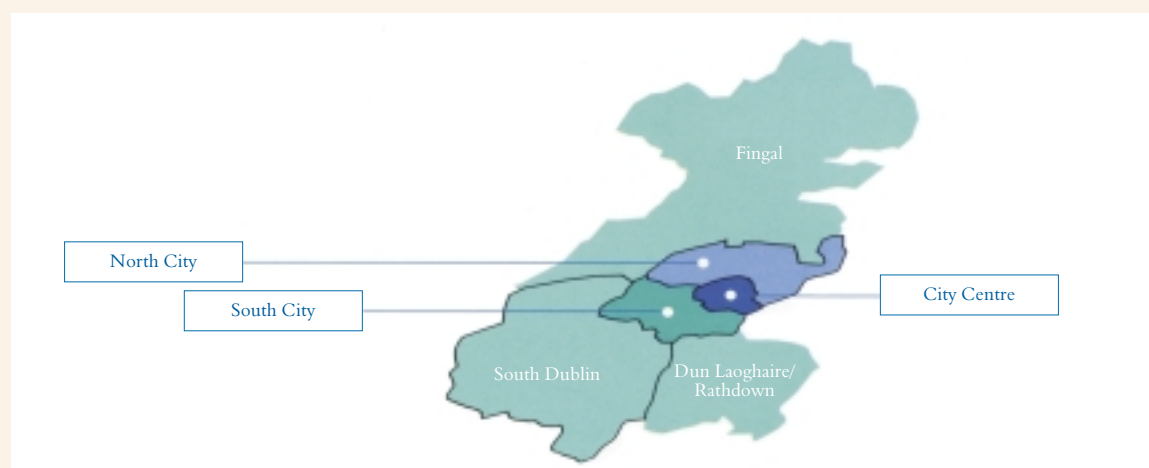


REVENUE'S NEW STRUCTURE

Figure 2 - Regional Boundaries



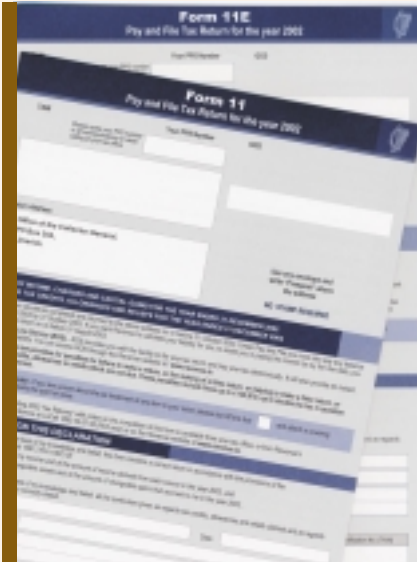
Figure 3 - Dublin Region





FORM 11 & CT1

Attachments



No Attachments with the Form 11 or CT1

The introduction of electronic filing made it necessary to review the layout and content of the Returns forms - Form 11 and CT1, and consequently introduce some changes in both layout and requirements. One of these changes is that there is no longer a requirement to submit attachments or documentation to support a claim for reliefs/allowances/tax credits with the Form 11 and the CT1. This is a

new development and one that was first introduced in respect of the income tax return for 2001.

This 'non-attachment' process simplifies the system used, and brings the electronic and paper form in line with one another. That is an integral part of e-filing.

Notwithstanding that there is no longer a need to submit documentation with the return, Revenue is still obliged to verify compliance of not only the return itself, but also what is claimed on the form. Therefore, a validation or verification process is necessary. It would not be feasible to review all cases where reliefs are claimed, as this would contradict the purpose of not requiring attachments in the first place. However, it is intended that each year certain reliefs and allowances will be selected for validation/verification, and a randomly selected percentage of customers claiming the selected relief/allowance will be chosen for **verification of the claim for that relief only**.

A list of the cases selected will issue to the relevant tax district, which will then contact the customer in regard

to the specific allowance or relief. The Inspector will request that the documentation relevant to that allowance or relief only be returned to the district within one month from the date of issue of the verification letter. If the documentation provided validates the claim, it will be returned to the customer/agent and no further action will be required. However, if the documentation is not returned or if it does not support fully the claim made, the relief will be either withdrawn or reduced to comply with the documentation. The case will also be reviewed for possible suitability for audit.

The initial validation or verification process is **not regarded as a verification audit**. The issue of the initial letter of enquiry dealing with the verification or validation process will preclude the customer from availing of the benefits associated with **an unprompted qualifying disclosure**. However, the customer will be able to avail of the benefits associated with the making of a **prompted qualifying disclosure**. ■

EURO

Corporation Tax

Corporation Tax Accounting Periods Ending in 2001 and Prior

We will shortly be converting our corporation tax assessing programs entirely to euro. The effect of this is that after a certain date (around mid May) all corporation tax assessment output from Revenue will be in euro

only, regardless of whether a return was filed in Irish pounds or euro. You may recall that at present we issue an assessment in the currency in which the return is filed – **Tax Briefing** Issue 46 refers.

The income tax assessing program will also be changed to euro only

and we will advise you in advance when this will happen. For the moment however we will continue to issue income tax assessments in the currency in which the return is received, with a bottom line conversion to euro, as appropriate. ■



PAY AND FILE 2003

Pay and File is now in its second year for Income Tax. This year Pay and File is being extended to Corporation Tax. This article gives a brief update of the current position for 2003.

Income Tax

The distribution of the 2002 Pay and File returns, Forms 11, 11E and Form 1, was completed in March and all agents should now have received the returns for their clients. The deadline for the submission of this return, together with required payments is 31 October 2003. As was the case for the 2001 return, an undertaking has been given that any 2002 return received by 31 August 2003 will be processed, and an assessment issued showing the balance of tax due for 2003, in time for the payment deadline of 31 October 2003.

A 'Guide to Completing 2002 Tax Returns' is now available on the Revenue website www.revenue.ie and printed copies will be available shortly.

A revised Pay and File guide will issue towards the end of May, detailing the procedures in place for 2003.

Corporation Tax

Companies are subject to Pay and File for any accounting periods ending on or after 1 January 2003. Any balance of corporation tax due in respect of accounting periods ending on or after 1 January 2003 must be paid on the same day as the return is due. For instance, for a company with an accounting period ending on 31 January 2003, the Form CT1 must be submitted by 21 October 2003 (see note on *Section 42 FA 2003*, on page 12) together with any balance of corporation tax for that accounting period. There is no change in the

preliminary tax due dates, set out in issue 48 *Tax Briefing*.

As Pay and File now applies to corporation tax, the Form CT1 for accounting periods ending in 2003 will be barcoded and will also incorporate a payslip for the balance of tax due for that accounting period. The place of filing this return has also changed to the Office of the Collector-General. As with the income tax return, no attachments are required with this form - however see separate article opposite regarding the need to retain full documentation.

The Form CT1 2003 will also incorporate *Extracts from Accounts* pages in place of the requirement to submit full accounts of the business. These pages must be completed in all cases where the company (or group of companies) has a turnover of less than €13,000,000. A full set of accounts must still be submitted where the turnover exceeds this limit.

Practitioners are reminded that the Form CT1 2003 is the **only** corporation tax return that should be used for accounting periods ending in 2003. **Do not use an earlier version of Form CT1 for 2003 accounting periods.**

Further information regarding the operation of Pay and File for corporation tax will be covered in later editions of *Tax Briefing*.

Revenue on Line Service

Remember that in addition to Income Tax, ROS also caters for the electronic filing of corporation tax returns. The electronic corporation tax return also has a built in calculation facility that will give you an instant calculation of your clients' tax liability.

IT and CT

Accounts Information

In general, accounts should not be submitted with either the income tax or corporation tax return; instead the *Extracts from Accounts* pages on the return should be completed. When completing these pages there may be nothing to enter under some headings, as the heading may not apply to the particular case.

However where there is an entry in the accounts, the corresponding section of the *Extracts from Accounts* pages must be completed. Depending on how the accounts are prepared, it may be necessary to aggregate some figures to arrive at a figure to be included in the *Extracts From Accounts* pages. For example, at item 9 of the *Extracts from Accounts* you would have to aggregate the total of motor, travel and insurance if these are shown separately in the accounts. Note that paper accounts will not be accepted as an alternative to completing the *Extracts From Accounts* pages.

Where turnover is in excess of €13,000,000 per annum, a paper copy of the financial statements, with computations and schedules, is still required to be filed with the return.

Partnerships file their returns using Form 1 (Firms). They must continue to submit a full set of accounts with this return; there are no *Extracts from Accounts* pages in this form. Individual partners submit their own return using the Form 11 and they are not required to complete the *Extracts from Accounts* pages in respect of that partnership income.

We have received a number of specific queries in relation to the *Extract from Accounts* pages, and these will be addressed in an article in the next issue of *Tax Briefing*. ■



FINANCE ACT

2003

The 2003 Finance Act was enacted on the 28 March 2003. The following pages highlight some of the changes introduced in the Act.

Income Tax

Benefit-in-Kind

Section 4 reduces, for the year of assessment 2003 and subsequent years of assessment, the level of the specified interest rate used for determining the benefit-in-kind charge on certain preferential loans made to employees by their employers. The new rates will be 4.5 per cent (reduced from 5 per cent) in the case of mortgage loans and 11 per cent (reduced from 12 per cent) in the case of non-mortgage loans.

Section 6 together with the Social Welfare Act provides with effect from 1 January 2004 for the direct application of PAYE and PRSI (including the training and health contribution levies) to the many current taxable benefits-in-kind. Under the new arrangements employers will deduct the appropriate PAYE income tax and PRSI from cash remuneration being paid to the employee at the same time as the benefit-in-kind is being provided. Where the cash remuneration is insufficient, the employer will be responsible for any shortfall in the relevant amount of tax. Where this shortfall is not made good by the employee to the employer by the end of the tax year, the tax borne by the employer will be regarded as a taxable benefit of the employee in the following tax year and subject to PAYE and PRSI in the same way as the original benefit.

In order to facilitate the introduction of the new system the existing system of valuing benefits is being changed and simplified as follows:

- (1) Under the current system the value of the private use of a company car is determined by reference to a percentage of the Original Market Value (OMV) of the car which depends on whether only the car is supplied or whether the employer also bears running costs and also takes account of the business mileage of the employee. This has the potential for a multiplicity of percentage rates. For the future, this complicated system is being simplified as follows:

Business mileage	Cash equivalent (% of OMV)
15,000 or less	30
15,001 to 20,000	24
20,001 to 25,000	18
25,001 to 30,000	12
over 30,000	6

- (2) The cash equivalent of the private use of an employer's van is being set at 5% of the original market value of the van.
- (3) The annual value of the use of an asset, other than premises, is being set at 5% of its market value when first provided by the employer.

Prior to the commencement of the new system the Revenue Commissioners will be making administrative regulations in relation to the timing of deductions and the accounting for such deductions.

Share Options

Section 7. See separate article on page 26.

Section 8 introduces a new *Section 128B TCA1997*. The new *section 128B* provides that where a share option is exercised on or after 30 June 2003, the gain will be taxable at the higher rate of income tax, currently 42 per cent, in force for the tax year in which the share option is exercised. Where the taxpayer would be liable at the standard rate of tax only, he or she may make application for the charge to be applied at that rate. Payment of this tax must be made to the Collector General within 30 days of the option being exercised. Each payment of this tax must be accompanied by a return on a prescribed form, to include details of the gain and tax due and a declaration as to the return's veracity. Interest at the rate of 0.0322 per cent per day will apply to any outstanding tax payable.

This tax is essentially an immediate payment of the tax charge arising on exercise of the share option and will be taken into account in computing the person's liability to income tax for the tax year concerned but may not be used in calculating any preliminary tax payable by the person for that year. All of the provisions of the Income Tax Acts relating to assessments, appeals, collection and recovery of tax and interest will apply to assessment of this tax. These provisions take effect from 30 June 2003.

Mortgage Interest Relief

Section 9 amends *Section 244 TCA 1997* to provide for an increase in the ceiling on mortgage interest payments by first-time buyers qualifying for tax relief. The ceiling is being increased from €3,175/€6,350 (single/married or widowed) to €4,000/€8,000 (single/married or widowed). In addition, the period of time in which this higher amount of relief may be claimed is being increased from five to seven years. First-time buyers who started to claim tax relief in respect of mortgage interest in the tax year 1998/99 or later will benefit from these new arrangements.



FINANCE ACT

2003

Case I/II

Section 11 amends *Section 65(3) TCA 1997* to ensure that the rules of that subsection take precedence over the rules contained in *Section 66(2) TCA 1997*. Where a trader or professional changes his or her accounting period in a tax year, the previous tax year's liability must be reviewed by reference to the corresponding period in the previous tax year and, if the profits of that corresponding period exceed the profits originally assessed for that previous tax year, the extra profits are charged to income tax for that previous tax year. The amendment in *Section 11* ensures that this previous tax year review will apply even where that year is the second year in which a trade or profession is carried on.

Pension Products and Retirement Funds

Section 14 makes a number of changes to the tax regime governing various pension products and also makes changes to the tax treatment of Approved Retirement Funds (ARFs).

Capital gains tax exemption is being extended to Personal Retirement Savings Account (PRSA) assets; it already applied to assets of occupational pension schemes and to certain Retirement Annuity Contracts (RAC). All tax payable in respect of pension income is paid under PAYE as benefits are paid out.

The circumstances in which contributions made to an occupational pension scheme or a statutory pension scheme may be set back to earlier years are being restricted. At present discretion is given to the Revenue Commissioners as regards the years to which non-ordinary annual contributions are to be attributed. In practice, this means that the contributions are set against income of earlier years in certain circumstances. From 6 February 2003, the setting back of contributions will be confined to contributions deducted from a lump sum payable on retirement to provide for dependants' benefits or contributions made on retirement to pay back a previous refund of contributions or benefits previously provided to the member of a scheme (such as a marriage gratuity), where the contributor had previously left a scheme.

For 2003 and subsequent years non-ordinary annual contributions to a pension scheme paid for a tax year between the end of the tax year and the return filing date for that year will be allowed in the tax year, subject to limits, where a claim is made by the return filing date for the year. The return filing date is the 31 October following the end of the year. This mirrors the present carry-back relief available to those paying premiums under retirement annuity contracts.

Contributions that cannot be allowed either in the preceding year or in the year of payment may be carried

forward to following years and allowed, subject to the age based limits for those years.

The circumstances in which assets in an Approved Retirement Fund (ARF) are treated as having been distributed are extended. With effect from 6 February 2003, assets will be treated as distributed in so far as they have been used for the following purposes:

- To make a loan or to secure a loan to the ARF holder or to a connected person;
- To acquire property from the ARF holder or a connected person;
- To acquire property to be used as holiday property or as a residence by the ARF holder or a connected person; where the property is acquired on or after 6 February 2003 for some other purpose (e.g. letting) and is subsequently used as holiday property or as a residence by the ARF holder or a connected person the distribution will arise at the time the property comes to be used for this purpose and will include any ARF assets used in the repair or improvement of the property;
- To acquire shares or other interests in a closely held company in which the ARF holder or a connected person is a participator;
- To acquire any tangible moveable property.

The sale of assets in the ARF to the ARF holder or a connected person will also be regarded as a distribution of the value of the assets in question.

In so far as ARF assets are treated as distributed they are no longer regarded as ARF assets; similarly, where the acquisition of assets is treated as giving rise to a distribution, the assets will not be regarded as assets in the ARF.

These new rules on distributions for ARFs will also apply to Approved Minimum Retirement Funds (AMRFs). Also the restriction on payments out of an amount of capital invested in approved minimum retirement fund is being strengthened to ensure that the restriction applies to distributions and amounts treated as distributions. Where assets in a PRSA are used in such a manner that a distribution would be treated as having been made if those assets were in an ARF, the assets will be treated as having been made available to the PRSA contributor. This means that any such transactions will be contrary to the rules of the PRSA until such time as the PRSA contributor is entitled to take benefits from the PRSA (generally at age 60 or over). Any such transactions would give rise to a tax charge under PAYE on the PRSA contributor in the same way as a tax charge would arise where such transactions occur in relation to funds in an ARF.

Continued on page 10



FINANCE ACT 2003

Continued from page 9

The person who manages assets in an ARF or an AMRF, known as a Qualifying Fund Manager (QFM), will in future be required to notify the Revenue Commissioners when he or she commences to act as a QFM; managers already acting in this capacity will be required to notify the Revenue Commissioners within 3 months of the passing of the Act.

The differential in the rates of age-based tax relief which applied for PRSAs and other pension products is being removed. For 2003 and subsequent years the rate for all pension products will be as follows where at any time during the tax year the contributor was:

Aged under 30	15% of net relevant earnings /remuneration
Aged over 30 and under 40	20% of net relevant earnings /remuneration
Aged over 40 and under 50	25% of net relevant earnings /remuneration
Aged 50 or over	30% of net relevant earnings /remuneration

The 30% rate will apply irrespective of age to certain sportspersons who retire early.

A single combined earnings cap of €254,000 is being applied to income that qualifies for relief in respect of pension contributions. The maximum relief will be the age based percentage of this amount. This will apply for the year 2002 and subsequent years in respect of contributions made on or after 4 December 2002 (Budget day).

For 2003 and subsequent years an individual will not be regarded as being in pensionable employment for the purposes of qualifying for relief for contributions to a PRSA or a Retirement Annuity Contract (RAC) where the individual is a member of an employer sponsored pension scheme for the purposes of survivor's and dependant's benefits only (up to now, an employee was not regarded as in pensionable employment for RAC purposes where the benefits provided by the pension scheme were limited to a lump sum payable on death or disability while in service). Such an employee will now be able to make PRSA contributions which are not linked to the pension scheme. Employee contributions to such a scheme will be treated as RAC contributions for the purpose of calculating the maximum RAC/PRSA relief on contributions.

The power governing the making of PAYE regulations is being changed to allow the Revenue Commissioners to apply the net pay arrangements to RAC premiums deducted by employers. Under the net pay arrangement, tax relief is given by the employer applying PAYE on the employee's salary after deducting allowable contributions to the pension scheme/PRSA or RAC.

Repayment, Interest and Time Limits

Section 17 provides, in relation to income tax, corporation tax and capital gains tax, for new arrangements to deal with claims for repayments, interest on repayments and Revenue's right to raise assessments. This is part of a general package of measures regarding repayments and interest on repayments covering direct and indirect taxes.

In relation to repayments, a general right to repayment of tax overpaid is being provided for. The repayment will be made irrespective of whether the tax was overpaid under an assessment or otherwise and irrespective of the presence or absence of any mistake on the part of the taxpayer. Any repayment must be subject to a valid claim and be made within four years from the end of the period to which it relates. Subject to transitional arrangements, this four year time limit replaces the existing longer time limits, the longest of which is ten years. The new time limit applies to claims for repayment of tax overpaid in respect of the year 2003 onwards. The existing time limits will remain in place for claims made on or before 31 December 2004 for earlier years. Where there is no existing right to repayment, the four year time-limit will apply irrespective of the year concerned. From 1 January 2005, there will be a four year time limit for all claims.

In future, interest will be paid on repayments of tax by Revenue. Where the repayment arises because of a mistaken assumption by Revenue in the application of the law, interest will be paid from the date the tax was paid until the repayment is made. In all other cases, including repayments of preliminary tax, interest will be payable from the end of 6 months after the date on which a claim for the repayment becomes a valid claim until the repayment is made. The rate of interest provided is 0.011% per day or part of a day (approximately 4% per annum). The interest will be paid without deduction of tax and will not be taxable in the hands of the recipient.

In line with the new four year time limit for repayment claims, the period within which Revenue may raise assessments and make enquiries is, in general, being reduced to four years also. Time limits will not apply to cases of fraud or neglect on the part of the taxpayer. Currently there are no time limits for such cases and this position will continue.

The new regime is subject to Commencement Order(s) by the Minister for Finance.

Donations to Approved Bodies

Section 21 amends Section 848A TCA 1997 which is concerned with tax relief for donations to approved bodies including eligible charities, schools, universities and other eligible bodies. With effect from 6 February 2003 an upper limit is placed on the level of tax relief which may be given in respect of donations in a single tax year by an



FINANCE ACT

2003

individual to approved bodies with which the individual is associated. Where the aggregate of donations in a single tax year by an individual to approved bodies with which he/she is associated exceeds 10% of his/her total income, the relief is capped at that level.

An individual is regarded as being associated with an approved body if he/she is an employee or member of that approved body or of an associated approved body. Two approved bodies are regarded as being associated with each other if the same person or a similar group of persons has control over or can direct the activities of both approved bodies.

Capital Allowances

Section 23 amend *Section 284 TCA 1997* so as to give effect to the Budget Day announcement to increase, from five years to eight years, the write-off period for annual wear and tear allowances in respect of capital expenditure incurred on or after 4 December 2002 on plant and machinery. In effect, an allowance of 12.5% per annum on a straight line basis over eight years will apply to expenditure incurred on or after 4 December 2002, subject to transitional arrangements. The new regime will apply in the case of both general plant and machinery and business motor vehicles. It will not apply to taxis and short-term hire vehicles which will retain their 40% per annum reducing balance arrangement under *Section 286 TCA 1997*. Neither will it apply in the case of certain fishing boats in the "white fish" fleet which attract a special enhanced regime of wear and tear allowances under *Section 284(3A) TCA 1997*. Finally, the new regime will not apply in the case of plant and machinery acquired under the terms of a binding contract evidenced in writing before 4 December 2002 and in respect of which capital expenditure is incurred on or before 31 January 2003.

Section 25 amends *Chapter 1 Part 9 TCA 1997* in relation to capital allowances for hotel buildings and registered holiday cottages.

Firstly, the section provides that a registered holiday cottage is no longer to be regarded as a building in use for the trade of hotel-keeping. Secondly, it provides that the annual rate of write-off for capital expenditure incurred on hotel buildings and holiday camps is reduced to 4%, with a resulting 25 year tax life. Subject to transitional arrangements, both these amendments apply as respects construction or refurbishment expenditure incurred on or after 4 December 2002.

The transitional arrangements provide that these changes will not apply as respects capital expenditure incurred by 31 December 2004 on the construction or refurbishment of a building if a full and valid planning application, which is acknowledged by the planning authority, is made on or before 10 March 2002 in accordance with the *Local Government (Planning and Development) Regulations 1994*, on

or before 31 May 2003 in accordance with the *Planning and Development Regulations 2001 to 2002*. In the case of hotel buildings the transitional arrangements also apply where a valid application for a certificate under *Section 25(7)(a)(ii) Dublin Docklands Development Act* is made on or before 31 May 2003.

Where the transitional arrangements apply, the section provides that the existing Bord Failte certification requirement continues in relation to the expenditure involved.

Finally, in relation to construction or refurbishment expenditure incurred on hotel buildings on or after 1 January 2003, the section inserts a reference to the new 'Multisectoral framework on regional aid for large investment projects' dated 19 March 2002, prepared by the European Commission in addition to the reference to the previous framework dated 7 April 1998. Where a project is subject to the notification requirements of either framework, approval of the potential capital allowances must be received from the EU Commission.

Relevant Contracts Tax

Section 33 amends the law governing Relevant Contracts Tax (RCT), the tax which principal contractors are obliged to deduct from payments made to certain subcontractors in the construction, meat processing and forestry industries. To combat deliberate late payment of RCT, the section provides that where a principal contractor makes an RCT remittance for a tax year or a period included in a tax year and that remittance is not included in a monthly return, the remittance will be treated as a remittance for the first income tax month of the tax year. However, if within one month of interest (on late payment) being demanded by virtue of the operation of that rule, the principal contractor makes a return for the income tax month or months to which the remittance relates, then that rule will be disapplied and the remittance will be treated as a remittance or remittances for the income tax month or months in question. This will then enable interest to be charged on the basis of the due date for the RCT remittance for the month or months in question. The section also provides that where an amount of RCT is payable on foot of a yearly estimate notice issued by an inspector of taxes, interest on the overdue tax will be calculated on the basis that the tax was due for the first income tax month of the tax year to which the notice relates. There is provision for the inspector of taxes or, on appeal against the notice, for the Appeal Commissioners to determine the amount of RCT which was unpaid for each income tax month in the tax year to which the notice relates. Where the inspector of taxes or Appeal Commissioners so determine, the interest on overdue tax will be calculated on the basis of the due date for the RCT remittance for the month or months in question.

FINANCE ACT 2003

Continued from page 11



These two measures will apply for the tax year 2003 and subsequent tax years.

The section also amends the rules governing bulk applications by principal contractors for relevant payments cards in respect of subcontractors. When a principal contractor receives a relevant payments card, he/she may then make payments to the subcontractor without deduction of tax. Currently, the rules permit a principal contractor to make a bulk application for relevant payment cards in respect of subcontractors whose contracts are still in operation at the turn of the tax year, without the normal requirement for those subcontractors to produce for inspection to the principal contractor their certificates of authorisation (C2s) to receive payments without deduction of tax. The facility is being modified so as to provide that, in making such an application, principal contractors will be required to obtain the number of the C2 for the relevant tax year from each subcontractor listed on the bulk application. This measure will apply to applications for relevant payments cards made on or after the date of the passing of the Act.

Self Assessment

Section 42 amends Part 41 TCA 1997. That Part is concerned with the Self-Assessment system and applies for income tax, corporation tax and capital gains tax purposes. Accordingly, the section implements a number of 2003 Budget announcements concerning these taxes and provides for certain other changes as follows:

- The Budget announcement that, as respect capital gains tax due as and from the year of assessment 2003, payment of capital gains tax will be required to be made by 31 October in the year of assessment as respects chargeable gains arising in the period from 1 January to 30 September 2003, and by 31 January in the next following year of assessment as respects chargeable gains arising in the period from 1 October to 31 December 2003.
- The Budget announcement that, in relation to corporation tax, a pay and file system will apply. This will mean that companies will be obliged to pay any balance of tax due in respect of an accounting period at

the same time as they make their tax return (currently companies pay the balance of tax within one month of the tax assessment issuing). The change applies as respects accounting periods ending on or after 1 January 2003.

- All corporation tax (that is, the two instalments of preliminary tax and the balance of tax) will be paid by the 21st of a month where it would otherwise be due on a day later than the 21st in that month. This change applies as respects corporation tax payments to be made from June 2003 onwards. Where this applies to the balance of tax, the tax return will also have to be made by the 21st day of the month.
- The balance of corporation tax will be payable by the return filing date even if the return is filed early (Currently, where a return is filed early and an assessment issues, the tax must be paid within one month of the assessment).

Tonnage Tax

Section 62 amends the scheme of tonnage tax introduced by the Finance Act 2002 to conform more fully with EU requirements. Tonnage tax is a scheme whereby as an alternative to charging corporation tax on certain profits of a qualifying shipping company, a tax charge is levied each year instead on the tonnage of the ships operated by the company. On 11 December 2002 the European Commission gave State aid clearance to the scheme of tonnage tax introduced by Section 53 Finance Act 2002. This clearance was given following a commitment to amend certain of the provisions of the legislation as enacted so as to make the scheme conform more closely with the Commission's tonnage tax policy. The amendments to the scheme made by this section are:

- Confining the tonnage tax regime to profits derived from shipping activities. In the case of profits which are referable to mixed activity (for example, sale of a holiday plus transport by ferry) only the profit on the shipping activity is included in the tonnage tax regime.
- Requiring separate accounting where a company engages in tonnage tax activities and other activities.
- Goods and services provided to a tonnage tax company by an associated non-tonnage tax company and goods and services provided by a tonnage tax company to an associated non-tonnage tax company are to be on an arm's length basis. Similar pricing rules to apply where a company operates both a tonnage tax trade and other business activities.
- The practice of capitalising a tonnage tax company or a tonnage tax trade through a preponderance of equity (known as "thick" capitalisation) rather than debt and capitalising other activities by means of tax deductible borrowings is countered.



FINANCE ACT

2003

- Excluding from tonnage tax any work undertaken by tug-boats in ports and port areas.
- Profits from the sale of goods on board ships to be included in the tonnage tax regime only to the extent that the goods are consumed on board ship. Income from maritime research to be excluded from tonnage tax.
- Excluding from tonnage tax the provision which allows profits from non-tonnage tax activities to be included where such profits do not exceed 0.25% of the total turnover of the company.

The section also amends the way the scheme may be commenced so as to dispense with the need for a Ministerial order and to provide that the scheme begins with effect from the passing of the Finance Act 2003.

Capital Gains Tax

Section 65 amends *Section 556 TCA 1997*, which provides for the indexation (based on changes in the consumer price index) of the cost of an asset when a gain on its disposal is being computed for capital gains tax purposes. This amendment gives effect to the Budget announcement that such indexation will not apply after 2002 and inserts a Table that shows what indexation is allowable in respect of assets disposed of in the year 2004 and subsequent years. The indexation allowable for disposals in 2003 is already set out in regulations made by the Revenue Commissioners (S.I. No. 12 of 2003).

Section 66 removes the facility to defer capital gains tax by the issue of debentures, loan stock or other similar securities under the following provisions of the Taxes Consolidation Act 1997:

- *Section 584* (reorganisation or reduction of share capital);
- *Section 585* (conversion of securities)
- *Section 586* (company amalgamations by exchange of shares); and
- *Section 587* (company reconstructions and amalgamations).

Subject to two transitional provisions, the change takes effect in relation to an issue or allotment of debentures etc. on or after 4 December 2002, unless such an issue or allotment is made pursuant to a written binding agreement made before that date. However, capital gains tax deferral will still apply where debentures are issued on or after that date by one company to another company under a company amalgamation by exchange of shares (*Section 586*) or under a company reconstruction and amalgamation (*Section 587*) where both companies are members of the same group for the purposes of *Section 616 TCA 1997*.

Section 67 amends *Part 19 TCA 1997* in four separate sections

- *Section 591* (relief for individuals on certain reinvestment)
- *Section 597* (replacement of business and other assets)
- *Section 600A* (replacement of qualifying premises), and
- *Section 605* (disposal to an authority possessing compulsory purchase powers)

Each of these sections allowed the deferral of a capital gains tax charge on gains accruing on the disposal of certain assets ("old assets") where the consideration for their disposal is reinvested in certain other assets ("new assets"). *Section 67* implements the Budget announcement that such deferrals are not available for disposals on or after 4 December 2002. However, any capital gains arising on the disposal of "old assets" which, under these sections, have been deferred on the acquisition of "new assets" before that date, can continue to be deferred so long as the consideration for the disposal of the "new assets" continues to be reinvested in other permitted assets. The gain on the disposal of the "new assets" themselves cannot, however, be deferred. Furthermore, as respects *Sections 597, 600A and 605* where "new assets" were acquired before 4 December 2002, with the intention of disposing of the related "old assets", but the owner had not disposed of those related "old assets", by Budget day, the gain on the disposal may still be deferred so long as the disposal of those related "old assets" takes place on or before 31 December 2003.

Section 68 contains a number of amendments to *Section 598 TCA 1997*, which provides relief from capital gains tax where an individual, having attained the age of 55, disposes of certain business assets or shares in his or her family company. Firstly, the section is being amended so that disposals of land which has been leased under the EU "Early Retirement from Farming" Scheme introduced by the Minister for Agriculture, Food and Rural Development on 27 November 2000, will come within the scope of the relief. The section is also being amended so that the use of an asset by a deceased spouse of an individual will be taken into account for the purposes of determining whether the individual qualifies for the relief.

It is also being provided that the period that an individual was a director of a company will be deemed to include the period during which the individual was a director of another company where, under a scheme of reconstruction or amalgamation, shares in that other company were exchanged for shares in the first-mentioned company. Finally, the limit to the consideration for the disposal of assets eligible for relief is being rounded up from €476,250 to €500,000.

Continued on page 14



FINANCE ACT 2003

Continued from page 13

Section 69 imposes a capital gains tax charge in respect of a deemed disposal of certain assets owned by an individual on the last day of the last year of assessment for which the individual is taxable in the State, prior to becoming taxable elsewhere. However this capital gains tax charge will only arise:

- If the individual is not taxable in the State for a period of five years or less before again becoming so taxable, and
- To the extent that the individual disposes of those assets during that period.

The assets concerned are a holding in any company (wherever located) with a value of either 5% or more of the value of all that company's issued share capital or exceeding €500,000. Whereas the gain on the deemed disposal arises before the individual ceases to be taxable in the State, the gain is required to be included in the individual's return and the tax in respect of it accounted for in the year in which the individual is again taxable in the State. Credit will be given in respect of any foreign tax payable on an actual disposal of the assets involved where such tax is payable in a territory with which Ireland has a double taxation treaty.

Section 70 inserts a new section into the Taxes Consolidation Act 1997. The new section imposes a charge to capital gains tax on any amount received by a person in respect of a non-competition agreement, where such amount is not liable to income tax or not otherwise liable to capital gains tax by virtue of it not being consideration for the disposal, in whole or in part, of an asset.

Section 71 amends *Section 980(8) TCA 1997*. *Section 980* requires a purchaser of certain assets to retain 15 per cent of the consideration to be paid to the vendor, unless the vendor produces a certificate (CG50A) issued by the Revenue Commissioners. Previously, an application for a CG50A certificate had to be completed and signed by the vendor. This amendment will allow an agent (e.g. a solicitor/tax practitioner etc.) to complete and sign the application form on the vendor's behalf. However, the agent will be required to supply certain details in relation to the vendor (viz. name, address, and, for residents, the tax reference number).

Excise Duty

Section 98 provides for a basic right to repayment of overpaid excise duty, or interest on excise duty, which was not due, and limits the liability of the Revenue Commissioners to make repayments to circumstances provided for in this section or under other excise law provisions. It also provides for a four-year time limit for making a claim for a repayment but if the claim relates to

an event before 1 May 2003 the four year limit will not apply until 1 January 2005. Where repayments arise it also provides for the payment of interest by the Revenue Commissioners, at a rate of 0.011 per cent per day or part of a day, on repayments of duty that arise:

- As a result of a mistaken assumption in the operation of excise law, or
- For any other reason and there are administrative delays in processing a valid claim.

The section provides that action by the Commissioners to initiate recovery of underpayments of excise duty is limited to a period of not more than four years after the act or event giving rise to the liability, except in the event of fraud or negligence. There is also a provision for the Minister for Finance to bring these changes into operation by way of Ministerial Order.

VAT Waiver of Exemption

Section 117 amends *Section 7* of the *VAT Act* which deals with waiver of exemption. A waiver of exemption occurs when an individual decides to change the exempt status of short term letting of property and make it subject to VAT (in normal circumstances such short term leases are exempt from VAT). Currently, while a property can be developed and VAT deductibility claimed on the basis that the property in question would be subject to a long-term lease, the owner may subsequently switch to a short term lease and waive his exemption in order to retain the deductibility claimed. If the waiver of exemption is later cancelled and any outstanding VAT liabilities need to be calculated, then this section provides that deductibility taken both before and after the waiver of the exemption will be included in the calculation of the adjustment amount (at present deductibility taken before the waiver may not be included).

Retention of Records

Section 121 amends *section 16* of the *VAT Act* which deals with records. Under current legislation records are retained for a period of six years from the date of the last transaction. This can result in information gaps relating to a property because once the six year period has passed, there is no continuing obligation to retain records. This amendment obliges taxable persons involved in property transactions to retain records for the VAT life of the property from beginning to end, plus a further period of six years. It also requires a person who opts to waive his or her right to exemption from tax on short-term lettings of immovable goods to retain records for the duration of the waiver, plus a further period of six years.



FINANCE ACT

2003

Interest on Refunds

Section 125 inserts a new *Section 21A* into the *VAT Act* which deals with interest on refunds of tax. This is part of a general package of direct and indirect tax proposals with regard to the payment of interest on tax. The section obliges the Revenue Commissioners to pay interest on a refundable amount in various circumstances, and if there is a delay of more than six months from the date of receipt of a valid claim for refund of tax. The rate at which interest will be paid is 0.011 per cent per day or part of a day. It also ensures that if a taxpayer is awarded interest in respect of a refund of VAT under any other enactment (e.g., under *Section 941 TCA 1997*), interest will not also be payable under *Section 21A* of the *VAT Act*. Finally, it allows Revenue to make Regulations as necessary.

The section has effect from a date to be decided under an Order or Orders of the Minister for Finance.

Time Limits

Section 129 amends *Section 30* of the *VAT Act* which deals with time limits. It provides for a four-year time limit for Revenue making estimates/assessments for underpayments of tax in cases other than fraud or neglect, but if the assessment relates to a taxable period before 1 May 2003 the six-year time limit may apply up to 31 December 2004. This amendment is part of the new interest package.

The section has effect from a date to be decided under an Order or Orders of the Minister for Finance.

Stamp Duty

Section 142 inserts a new Chapter into the *Stamp Duties Consolidation Act 1999*, containing three new sections:

- *Section 159A* restricts the repayment of stamp duty to valid claims made within four years of, inter alia, the date an instrument was stamped by Revenue. A valid claim is one where Revenue has been provided with all the information to enable them to establish the extent of the overpayment. This measure is being introduced with transitional arrangements.
- *Section 159B* provides that interest on a repayment will be only be paid where the repayment has not been made by Revenue within six months of receiving a valid claim for repayment. An exception to this general rule is that interest will be paid from the date of the event giving rise to the repayment, where Revenue has made an error in the operation of stamp duty. This section also provides that the new rate of interest on such repayments will be at the rate of 0.011 per cent per day or part of a day.
- *Section 159C* restricts the period within which Revenue may make enquiries or raise assessments in relation to underpayments of stamp duty to a period of four years from, inter alia, the date an instrument was stamped by Revenue. This restriction will not apply where the underpayment arises from fraud or neglect. The three sections will come into operation by way of Ministerial Order.

PAYE Estimates

Section 157 concerns the collection and recovery of PAYE income tax from employers and, in particular, estimates of tax due that are raised in the absence of a return. This section enables an additional estimate to be raised where a previously estimated amount has been paid and a return showing the correct liability has not been made, or in a case where the Revenue Commissioners subsequently have information indicating that the original estimate was too low. ■



EXCHANGE RATES



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

	2001	2002
U S dollar	0.8861	0.946
Sterling	0.6182	0.629
Danish krone	7.4481	7.43
Japanese yen	108.48	118.10
Swiss franc	1.5032	1.467
Swedish krona	9.3392	9.16
Norwegian krone	7.9945	7.51
Canadian dollar	1.3767	1.484
Australian dollar	1.7260	1.738

Lloyds Conversion Rate

For accounts closed in the calendar year 2002 the conversion rate of sterling to euro should be calculated by reference to the sterling mid-closing rate supplied by the Central Bank.

2002 Stg £1 = Euro 1.5372 ■

RELIEF FOR TUITION FEES

Relief for fees paid for Foreign Language/I.T. Courses (Section 476, TCA 1997)

It has come to Revenue's attention that a recent list supplied by FÁS detailing the courses and colleges, which are approved for the relief for fees paid for training courses, was not complete. As a result individuals who may have applied for the relief may have been refused the relief.

FÁS has now provided a revised list, which is available on Revenue's Internet site, and they have notified the affected course providers.

Where a person is aware of any claim that has been refused they should consult the revised list to clarify if the training course and college are approved by FÁS. If the course and college are approved they should make application to their tax district to have the claim admitted. ■

CGT

Correspondence

This article deals with the submission of general Capital Gains Tax (CGT) correspondence including:

- Payments in settlement of outstanding liabilities
- Capital gains tax returns for resident and non-resident individuals, estates and trusts
- Applications for certificates under *Section 980 TCA 1997*.

Correspondence of this nature should be sent directly to the inspector dealing with the client or to the Collector-General. Increasingly, it is being directed to the Capital Gains Tax Unit, Setanta Centre and Capital Taxes Branch in Dublin Castle. We would ask practitioners to ensure all correspondence is directed to the appropriate office. The following guidelines should assist you in this.

- Payments, with the exception of those relating to an application for a certificate under *Section 980(8) TCA 1997*, should be submitted to the Collector-General. Payments for the purpose of *Section 980(8)(c) TCA 1997* should continue to be sent to the inspector dealing with the application.
- Capital Gains returns for chargeable persons should normally be submitted to the Collector-General. If, however, your client is a PAYE taxpayer the return should be submitted to his/her inspector.
- Applications for certificates under *Section 980(8) TCA 1997* should be dealt with as follows:

Applicant is Resident:

If the applicant is registered for tax the application should be submitted to his/her inspector. If not registered, e.g., a pensioner, the local inspector of taxes will process the application.

Applicant is Non-resident:

The application together with a computation of gain/loss and remittance, where appropriate, should be submitted to the Tax District dealing with the postal address of the Irish resident agent. For example, if the non-resident vendor has a Cork based solicitor acting the application should be submitted to Cork Tax District, regardless of the location of the asset.

In cases of difficulty please contact your local tax office before making a submission. ■



SPORTSPERSONS EMPLOYED BY CLUBS

Expenses

What is the tax treatment of expenses paid to or incurred by soccer players and other sportspersons employed by clubs?

Legislative Provisions

The legislative provisions governing expense payments and deductions are contained in *Sections 114 and 117 TCA 1997*. A charge to income tax under Schedule E arises under *Section 117* where expense payments are made to directors and employees of a body corporate which are not otherwise chargeable to tax. Such payments are treated as perquisites of the employment of the director or employee and are included in the assessable income of the director or employee for that year.

Section 114 TCA 1997 provides that where the holder of an office or employment of profit is necessarily obliged to incur and defray out of the emoluments of the office or employment of profit expenses of travelling in the performance of the duties of that office or employment, or otherwise to expend money wholly, exclusively and necessarily in the performance of those duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed.

Travel & Subsistence Expenses

Payments by an employer which do no more than re-imburse an employee for allowable expenses actually incurred may be made free of tax in certain circumstances. Revenue leaflets IT 51 (Employees' Motoring Expenses) and IT54 (Employees' Subsistence Expenses) set out the circumstances and the conditions to be fulfilled in this regard. These provisions apply equally to employed sportspersons and there are no special rules or treatment applicable to this category of employee. The question of allowable travel expenses will depend on the facts of each case, i.e., the location of the club grounds, location of training grounds, if different, location of matches, transport provided by the club etc.

Other Expenses

With regard to other expenses incurred by sportspersons, e.g., clothing, boots, gym membership, special foods, etc., a deduction will only be available where the expenses satisfy the requirements of *Section 114*. If an employee wishes to make a claim in this regard he/she should submit full details at the end of tax year so that the Inspector can determine what, if any, expenses are allowable. The following points should be noted:

- With regard to gym membership and special foods the question of whether or not the expense has been incurred "wholly exclusively

and necessarily" will arise. This test rules out any deduction for expenditure where a duality of purpose exists, i.e., a business and non-business related purpose, unless a specific apportionment can be made between that part of an expense which is wholly and exclusively incurred in the performance of the duties and another part which is not. Generally speaking claims for gym membership and special foods would be inadmissible on the basis that there could be no differentiation between that part of the expense incurred for the purposes of playing sport and that incurred to keep the individual fit and healthy.

- In relation to clothing and footwear, the general principle is that expenditure on clothing qualifies for a deduction under *Section 114* if it is in respect of the costs of protective clothing or a uniform. A deduction may therefore be due if a player is "necessarily obliged" to incur such costs. The question of any club and/or individual sponsorship in the provision of clothing or the provision of clothing by the club itself will also be relevant factors under this heading.
- Medical care required as a result of injuries, e.g., doctor's fees, physiotherapists, etc. may qualify for health expenses relief under *Section 469 TCA 1997*. ■

CAPITAL GAINS TAX

Development Land



Part Disposal Of Development Land

In the case of development land, indexation relief is given only in respect of that part of the amount of the base cost as is equal to the current use value of the land at the date of acquisition. Where the part disposal rules apply the application of the part disposal formula may result in a disproportionate allocation of cost being applied to the part sold. Arising from a recent decision by the Appeal Commissioners, Revenue will accept that the following treatment is to be applied.

Example

An individual acquired 50 acres of land for €100,000 (€2,000 per acre). Some years later, 10 acres are sold for €4m and the value of the remaining 40 acres is €200,000.

			€
Consideration			4,000,000
Cost:			
100,000	x	<u>4,000,000</u>	
		4,000,000 + 200,000	
100,000	x	<u>4,000,000</u>	
		4,200,000	
95,238	x	Index (say) 1.5	142,857
Chargeable Gain			3,857,143

In this example €95,238 is clearly greater than the current use value of the land disposed of, at the time of its acquisition (€20,000).

Where land is acquired at current use value and a part of that land is subsequently disposed of as development land, the allowable cost, determined by the part disposal formula, should be viewed as an allocation of the original cost rather than the market value of that part of the land at the time of its acquisition. This original cost represents current use value, at the time of acquisition and any allocation of this amount should consequently be indexed, without restriction.

On a subsequent disposal of the remaining 40 acres, the base cost of the land disposed of, will be the original cost less the base cost allocated to this disposal, i.e., €100,000 - €95,238 = €4,762

Disposal of A Garden

A similar situation arises on the disposal of a site, which was part of the garden of a principal private residence. The chargeable gain arising should be calculated as follows:

Example

An individual disposes of part of his garden for €40,000. The current use value of the site is €2,000. The entire property originally cost €100,000. The market value of the property after the sale of the site is €360,000.

Step 1. Calculate the gain arising using the part disposal rules and ignoring any development land implications.

			€
Proceeds			40,000
Cost:			
100,000	x	<u>40,000</u>	
		360,000 + 40,000	
10,000		Index (say) 1.5	15,000
Gain			25,000

Step 2. Calculate a notional gain, as if the site was sold for current use value. This is the principal residence relief.

Proceeds (say)			2,000
Cost:			
100,000	x	<u>2,000</u>	
		360,000 + 2,000	
552	x	Index (say) 1.5	828
Principal Private Residence			1,172

Step 3. Deduct 2 from 1 above. This is the chargeable gain.

Gain			25,000
Principal Private Residence			1,172
Chargeable Gain			23,828

As in the previous example, on a subsequent disposal of the remaining property, the base cost of the land disposed of, will be the original cost less the base cost allocated to this disposal.

i.e. €100,000 - €10,000 = €90,000



CAPITAL GAINS TAX

Negligible Value

Section 538 TCA 1997 provides for loss relief where the owner of an asset satisfies the inspector that its value has become negligible. The loss is calculated as if the asset was sold for an amount equal to the amount so valued.

The word 'negligible' is not defined for the purpose of the Tax Acts and therefore takes its normal meaning, i.e., not worth considering; insignificant. The concept of negligible value is not comparative in nature. A dramatic fall in the value of shares, e.g., due to the volatile nature of the sector in which it operates, would not give rise to a negligible value claim where the company continues to operate and its shares

continue to be traded. For example, shares purchased for €10M would not be regarded as having negligible value by virtue of their value decreasing to €100,000. Clearly €100,000 is not a negligible amount. Revenue do not accept that the legislation is intended to be applicable in these circumstances particularly where there would be a ready mechanism available to the shareholder to dispose of the shares. Section 538 is not intended to be a provision for making losses available on an artificial basis in circumstances where there would be no impediment to their actual disposal in the market place.

In applying the provisions of this section the inspector will look to the specific facts in ascertaining if the

Losses

value of the asset has become negligible. In the case of shares, for example, a claim will only be considered where the inspector is satisfied that they are effectively worthless. Persons claiming relief under this section should provide their inspector with full details, supported by relevant documentation, of the circumstances in which the relevant asset has become of negligible value.

Special provisions apply where the assets in question are shares in a dissolved company where the shareholder acquires property of the company following a Ministerial waiver under the *State Property Act 1954* or where the asset is a building or structure on land. ■

RETENTION OF RECORDS

Records to be retained by telecommunication service providers and certain taxpayers

The purpose of this article is to clarify Revenue's policy in relation to the obligations on telecommunication service providers and other persons to retain records under both the *Taxes Consolidation Act, 1997* and the *VAT Act, 1972* in respect of personal data relating to telephone calls made by individual subscribers to telecommunication services.

Taxpayer's statutory obligations

Section 886 TCA 1997 imposes an obligation on taxpayers, including telecommunication service providers, to keep certain records. The definition of "records" is quite broad and includes accounts, books of account, documents and other data maintained manually or by electronic, photographic or other process, relating to:

- All sums of money spent and received in the course of carrying on a trade, profession or other

activity and the purpose of such receipts and expenditure,

- All sales and purchases of goods and services where the carrying on of a trade profession or other activity involves the purchase or sale of goods or services,
- The assets and liabilities of such trade, profession or other activity,
- The acquisition and disposal of assets, which would be chargeable assets for capital gains tax purposes.

Section 16 VAT Act, 1972 also imposes an obligation on persons who are obliged under the VAT Act to operate VAT, to keep full and true records of all transactions which affect or may affect that person's VAT liability.

General rule

The general rule is that details of the dialled number, the date and time and duration of particular calls are not records that are required to be kept by telecommunication service providers or taxpayers for the purpose of any tax. The word "tax" means any tax, duty, levy or charge

under the care and management of the Revenue Commissioners.

Exceptions

However, this general rule does not apply to invoices, bills or other documents, or parts thereof, insofar as such documents or such parts show total billing amounts, or breakdowns of total billing amounts into categories of a general or aggregate nature. Accordingly, where one part of a document consists of a page or pages showing the total billing amount (or showing a breakdown of this billing amount into general or aggregate categories), and another part of the same document consists of a page or pages showing details of particular telephone calls made by individual subscribers, only the page or pages showing the total billing amount (or showing the breakdown of this amount as aforesaid) need be retained for tax purposes.

Revenue reserve the right to withdraw this policy in light of their ongoing operational requirements. ■



VAT COMMITTEE

Guidelines

The following Guidelines have been approved for publication following review by the EU Commission Services of Guidelines agreed from the meetings of the VAT Committee held on 19 June 2002 and 8 January 2003.

Meeting number 65 19 June 2002

Articles 8 and 9 - Place of supply of goods and services rendered by undertakers

Delegations agreed almost unanimously that the services supplied by the undertaker in the framework of organising a funeral should be considered as composite elements of a single service, although it still has to be determined on a case by case basis.

Furthermore delegations also agreed unanimously that the place of supply of this single service would be where the undertaker is established, in accordance with Article 9(1) of the 6th VAT Directive.

Article 12(3)(a) - VAT rates applicable to CD-ROMs

The delegations unanimously agreed that electronic media including text or spoken word were not included in Annex H, category 6.

Articles 11 and 13(B)(d)(3) - Taxable amount when goods are purchased by credit card

All delegations agreed that in circumstances where goods are sold at a given price irrespective of how payment is to be made and where a customer paying by credit card was required to pay a card-handling fee to an associate of the retailer, this fee was in principle, ancillary and subordinate to the main supply and would thus take on the same VAT liability.

Meeting number 67

Article 9 and Annex L - E-Commerce. Electronically supplied services

The Delegations agree **unanimously** that a television or radio programme that is broadcast over the Internet or similar electronic network and is simultaneously broadcast over a traditional radio and television network (i.e., by wire or over the air, including by satellite) is radio and television broadcasting within the penultimate indent of Article 9(2)(e) of the Sixth Directive. Conversely, a program that is broadcast only over the Internet or similar electronic network, is an electronically supplied service under the last indent of Article 9(2)(e).

The Delegations agree **unanimously** that distance teaching is an electronically supplied service within the meaning of the last indent of Article 9(2)(e) when it is automated and dependent on the Internet or similar electronic network to function and its supply requires little or no human involvement. Where the Internet or similar electronic network is used as a tool simply for communication between the teacher and student (e.g., e-mail), this will not be viewed as an electronically supplied service.

The Delegations agree **unanimously** that a non-established taxable person who is taxable under the special scheme provided for under Article 26C, may cease to qualify for the special scheme under that Article at anytime throughout a calendar quarter where any of the criteria for exclusion are satisfied. The non-established taxable person is required to submit any outstanding return up to the end of the calendar quarter in which they were excluded. The requirement to submit this return has no effect on the requirement, if any, for the non-established taxable person to register under the normal procedures

in a Member State immediately upon exclusion from the special scheme.

The Delegations agree **unanimously** that where a non-established taxable person declares and remits an amount of VAT to the Member State of Identification, who in turn distributes the amount to the Member State of Consumption, and the Member State of Consumption subsequently realises that the amount is too high, the Member State of Consumption will advise the Member State of Identification of the adjustment and send the overpayment directly to the non-established taxable person. The Delegations also agree unanimously that where a non-established taxable person remits, in relation to the declaration, an overpayment of VAT to the Member State of Identification, this Member State will return the overpaid amount directly to the non-established person.

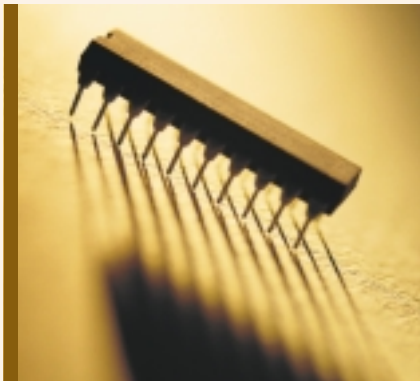
The Delegations agree **unanimously** that each reporting period of a non-established taxable person to the Member State of Identification under the special scheme set out in Article 26C, is treated as an independent, closed reporting period.

The Delegations agree **unanimously** that, in respect of returns made under the special scheme set out in Article 26C, the Directive does not permit the rounding of amounts to the nearest whole monetary unit (e.g., Euro) and that the exact amount of VAT must be reported and remitted in accordance with the Sixth Directive.

The Delegations agree **unanimously** that where potential sellers obtain the right to list an item for sale on a website (e.g., an online market place) in exchange for a fee (e.g., a listing fee and/or a success fee), potential buyers bid for the item on the website via an automated process, the parties are notified by an automatically computer generated e-mail in the event of a completed sale and the buyer and the seller

VAT COMMITTEE

Guidelines



ultimately complete the sale, the service provided by the website operator (e.g., the operator of the online market place) is considered to be an electronically supplied service under the last indent of Article 9(2)(e). Such supplies may well constitute, at least in part, web-hosting services.

The Delegations agree **unanimously** that the attached Guide to Interpretation and accompanying tables set out the guidance on what is meant by “electronically supplied services” for purposes of the last indent of Article 9(2)(e) of the Sixth VAT Directive.

Annex

“Electronically Supplied Services”

Guide to Interpretation

Introduction

This document sets out guidance on what is meant by “electronically supplied services” and will help businesses decide whether their services fall within the place of supply rules for such services (as per the last indent of Article 9(2)(e) of the Sixth VAT Directive). This document only addresses the place of supply issue.

The attached tables give examples of transactions that are either included or excluded from the definition of

“electronically supplied services”. Supplies of goods or supplies of services that are excluded from the definition are treated in accordance with other place of supply rules.

What is an “electronically supplied service”?

An “electronically supplied service” is one that:

- In the first instance is delivered over the Internet or an electronic network (i.e., reliant on the Internet or similar network for its provision); and then
 - The nature of the service in question is heavily dependent on information technology for its supply (i.e., the service is essentially automated, involving minimal human intervention and in the absence of information technology does not have viability.).
- Therefore, on the basis of this two step test, an “electronically supplied service” includes:
- *Digitised products* generally, such as software and changes to or upgrades of software; or
 - *A service* which provides, or supports a business or personal presence on an electronic network (e.g., web site or web page); or
 - *A service automatically generated from a computer*, via the Internet or an electronic network, in response to specific data input by the customer; or
 - *Services, other than those specifically mentioned in Annex L, which are automated and dependent on the Internet or an electronic network for their provision.*

Telecommunications and radio and television broadcasting services, covered respectively in the ninth and penultimate indents of Article 9(2)(e)

of the Sixth VAT Directive, are not regarded as electronically supplied services for purposes of this Directive.

In general, the use of the Internet or other electronic networks by parties to communicate with respect to transactions or to facilitate trading does not, any more than the use of a phone or fax, affect the normal VAT rules that apply. For example, where parties simply use the Internet to convey information in the course of a business transaction (e.g., e-mail), this does not change the nature of that transaction. This differs from a supply that is completely dependent on the Internet in order to be carried out (e.g., searching and retrieving information from a database with no human intervention).

In all instances, electronically supplied services will be taxable at the standard rate established by a Member State (in accordance with Article 12(3)(a) of the Sixth Directive), unless an exempting provision in a Member State applies. For example, when considering the supply of gambling, if the supply in the traditional manner is exempt in a Member State, it would also be exempt if it constituted a supply of an electronically supplied service.

The attached tables illustrate the above approach by classifying a range of supplies to provide clear examples of those that are regarded as being electronically supplied services and those that are not. This Guidance is not intended to be exhaustive.

Supplies shown as excluded are treated in accordance with other place of supply rules. Particular care should be taken where a service includes both electronic and other elements. Such composite transactions must generally be considered on a case-by-case basis.

Continued on page 22



VAT COMMITTEE (Guidelines)

Continued from page 21

Table 1

Annex L Reference	Supplies Covered by the Legal Text	Example of a Service That is an Electronically Supplied Service
<i>Item 1</i>	A. Web site supply, web-hosting and distance maintenance of programmes and equipment	<ul style="list-style-type: none"> ● Web-site hosting and web-page hosting ● Automated, on-line distance maintenance of programmes ● Remote systems administration ● On-line data warehousing (i.e., where specific data is stored and retrieved electronically) ● On-line supply of on-demand disc space
<i>Item 2</i>	A. Software and updating thereof	<ul style="list-style-type: none"> ● Accessing or downloading software (e.g., procurement/accountancy programmes, anti-virus software) plus updates ● Bannerblockers (software to block banner adverts showing) ● Download drivers, such as software that interfaces PC with peripheral equipment (e.g., printers) ● On-line automated installation of filters on web-sites ● On-line automated installation of firewalls
<i>Item 3</i>	A. Images B. Text and information C. Making databases available	<ul style="list-style-type: none"> ● Accessing or downloading desktop themes ● Accessing or downloading photographic or pictorial images or screensavers ● The digitised content of books and other electronic-publications ● Subscription to on-line newspaper and journals ● Weblogs and website statistics ● On-line news, traffic information and weather reports ● On-line information generated automatically by software from specific data input by the customer, such as legal and financial data (e.g., continually updated stock market data) ● The provision of advertising space (e.g., banner ads on a web site/web page) ● Use of search engines and Internet directories
<i>Item 4</i>	A. Music B. Films C. Broadcasts and events - political, cultural, artistic, sporting, scientific and entertainment D. Games, including games of chance and gambling games	<ul style="list-style-type: none"> ● Accessing or downloading of music onto PCs, mobile phones, etc. ● Accessing or downloading of jingles, excerpts, ringtones, or other sounds ● Accessing or downloading of films ● Web-based broadcasting that is only provided over the Internet or similar electronic network and is not simultaneously broadcast over a traditional radio or television network, as opposed to Item 4, Table 2 ● Downloads of games onto PCs, mobile phones, etc. ● Accessing automated on-line games which are dependent on the Internet, or other similar electronic networks, where players are remote from one another



VAT COMMITTEE

Guidelines

Annex L Reference	Supplies Covered by the Legal Text	Example of a Service That is an Electronically Supplied Service
Item 5	A. Distance teaching	<ul style="list-style-type: none"> Teaching that is automated and dependent on the Internet or similar electronic network to function, including virtual classrooms, as opposed to Item 2(b), Table 2. Workbooks completed by pupil on-line and marked automatically, without human intervention
Item 6 Other services included:	A. Those not explicitly listed in Annex L	<ul style="list-style-type: none"> On-line auction services (to the extent that they are not already considered to be web-hosting services under Item 1) that are dependent on automated databases and data input by the customer requiring little or no human intervention (e.g., an on-line market place or on-line shopping portals), as opposed to Item 3(f), Table 2. Internet Service Packages (ISPs) in which the telecommunications component is an ancillary and subordinate part (i.e., a package that goes beyond mere Internet access comprising various elements (e.g., content pages containing news, weather, travel information; games fora; web-hosting; access to chat-lines etc.))

Table 2

Example of a Transaction Not Considered to be a Supply of an "Electronically Supplied Service"	Rationale
1) A supply of . . . a) A good, where the order and processing is done electronically b) A CD-ROM, floppy disc and similar tangible media c) Printed matter such as a book, newsletter, newspaper or journal d) A CD, audio cassette e) A Video cassette, DVD f) Games on a CD-ROM	<ul style="list-style-type: none"> These are supplies of goods
2) A supply of . . . a) services of lawyers and financial consultants, etc., who advise clients through e-mail b) interactive teaching services where the course content is delivered by a teacher over the Internet or an electronic network (i.e., via remote link)	<ul style="list-style-type: none"> This is a supply of service that relies on substantial human intervention and the Internet or electronic network is only used as a means of communication
3) A supply of . . . a) Physical repair services of computer equipment b) Off-line data warehousing services c) Advertising services, such as in newspapers, on posters and on television d) Telephone helpdesk services e) Teaching services involving correspondence courses such as postal courses f) Conventional auctioneers' services reliant on direct human intervention, irrespective of how bids are made (e.g., in person, Internet or telephone), as opposed to Item 6(a), Table 1	<ul style="list-style-type: none"> These are supplies of services that are not delivered over the Internet and rely on substantial human intervention

Continued on page 24



VAT COMMITTEE (Guidelines)

Continued from page 23

Example of a Transaction Not Considered to be a Supply of an "Electronically Supplied Service"	Rationale
4) A supply of a radio and television broadcasting service provided over the Internet or similar electronic network simultaneous to the same broadcast being provided over traditional radio or television network, as opposed to Item 4(c),	<ul style="list-style-type: none"> This is a supply of a radio and television broadcasting service, which is covered by the penultimate indent of Article 9(2)(e)
5) A supply of . . . a) Videophone services (i.e., telephone services with a video component) b) Access to the Internet and World Wide Web c) Telephony (i.e., telephone service provided through the Internet)	<ul style="list-style-type: none"> These are supplies of telecommunication services and are covered by the place of supply rules for such services under the ninth indent of Article 9(2)(e)

CGT

Rolled Over Gain

Arising from a recent decision by the Appeal Commissioners, the following treatment is to be applied where a gain, which had been rolled over, crystallises on the disposal of a "replacement asset". Where by virtue of roll-over relief, capital gains tax has been deferred, the deferred gain may subsequently crystallise in certain circumstances including, for example, the sale of the new assets without further re-investment and the cessation of trade. In calculating the tax on the deferred gain, the rate of tax to be charged on the gain is the rate pertaining at the date of the event which gives rise to the crystallisation of the gain and not the date of the original disposal of the asset, the gain on which was deferred.

It should be borne in mind, however, that indexation will only apply to the date of the original disposal. ■



LATE PAYMENT IN COMMERCIAL TRANSACTIONS

Tax treatment of interest and compensation paid under S.I. No. 388 of 2002 European Communities (Late Payment in Commercial Transactions) Regulations 2002

General

This article sets out the tax treatment of interest and compensation paid under the new Regulations. The tax treatment of interest payments made under the *Prompt Payment of Accounts Act, 1997* is outlined in an article in Issue 31 of *Tax Briefing*.

With effect from 7 August 2002 the Regulations give effect to Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions. They apply, with some exceptions, to commercial transactions in both the public and private sectors and amend the *Prompt Payments of Accounts Act, 1997*.

The new Regulations provide that interest shall be payable in respect of a late payment. In contrast to interest paid under the *Prompt Payment of Accounts Act 1997*, it will now be an implied term of every contract that interest is payable if debts are not paid on time. A payment is regarded as late when 30 days have elapsed unless an alternative payment period is specified in an agreed contract. The interest chargeable for late payment is the European Central Bank main refinancing rate plus seven percentage points unless otherwise agreed.

Also there is provision that compensation may be claimed for

debt recovery costs. Like the "late payment interest", compensation is an implied term of every "commercial transaction", i.e., it forms part of the terms of the contract itself and is not in addition to the contract.

Tax treatment of interest paid under S.I. No. 388 of 2002

VAT

The payment received in respect of interest under S.I. No. 388 of 2002, European Communities (Late Payment in Commercial Transactions) Regulations 2002 is not regarded as consideration for VAT purposes. Accordingly, any such payment collected by a taxable person from a customer, due to the late payment of that customer's account, does not represent consideration for a taxable supply and is not, therefore, liable to VAT.

Income Tax/Corporation Tax

The interest is regarded as a trade expense, which is tax deductible in computing the profits of the person making the payment (i.e., the purchaser).

The interest is taxable in the hands of the recipient (i.e., the supplier). Although strictly chargeable under Case III of Schedule D, it may be included as a trade receipt and accordingly assessed under Schedule D Case I.

Professional Services Withholding Tax (PSWT)

Unlike interest paid under the *Prompt Payment of Accounts Act, 1997*, interest paid under the new Regulations is an

implied term of the contract.

Accordingly, where interest is paid in accordance with Regulation 4 of the new Regulations on foot of payments, which are payments for professional services, within the meaning of *Section 520 TCA 1997*, PSWT should **be deducted** from the interest. When completing Forms F45 for issue to specified persons (i.e., suppliers), accountable persons should include interest amounts.

Relevant Contracts Tax

Where interest is paid in accordance with Regulation 4 of the new Regulations on foot of payments, which are payments to subcontractors in certain industries, within the meaning of *Section 531 TCA 1997*, RCT should be deducted from the interest. When completing Forms RCTDC for issue to sub-contractors, principal contractors should include interest amounts.

Withholding tax on interest payments by companies and to non-residents

Unlike interest paid under the *Prompt Payments of Accounts Act, 1997* interest paid under the new Regulations is not yearly interest. Accordingly, *Section 246 TCA 1997* does not apply where penalty interest is paid.

Tax treatment of compensation paid under S.I. No. 388 of 2002

The tax treatment of compensation paid under the new Regulations is the same as interest paid under the Regulations as outlined above, with the exception that the issue of the application of *Section 246 TCA, 1997* does not arise. ■



SHARE OPTIONS

Payment of Tax

Payment of tax in respect of share options in certain circumstances

Section 7, Finance Act, 2003 amends the payment arrangements in relation to income tax due in respect of the acquisition of shares under share options granted under unapproved share option schemes. Under existing rules, when such an option is exercised, an income tax charge arises, under *Section 128 TCA 1997*, on the gain from the exercise of the option, that is, on the difference between the market value of the shares on the date of exercise and the amount paid for the shares (i.e., the option price). The income tax is payable under self-assessment. However, in respect of share options exercised on or after 6 April 2000, the taxpayer may elect, under *Section 128A TCA 1997*, to defer the payment of the income tax for seven years or until the shares are disposed of, whichever is the earlier.

Section 7, Finance Act, 2003 provides for an extended deferral of the income tax liability in circumstances where the market value of shares acquired by the exercise of a share option has, when the income tax is due for payment, fallen below the amount of the income tax chargeable under *Section 128, TCA 1997* in respect of the acquisition of the shares.

Section 7, Finance Act, 2003 also abolishes the existing option to defer payment of the income tax for share options exercised after the passing of the Act (28 March 2003).

In the case of share options exercised before 6 February 2003, the new provision provides that payment of the income tax liability, whether currently due or deferred, may, at the election of the taxpayer, be satisfied by way of a payment on account equal to the market value of the shares at specified dates with the balance of the income tax being deferred until the taxpayer, or his or her spouse, disposes of the shares or any other shares. It should be noted in particular that:

- Where income tax paid before 6 February 2003 exceeds the payment on account under these arrangements there is NO right to repayment of the excess, and
- To qualify for this payment on account provision, any other income tax liability arising from the exercise of share options (and which does not qualify under this payment on account option) must have been paid or been included in an instalment arrangement acceptable to the Collector-General.

Section 8 Finance Act, 2003 provides for a new scheme of payment in respect of share options exercised on or after 30 June 2003 and this will be the subject of an Article in the next issue of **Tax Briefing**.

For the purposes of this article the following terms have the meanings set out hereunder:

'relevant shares': shares acquired between 6 April 2000 and the 5 February 2003 as a result of the exercise of an option.

'relevant year': the year of assessment in which the option was exercised.

'any shares': includes securities within the meaning of *Section 135*,

TCA 1997 and stock (i.e., shares, securities, stock and any other interest in a company).

'market value': as defined in *Section 548, TCA 1997*. (i.e., in the case of shares quoted on a stock exchange the price quoted, and in the case of shares which are unquoted, the price they might reasonably be expected to fetch on a sale in the open market.)

Election

An election must be made by the individual to avail of the new payment provisions. The election must be made to his/her Inspector **on or before 1 June 2003**. This will be regarded as a protective election only for those individuals who fall into categories (a) (where the relevant shares have not yet been disposed of), (b), (c) and (d) below. The payment on account must be paid to the Collector-General **on or before 30 June 2003** by individuals falling into categories (a) (where the relevant shares have been disposed of) and (e) below.

There are five categories of individuals who may elect for the new provision to apply.

(a) Persons who had already made an election under section 128A to defer the payment of income tax due on the exercise of a share option and dispose of the relevant shares within the seven year deferral period.

Where an individual has already made an election to defer the payment of the income tax due on the exercise of share options and disposes of the relevant shares within the seven year deferral period the income tax would be due on 31 October following the year in which the relevant shares were sold.

Under the new provision where:

- The market value of the relevant shares at the date of disposal was less than the income tax due, and



SHARE OPTIONS

Payment of Tax

- The income tax due on the exercise of the share option is still unpaid

an individual may, following an election to his/her Inspector on or before 1 June 2003, make a payment on account to the Collector-General equal to the market value of the relevant shares on the date of disposal of the relevant shares. The payment must be made by the later of 30 June 2003 or 30 days after the date of the disposal of the relevant shares. Any tax paid before 6 February 2003 which is in excess of the payment on account will **NOT** be refunded.

The balance of the income tax due after the payment on account will become due for payment by reference to the net gains, after tax, made by the individual, or his or her spouse (please refer to the paragraph on 'Disposals by Spouse' below), on any subsequent disposal of **any shares** after the date of disposal of the relevant shares.

Example 1

Mr A exercised his share option on 1 June 2000. The income tax due as a result of the exercise of the share option was €50,000. He made his election to defer the income tax due on the exercise of his share option on or before 31 January 2002. Mr A sold his shares on 1 July 2002.

The market value of the relevant shares at the date of sale was €30,000.

Prior to the Finance Act, 2003 Mr A would have to pay income tax of €50,000 to the Collector-General on or before 31 October 2003.

Following the Finance Act, 2003 Mr A may make an election on or before 1 June 2003 to make a payment on account equal to the market value of the relevant shares at the date of disposal of the relevant shares.

Mr A pays €30,000 to the Collector-General on or before 30 June 2003.

Mr A sells other shares on 1 May 2005 with a net gain of €80,000 (after income tax, if due, and capital gains tax). The balance of the income tax due, €20,000 must be paid to the Collector-General on or before 31 October 2006.

Example 1A

If in Example 1 Mr A did not sell the relevant shares, acquired as a result of the exercise of the share option on 1 June 2000, he may following the Finance Act, 2003 make a protective election on or before 1 June 2003 to make a payment on account equal to the market value of the relevant shares at the date of disposal of the relevant shares.

If Mr A sells the relevant shares on 1 July 2004 for €30,000.

The payment on account (€30,000) must be made on or before 30 July 2004.

(b) Persons who elected under section 128A to defer the income tax due on the exercise of a share option and still hold the relevant shares at 31 December in the year of assessment beginning seven years after the relevant year.

Where an individual has already made an election to defer the income tax due on the exercise of a share option and still retains the relevant shares at 31 December in the year of assessment beginning seven years after the relevant year, the income tax would be due on 31 October in the year of assessment following the year of assessment beginning seven years after the relevant year.

Under the new provision where such an individual:

- Still retains the relevant shares at 31 December in the year of assessment beginning seven years after the relevant year, and

- The market value of the relevant shares at that 31 December is less than the income tax due on the exercise of the relevant shares,

he/she may, following a protective election to his/her Inspector on or before 1 June 2003 make a payment on account to the Collector-General equal to the market value of the relevant shares at that 31 December. The payment must be made within 30 days after that 31 December.

The balance of the income tax due after the payment on account will become due for payment by reference to the net gains, after tax, made by the taxpayer, or his or her spouse (please refer to the paragraph on 'Disposals by Spouse' below), on any subsequent disposal of **any shares** after that 31 December.

Example 2

Mr A exercised his share option on 1 June 2000. The income tax due as a result of the exercise of the share option was €60,000. He made his election to defer the income tax due on the exercise of his share option on or before 31 January 2002. Mr A still retains the relevant shares at 31 December 2007.

The market value of the relevant shares at 31 December 2007 is €40,000.

Prior to the Finance Act, 2003 Mr A would have to pay €60,000 to the Collector-General on or before 31 October 2008.

Following the Finance Act, 2003 Mr A may make a protective election on or before 1 June 2003 to make a payment on account equal to the market value of the relevant shares at the 31 December 2007.

Continued on page 28



SHARE OPTIONS

Continued from page 27

Mr A pays €40,000 to the Collector-General within 30 days of 31 December 2007.

Mr A sells other shares on 1 May 2009 with a net gain of €80,000 (after income tax, if due, and capital gains tax). The balance of the income tax due, €20,000 must be paid to the Collector-General on or before 31 October 2010.

(c) Persons entitled to make an election, under section 128A, after 6 February 2003 and on or before 31 October 2003 or 31 October 2004 as appropriate, to defer the income tax due on the exercise of a share option but did not do so (i.e., persons who exercised share options between 1 January 2002 and 5 February 2003).

Prior to the Finance Act, 2003 the income tax due on the relevant shares would be payable by such individuals on or before 31 October 2003 or 31 October 2004 as appropriate irrespective of whether the relevant shares were sold or retained on those respective dates.

Under the new provision such an individual may make a protective election on or before 1 June 2003 and avail of the following:

- Where the income tax due on the relevant shares is payable on or before 31 October 2003 or 31 October 2004 as appropriate, and
- The market value of the relevant shares at
 - (a) the 31 October 2003 or 31 October 2004, as appropriate, where the relevant shares are still retained, or
 - (b) the date of disposal if the relevant shares have been disposed of before 31 October 2003 or 31 October 2004 as appropriate,

is less than the income tax due,

the individual may following an election to his/her Inspector on or before 1 June 2003 make a payment on account to the Collector-General equal to the market value of the relevant shares at:

- (a) 31 October 2003 or 31 October 2004 as appropriate, or
- (b) the date of disposal, if earlier.

The payment must be made within 30 days after 31 October 2003 or 31 October 2004 as appropriate.

The balance of the income tax due after the payment on account will become due for payment by reference to the net gains, after tax, made by the taxpayer, or his or her spouse (please refer to the paragraph on 'Disposals by Spouse' below), on any subsequent disposal of **any shares** after 31 October 2003 or 31 October 2004 as appropriate or the date of disposal, if earlier.

Example 3

Mr A exercised his share option on 1 June 2002. The income tax due as a result of the exercise of the share option is €60,000. He makes no election to defer the income tax due on the exercise of his share option on or before 31 October 2003. Mr A still retains the relevant shares at 31 October 2003.

The market value of the relevant shares at 31 October 2003 is €40,000.

Prior to the Finance Act, 2003 Mr A would have to meet his preliminary tax obligations and pay any balance of the €60,000 to the Collector-General on or before 31 October 2003.

Following the Finance Act, 2003 Mr A may make a protective election on or before 1 June 2003 to make a payment on account equal to the market value of the relevant shares at the 31 October 2003. Mr A pays €40,000 to the Collector-General within 30 days of 31 October 2003.

Mr A sells other shares on 1 May 2006 with a net gain of €80,000 (after income tax, if due, and capital gains tax). The balance of the income tax due, €20,000 must be paid to the Collector-General on or before 31 October 2007.

Example 4

Mr A exercised his share option on 1 June 2002. The income tax due as a result of the exercise of the share option is €60,000. He makes no election to defer the income tax due on the exercise of his share option on or before 31 October 2003. Mr A still retains the relevant shares at 31 October 2003.

The market value of the relevant shares at 31 October 2003 is €80,000.

Mr A has to meet his preliminary tax obligations and pay any balance of the €60,000 to the Collector-General on or before 31 October 2003.

Mr A makes a protective election on or before 1 June 2003 to make a payment on account equal to the market value of the relevant shares on 31 October 2003. The provisions of *Section 7, Finance Act, 2003* are not available to Mr A at 31 October 2003 as the market value of the relevant shares at that date is greater than the income tax due.

(d) Persons entitled to make an election under section 128A to defer the income tax due on the exercise of a share option before 6 February 2003 and where the relevant shares have been disposed of but the income tax is not due until 31 October 2003 or 31 October 2004 as appropriate.

Prior to the Finance Act, 2003 the income tax would be payable by such individuals on or before 31 October 2003 or 31 October 2004, as appropriate.



SHARE OPTIONS

Payment of Tax

Under the new provision:

- Where the income tax due on the relevant shares is payable on or before 31 October 2003 or 31 October 2004 as appropriate, and
- The market value of the relevant shares at the date of disposal is less than the income tax due,

an individual may make a protective election on or before 1 June 2003 and make a payment on account to the Collector-General equal to the market value of the relevant shares at the date of disposal.

The payment must be made within 30 days after 31 October 2003 or 31 October 2004 as appropriate.

The balance of the income tax due after the payment on account will become due for payment by reference to the net gains, after tax, made by the taxpayer, or his or her spouse (please refer to the paragraph on 'Disposals by Spouse' below), on any subsequent disposal of any shares after 31 October 2003 or 31 October 2004 as appropriate or the date of disposal, if earlier.

Example 5

Mr A exercised his share option on 1 June 2002. The income tax due as a result of the exercise of the share option is €60,000. He made his election to defer the income tax due on the exercise of his share option on 1 August 2002. Mr A sold the shares on 1 December 2002.

The market value of the relevant shares at 1 December 2002 was €40,000.

As Mr A sold the shares in the same year as the share option were exercised he was not entitled to make an election to defer the income tax due on the exercise of the share option.

Prior to the Finance Act, 2003 Mr A would have to meet his preliminary tax obligations and pay any balance of the €60,000 to the Collector-General on or before 31 October 2003.

Following the Finance Act, 2003 Mr A may make a protective election on or before 1 June 2003 to make a payment on account equal to the market value of the shares at the date of disposal.

Mr A pays €40,000 to the Collector-General within 30 days of 31 October 2003.

Mr A sells other shares on 1 May 2006 with a net gain of €80,000 (after income tax, if due, and capital gains tax). The balance of the income tax due, €20,000 must be paid to the Collector-General on or before 31 October 2007.

(e) All other cases

In all cases other than those referred to above where an individual has exercised a share option:

- Before 6 February 2003, and
- The market value of those shares on 6 February 2003 or at the date of disposal if earlier, is less than the income tax due

he/she may, following an election to his/her Inspector on or before 1 June 2003 make a payment on account to the Collector-General equal to the market value of the shares at 6 February 2003 or the date of disposal if earlier.

The payment must be made **by 30 June 2003**.

The balance of the income tax due after the payment on account will become due for payment by reference to the net gains, after tax, made by the taxpayer, or his or her spouse (please refer to the paragraph on 'Disposals by Spouse' below), on any subsequent disposal of any shares after 6 February 2003.

Example 6

Mr A exercised his share option on 1 June 1999. The income tax due as a result of the exercise of the share option is €60,000. No election to defer the income tax is available. Mr A still retains the relevant shares at 6 February 2003.

The market value of the relevant shares at 6 February 2003 is €40,000.

Prior to the Finance Act, 2003 Mr A would have to meet his preliminary tax obligations and pay any balance of the €60,000 to the Collector-General on or before 30 April 2001.

Following the Finance Act, 2003 Mr A may make an election on or before 1 June 2003 to make a payment on account equal to the market value of the relevant shares at the 6 February 2003.

Mr A pays €40,000 to the Collector-General on or before 30 June 2003.

Mr A sells other shares on 1 May 2005 with a net gain of €80,000 (after income tax, if due, and capital gains tax). The balance of the income tax due, €20,000 must be paid to the Collector-General on or before 31 October 2006.

Example 7

Mr A exercised his share option on 1 June 1999. The income tax due as a result of the exercise of the share option is €100,000. No election to defer the income tax is available. Mr A still retains the shares at 6 February 2003 at which date the market value is €40,000.

Continued on page 30



SHARE OPTIONS

Continued from page 29

Prior to the Finance Act, 2003, Mr. A had entered into an instalment arrangement with the Collector-General for the payment of the income tax and at 6 February 2003, €50,000 had been paid.

Following the Finance Act, 2003 Mr A may make an election on or before 1 June 2003 to make a payment on account equal to the market value of the shares at the 6 February 2003 i.e. €40,000.

As Mr A has already paid in excess of the payment on account he does not for the present have to pay any further income tax. However, he is NOT entitled to repayment of the €10,000 paid in excess of the payment on account.

Mr A sells other shares on 1 May 2005 with a net gain of €80,000 (after income tax, if due, and capital gains tax). The balance of the income tax due, €50,000 must be paid to the Collector-General on or before 31 October 2006.

Balance of income tax remaining unpaid

It should be noted that where a payment on account has been made and the balance of the income tax liability deferred, then the balance remaining unpaid will be due for payment by reference to subsequent disposals of **any shares** by the taxpayer or his or her spouse.

The amount to be paid in any year of assessment in respect of the outstanding liability will be the lesser of:

- The net balance(s) of income tax remaining unpaid, by reference to **paragraphs (a), (b), (c), (d) or (e)**, after any previous payments have been taken into account, and
- The aggregate of the net gains (if any) arising from share disposals by the taxpayer and/or his or her spouse in that year of assessment.

The net gain from any particular disposal is the excess (if any) of the market value of the shares at the date of disposal over the acquisition costs (option price and ancillary costs) and any tax chargeable or actually paid (depending on the circumstances) in respect of the acquisition or the disposal of those shares. Where the shares disposed of are shares in respect of which the income tax has been deferred under the new provision, credit in computing the net gain will be given only for income tax actually paid in respect of the shares **prior** to the disposal. Where the disposal is of shares to which the new provision does not apply, then credit will be given for the income tax chargeable in respect of the acquisition of those shares. The due date for the payment of the sum is 31 October in the year following the year in which the disposals take place.

Example 8*

Mr A exercised his share option on 1 June 2000. The income tax due as a result of the exercise of the share option was €50,000. He made his election to defer the income tax due before 31 January 2002. Mr A sold his shares on 1 July 2002.

The market value of the relevant shares at the date of sale was €30,000. Mr A makes an election on or before 1 June 2003 to make a payment on account based on the market value of the relevant shares at 1 July 2002. This payment is made on 30 June 2003.

Mr A sells other shares (not acquired under a share option) on 1 May 2005. The market value of these shares was €100,000. Mr A acquired these shares on 1 June 2004 for €80,000. The net gain is calculated as follows:

Capital gains tax due on sale of shares 1 May 2005

Sale proceeds	€100,000
Cost	€80,000
Chargeable Gain	€20,000
Capital gains tax due @ 20% =	€4,000

Net gain is therefore

$$€100,000 - (€80,000 + €4,000) = €16,000$$

Payment of balance of income tax due

Income tax due on exercise of share option	€50,000
Payment on account on 30 June 2003	€30,000
Balance of income tax due	€20,000
Payment due 31 October 2006	€16,000
Balance still outstanding/deferred	€ 4,000

* For the purpose of this example indexation and the capital gains tax annual exemption have been ignored.

Example 9*

Mr A exercised his share option on 1 June 2000. The income tax due as a result of the exercise of the share option was €60,000. He made his election to defer the income tax due on the exercise before 31 January 2002. Mr A sold his shares on 1 July 2002.

The market value of the relevant shares at the date of sale was €30,000. Mr A makes an election on or before 1 June 2003 to make payment on account based on the market value of the relevant shares at 1 July 2002. This payment is made on 30 June 2003.

Mr A exercised another share option on 1 August 2003 for a price of €80,952. The market value of the shares was €200,000 giving rise to an income tax liability of €50,000. Mr A sells these shares on 1 July 2004 when their market



SHARE OPTIONS

Payment of Tax

value was €300,000. The net gain arising from this disposal is calculated as follows:

Income tax liability for share options exercised 1 August 2003

Market value of shares at 1 August 2003	€200,000
Option Price	€80,952
Share option gain	€119,048

Income tax due €119,048 at 42% = €50,000

* For the purpose of this example indexation and the capital gains tax annual exemption have been ignored.

Capital gains tax liability for shares sold 1 July 2004

Sale proceeds	€300,000
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Cost

Price paid	€80,952
Amount chargeable to income tax	€119,048
Chargeable Gain	€100,000

Capital gains tax due @ 20% = €20,000

Net gain is therefore

€300,000 - (€80,952 + €50,000 + €20,000) = €149,048

Payment of balance of income tax due on options exercised on 1 June 2000

Income tax due on exercise of share option	€60,000
Payment on account on 30 June 2003	€30,000
Balance of income tax due	€30,000
Payment due 31 October 2005	€30,000

Persons wishing to avail of the provision

An individual who wishes to avail of the new provision must make a written election to his/her inspector, **on or before 1 June 2003**, on Form SO3 (available at www.revenue.ie) and make the required payment on account to the Collector-General on or before the required payment date.

Late Election

There is provision for the admission of a late election in circumstances where Revenue is satisfied that the late election was due to absence, illness or other reasonable cause. Applications for late elections should be made in writing to the individual's Inspector outlining the reason(s) for the late election.

Where a person fails to comply with the provision

Where an individual, having elected to avail of the new provision, subsequently fails to comply fully with its requirements, the full liability to income tax will be due and payable as if no election was made and interest and penalties will arise where relevant.

Death

Where an individual who has availed of the provision to defer the income tax due on the exercise of a share option or to make a payment on account dies, the balance of any outstanding liability will be discharged by the Revenue Commissioners, and will not be a charge on the estate of the deceased person.

Payments prior to 6 February 2003

Any amounts paid prior to 6 February 2003 in respect of income tax arising on the exercise of a share option will not be repaid.

Disposals by spouse

The reference to the disposal of **any shares** by an individual who has availed of the new provision includes disposals by his/her spouse where they are assessed to tax on the aggregation basis or where a transfer takes place between spouses on or after 25 February 2003 except where the spouses are separated or the marriage has been dissolved.

Loss for capital gains tax purposes

Where an individual makes an election under paragraphs (a) to (e) above, any capital loss arising on the disposal of those shares will not be available for set off until the full income tax liability due as a result of the exercise of a share option has been paid.

Part disposal

The payment on account provision applies to part disposals of relevant shares.

Interest

The due date for the payment of income tax deferred on the exercise of a share option will, for the purposes of interest on overdue tax, be the date when the sum is due and payable.

Options exercised on or after 6 February 2003

The payment on account provision cannot be claimed in respect of income tax due on share options exercised on or after 6 February 2003.

Deferral of income tax on the exercise of such share option(s) can continue to be claimed under the old regime for share option(s) exercised between 6 February 2003 and 28 March 2003.

The election to defer the income tax due on the exercise of share option(s) will no longer be available in respect of share options exercised after 28 March 2003.

Previous Articles

Tax Briefing Issues No 40, 41, 46, 48 and 50. ■



REVENUE ON-LINE SERVICE

Update

Revenue On-Line Service Enhancements - April 2003

The latest phase of ROS was released on 13th April 2003 and includes the following:

■ Electronic filing of Relevant Contracts Tax Forms - RCT30

Form RCT 30 is the monthly return by principal contractors of amounts deducted from payments to uncertified sub-contractors during the previous month. This form will be available in the online version.

■ Enhanced P45 Inbox facilities

This will allow ROS customers to more easily access details of individual P45's filed through ROS. Searches by PPS Number or Surname will now be possible.

■ Introduction of ROS Network Launcher

This will enable ROS customers to install the ROS offline launcher to either the C drive (default) or to a network drive in their own office, which can then be accessed by multiple users. Before installing this version, network administrators should contact roshelp@revenue.ie for technical assistance.

■ Enhancements to Vehicle Registration electronic filing

- Same day amendments for Vehicle Registration Forms, e.g., change of name and address or company to individual.
- Instant AEP Statements will be available through ROS.

Our Information desk continues to be available week-days from 8.30a.m. to 6.30p.m. (6.00pm on Friday) at Locall 1890 20 11 06 or by email at roshelp@revenue.ie if you have any queries or difficulties.

ROS Presentations.

ROS presentations will re-commence in May 2003 and will be held at locations and dates to be advised. If you would like to attend a presentation or require any further information on ROS please email rosmanager@revenue.ie

ROS Liaison Officers will be available to visit clients' offices and provide any necessary assistance. A full list of ROS Liaison Officers is available in the Help facility on the ROS site (which can be accessed through the main Revenue Website at www.revenue.ie). Additional officers will shortly be coming on stream and a revised list will be made available on the site. If you have any queries regarding ROS or would like more information, please contact your local liaison officer and they will be glad to deal with any issues that you have. ■

REVENUE NEWS

Update

Updated Leaflets

Leaflet IT1

Leaflet IT1 Tax Credits, Reliefs and Rates for the Tax Years 2002 and 2003 has been updated and is available on the Revenue Website at www.revenue.ie.

Tax Relief for Investment in Films

Please note that guidelines on the operation of *Section 481 TCA 1997* (Tax Relief for investments in Films) are now available on the Revenue Website.

Deposit Interest - Whether a Trading Receipt

The Revenue Commissioners have amended the Information Notice "Deposit Interest - Whether a Trading Receipt?" to allow for an increase in the amount of regulatory capital that can be invested by a company and for the deposit interest to be assessed as Case I. The amendment will be of interest to companies that are required by regulatory authorities such as the Central Bank of Ireland or the Department of Enterprise, Trade and Employment to retain a certain level of permanent capital in the business. The Information Notice can be found on the Revenue website under Technical Guidelines in the Publications section. The amended paragraph is headed "1. Regulatory Capital Requirement". ■