

TAX BRIEFING

FIRST ACTIVE SHARES



Introduction

First Active plc. was acquired by the Royal Bank of Scotland in January 2004 and shareholders in First Active received a cash payment for their shareholding. This cash payment gives rise to a capital gains tax exposure later this year. In this article we give an overview of the capital gains tax implications of this event and show, with examples, the calculation of the capital gains tax liability arising in a number of different situations.

Cash Payment

On 5 January 2004 the Royal Bank of Scotland (RBS) acquired First Active plc for cash. The acquisition was effected by a scheme of arrangement whereby a wholly owned subsidiary of RBS paid cash to First Active shareholders in consideration of the cancellation of their First Active shares and the issue of new First Active shares to that company. In January 2004 First Active shareholders received €6.20 in cash for each share held.

This cash payment is a capital sum for capital gains tax purposes. The time of disposal is the date on which the cash was received by the

shareholder and, accordingly, any liability arising is payable on or before 31/10/2004.

While the chargeable gain on this capital sum is computed in the normal manner consideration should be given to the following:

- ◆ Many shareholders received some or all of their shares free of charge. To the extent that the shares disposed of were 'free shares' there are no allowable costs.
- ◆ In June 2003 First Active plc made a capital repayment of €1.12 per share to its shareholders (see *Tax Briefing*, Issue 53). This payment was also a capital sum for capital gains tax purposes and constituted a part disposal of the original holding at that time. It will be necessary, where shares were purchased, to apportion the allowable costs of acquisition between the payments received in both years.
- ◆ Unused prior year and current year losses, to the extent that they are allowable, must be taken into account when calculating the chargeable gains for the 9 month period to 30/9/2004. In

(Continued on page 3)

IN THIS ISSUE

Repayments, Interest & Time Limits

Approved Profit Sharing Scheme

VAT and Property

ROS

Form CT1

Stapled Stock Arrangements

Pay & File

***"Not Resident Elsewhere"*
(S. 195 & 234 TCA 1997)**

...see inside for full listings

CONTENTS

	Page
First Active Shares	1
CGT Withholding Tax (<i>S. 980 TCA 1997</i>)	5
Repayments, Interest & Time Limits	6
Professional Services Withholding Tax (<i>Credit</i>)	12
'Not Resident Elsewhere' (<i>S. 195 & 234 TCA 1997</i>)	12
VAT and Property (<i>The 10% Rule</i>)	13
VAT and Property (<i>S. 4(8) TCA 1997</i>)	15
Employer Information (<i>Collector-General</i>)	16
Form CT1 (<i>2004</i>)	17
Stapled Stock Arrangements	18
ROS (<i>Update</i>)	19
Approved Profit Sharing Schemes	20
Pay & File 2004 (<i>IT & CT</i>)	22
Revenue News	24

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KEY DATES

August 2004

14 PAYE/PRSI

P30 monthly return and payment for July 2004

14 Dividend Withholding Tax

Return and payment of DWT for July 2004

14 Relevant Contracts Tax

RCT30 monthly return and payment for July 2004

1-21 Corporation Tax

2nd Instalment PT for APs ending between 1-29 February 2004

1st Instalment PT for APs ending between 1-30 September 2004

Returns for APs ending between 1-30 November 2003

Pay Balance due on APs ending between 1-30 November 2003

1-31 Corporation Tax

Returns of Third Party Information for APs ending between 1-30 November 2003

September

14 PAYE/PRSI

P30 monthly return and payment for August 2004

14 Dividend Withholding Tax

Return and payment of DWT for August 2004

14 Relevant Contracts Tax

RCT30 monthly return and payment for August 2004

19 VAT

VAT3 return and payment for period July/August 2004

1-21 Corporation Tax

2nd Instalment PT for APs ending between 1-31 March 2004

1st Instalment PT for APs ending between 1-31 October 2004

Returns for APs ending between 1-31 December 2003

Pay balance on APs ending between 1-31 December 2003

1-31 Corporation Tax

Returns of Third Party Information for APs ending between 1-31 December 2003

October

14 PAYE/PRSI

P30 monthly return and payment for September 2004

14 Dividend Withholding Tax

Return and payment of DWT for September 2004

14 Relevant Contracts Tax

RCT30 monthly return and payment for September 2004

1-21 Corporation Tax

2nd Instalment PT for APs ending between 1-30 April 2003

1st Instalment PT for APs ending between 1-30 November 2004

Returns for APs ending between 1-31 January 2004

Pay balance on APs ending between 1-31 January 2004

1-31 Corporation Tax

Returns of Third Party Information for APs ending between 1-31 January 2004

31 Income Tax

Preliminary Tax 2004

Pay Balance of 2003 Tax Liability

Return of Income for 2003

31 Capital Gains Tax

Payment due on gains arising between 1 January 2004 to 30 September 2004

Return of Capital Gains for 2003

November

14 PAYE/PRSI

P30 monthly return and payment for October 2004

14 Dividend Withholding Tax

Return and payment of DWT for October 2004

14 Relevant Contracts Tax

RCT30 monthly return and payment for October 2004

18 Income Tax

Extended Pay and File deadline for those who both file and pay through ROS (conditions apply)

19 VAT

VAT 3 return and payment for period September/October 2004

VAT 3 return and payment for APs ending between 1-31 October 2004

1-21 Corporation Tax

2nd Instalment PT for APs ending between 1-31 May 2004

1st Instalment PT for APs ending between 1-31 December 2004

Returns for APs ending between 1-29 February 2004

Pay balance on APs ending between 1-29 February 2004

1-30 Corporation Tax

Returns of Third Party Information for APs ending between 1-29 February 2004

FIRST ACTIVE SHARES

Continued from page 1

many instances these may include losses incurred on the disposal of shares in Eircom. Details of the allowable costs attributable to Eircom shares are set out in *Tax Briefing*, Issue 46.

Example 1 'Free' shares only

Mr. A acquired 450 'free' First Active shares in 1998. In addition he acquired 45 loyalty shares, at no cost, during 1999 and 2000. On the acquisition of First Active by the Royal Bank of Scotland he received a cash payment of €3,069. His computation of capital gains tax for 2004 is as follows, assuming he has no other chargeable disposals or unused prior year losses.

Cash Received	€3,069
Allowable Costs (Note 1)	Nil
Chargeable Gain	€3,069
Less Personal Exemption (Note 2)	€1,270
Net Chargeable Gain	€1,799
Tax Payable (Note 3)	€359.80

Note 1

As the shares were acquired at no cost they have a 'nil' base cost.

Note 2

The first €1,270 of an individual's net gains is not chargeable. This exemption is not transferable between spouses.

Note 3

The tax is payable on or before 31/10/2004. If Mr. A disposes of other assets during the 9 months to 30/9/2004, his calculation of tax payable will be based on the aggregate of all disposals in that period.

Example 2

Purchased shares only and unused losses.

Ms. B purchased 5000 shares in First Active on 1/7/2000 for €12,500. In June 2003, as a result of an approved capital reduction scheme, she received €5,600 from First Active. This reduction was effected by the issue, and subsequent cancellation, of bonus shares to existing First Active shareholders. Ms. B has a loss of €2,733 on this transaction for 2003, calculated as follows:

Cash Received	€5,600
Allowable Costs (see Note 1)	€8,333
Loss	€2,733

Note 1

As part of the capital reduction scheme each First Active shareholder received 2 bonus shares, at no cost, for each share held. Accordingly, Ms. B received 10,000 shares at no additional cost. For capital gains tax purposes, however, these shares are deemed to have a cost which is in proportion to the cost of the original holding ie, $€12,500 \times 10000/15000$.

Note 2

Assuming she had no other chargeable gains in 2003, Ms. B can offset this loss against future chargeable gains.

In January 2004 Ms. B received €31,000 on the acquisition of First Active by the Royal Bank of Scotland. In addition to her First Active losses of €2,733 she has other unused losses of €750. Her computation of capital gains tax for 2004 is as follows, assuming she has no other chargeable disposals or unused prior year losses.

Cash Received	€31,000
Allowable Costs (Note 3)	€4,767
Chargeable Gain	€26,233
Less Unused Prior Year Losses	€3,483
	€22,750
Less Personal Exemption (Note 4)	€1,270
Net Chargeable Gain	€21,480
Tax Payable (Note 5)	€4,296

Note 3

The shares were purchased for €12,500. Part of this amount i.e., €8,333, was utilised in 2003 and the balance of €4,167, after adjustment for inflation, is deducted in calculating the 2004 gain. The inflation multiplier, 1.144, is applied to the allowable cost ($€4,167 \times 1.144$).

Note 4

The first €1,270 of an individual's net gains is not chargeable. This exemption is not transferable between spouses.

Note 5

This tax is payable on or before 31/10/2004. If Ms. B disposes of other assets during the 9 months to 30/9/2004, her calculation of tax payable will be based on the aggregate of all disposals in that period.

Example 3

'Free' shares only and unused losses.

Mr. E acquired 450 'free' First Active shares in 1998. In addition he acquired 45 loyalty shares, at no cost, during 1999 and 2000. In June 2003, as a result of an approved capital reduction scheme, he received €554 from First Active. He had unused losses of €800. His computation of chargeable gains tax for 2003 is as follows, assuming he had no other chargeable disposals in that year.

Cash received	€554
Unused losses forward (to cover)	€554
Chargeable gain	nil

On the acquisition of First Active by the Royal Bank of Scotland Mr. E received a cash payment of €3,069. His computation of capital gains tax for 2004 is as follows, assuming he has no other chargeable disposals.

Cash Received	€3,069
Allowable Costs (Note 1)	Nil
Chargeable Gain	€3,069
Unused prior year losses (Note 2)	€246
	€2,823
Less Personal Exemption (Note 3)	€1,270

Continued on page 4

FIRST ACTIVE SHARES

Continued from page 3

Net Chargeable Gain	€1,553
Tax Payable (Note 4)	€310.60

Note 1

As the shares were acquired at no cost they have a 'nil' base cost.

Note 2

This is the balance of the losses (800 - 554).

Note 3

The first €1,270 of an individual's net gains is not chargeable. This exemption is not transferable between spouses.

Note 4

The tax is payable on or before 31/10/2004.

If Mr. E disposes of other assets during the 9 months to 30/9/2004, his calculation of tax payable will be based on the aggregate of all disposals in that period.

Example 4

Mixture of 'free' and purchased shares acquired on the same date.

Mr. C acquired 450 'free' First Active shares on flotation in October 1998. In addition, he purchased 800 shares for €2,300 at the same time. Subsequently, he received 45 loyalty shares during 1999 and 2000. In June 2003, as a result of an approved capital reduction scheme, he received €1,450 from First Active. For capital gains tax purposes his allowable expenditure was €1,188 (see Note 1).

Note 1

As part of the capital reduction scheme each First Active shareholder received 2 bonus shares, at no cost, for each share held. These shares are deemed to have acquired at the same date as the original holding. Accordingly, Mr. C received 2,590 shares at no additional cost. For capital gains tax purposes, shares of the same class are treated as being disposed of on a 'first in first out' basis where they were acquired at different dates. Difficulties can arise where, on flotation, an individual bought shares and acquired 'free' shares and, in these circumstances, Revenue accept that the shareholder may nominate the block of shares from which the disposal has been made. In this example the 'free' shares were disposed of first.

Mr. C disposed of 2,590 shares which comprised 1,350 'free' shares with no attaching costs and 1,240 shares with an aggregate cost of €1,188 (2300 x 1240/2400). The unused costs of €1,112 are carried forward.

In January 2004 Mr. C received €8,029 on the acquisition of First Active by the Royal Bank of Scotland. His computation of capital gains tax for 2004 is as follows, assuming he has no other chargeable disposals or unused prior year losses.

Cash Received	€8,029
Allowable Costs (Note 2)	€1,348

Chargeable Gain	€6,681
Less Personal Exemption (Note 3)	€1,270
Net Chargeable Gain	€5,411
Tax Payable (Note 4)	€1,082.20

Note 2

The shares were purchased for €2,300. Part of this amount ie, €1,188, was utilised in 2003 and the balance of €1,112, after adjustment for inflation, is deducted in calculating the 2004 gain. The inflation multiplier, 1.212, is applied to the allowable cost (€1,112 x 1.212).

Note 3

The first €1,270 of an individual's net gains is not chargeable. This exemption is not transferable between spouses.

Note 4

This tax is payable on or before 31/10/2004. If Mr. C disposes of other assets during the 9 months to 30/9/2004, his calculation of tax payable will be based on the aggregate of all disposals in that period.

Example 5

Mixture of 'free' and purchased shares acquired at different dates.

Ms. D acquired 450 'free' First Active shares on flotation in October 1998. She subsequently received 45 loyalty shares during 1999 and 2000. In July 2001 she purchased 7,000 shares for €17,500. In June 2003, as a result of an approved capital reduction scheme, she received €8,394 from First Active. Ms. D has a loss of €2,860 on this transaction for 2003, calculated as follows:

Cash Received	€8,394
Allowable Costs (see Note 1)	€11,254
Loss	€2,860

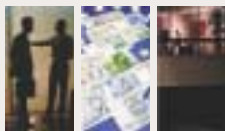
Note 1

As part of the capital reduction scheme each First Active shareholder received 2 bonus shares, at no cost, for each share held. Accordingly, Ms. D received 14,990 shares at no additional cost. These shares are deemed to have been acquired at the same date as the original holding. For capital gains tax purposes, shares of the same class are treated as being disposed of on a 'first in first out' basis where they were acquired at different dates. Ms. D disposed of 14,990 shares which comprised 1485 'free' shares with no attaching costs and 13,505 shares with an aggregate cost of €11,254 (17,500 x 13505/21000). The unused costs of €6,246 are carried forward.

Note 2

Assuming she had no other chargeable gains in 2003, Ms. D can offset this loss against future chargeable gains.

In January 2004 Ms. D received €46,469 on the acquisition of First Active by the Royal Bank of Scotland. Her computation of capital gains tax for 2004 is as follows, assuming she has no other chargeable disposals or unused prior year losses.



FIRST ACTIVE SHARES

Cash Received	€46,469
Allowable Costs (Note 3)	€6,789
Chargeable Gain	€39,680
Less Unused Prior Year Losses	€2,860
	€36,820
Less Personal Exemption (Note 4)	€1,270
Net Chargeable Gain	€35,550
Tax Payable (Note 5)	€7,110.00

Note 3

The shares were purchased for €17,500. Part of this amount ie, €11,254, was utilised in 2003 and the balance of €6,246, after adjustment for inflation, is deducted in calculating the 2004 gain. The inflation multiplier, 1.087, is applied to the allowable cost (€6,246 x 1.087).

Note 4

The first €1,270 of an individual's net gains is not chargeable. This exemption is not transferable between spouses.

Note 5

This tax is payable on or before 31/10/2004. If Ms. D disposes of other assets during the 9 months to 30/9/2004, her calculation of tax payable will be based on the aggregate of all disposals in that period.

The following articles, which appeared in previous issues of **Tax Briefing** may be of assistance when preparing your clients' capital gains tax return for 2003:

Jefferson Smurfit Shares (takeover by MDCP Acquisitions Ltd) **Tax Briefing** Issue 53 (August 2003)

First Active plc (Repayment of capital) **Tax Briefing** Issue 53 (August 2003)

Eircom Shares (Calculation of Base Cost) **Tax Briefing** Issue 46 (December 2001) ■

CGT WITHHOLDING TAX

S. 980 TCA 1997

Form CG50B Certificate of Deduction of Capital Gains Tax from Purchase Consideration under Section 980(4)(a)(i) Taxes Consolidation Act 1997

I certify that on payment of the consideration, agreed at: € [] agreed, for the acquisition of the asset(s), namely: [] to (the Vendor) [] of (Address) []

I declared, in accordance with the provisions of Section 980(4)(a)(i) Taxes Consolidation Act 1997, the sum of € [] in respect of Capital Gains Tax. I further certify that the said sum has been paid by me to the proper officer for the receipt of taxes who has issued to me:

Receipt No. [] dated [] in the sum of € []

I / (the company / the trust submit(s)) her return to the:

Revenue Office []

Tax Reference No. []

Name (Block Capital) []

Address []

Date []

Signature []

Capacity in which this Certificate is given (e.g. Co. Secretary, Individual on own behalf, etc.) []

Full name of Company, trust, etc. acquiring the asset []

For Official use only []

Form CG50B

Deduction from Consideration on disposal of Certain Assets

Section 980(4) Taxes Consolidation Act, 1997 states that where an asset, to which this section applies, is being acquired the purchaser must deduct an amount equal to 15 per cent of the payment for capital gains tax unless the vendor produces one of the certificates referred to in the section.

Where a person deducts withholding tax on the purchase of an asset he/she must make a return of the transaction and the tax deducted to the Revenue Commissioners.

Section 980(7) TCA 1997 provides that in computing the capital gains tax liability on the disposal, the vendor is entitled, on making a claim, to relief for the tax deducted by the purchaser. A vendor may apply for relief to his/her local Revenue Office by submitting a completed Form CG50B. This Form is completed in full by the purchaser and transmitted to the vendor who, in turn, submits it to his/her local Revenue Office.

Form CG50B is available on the revenue website, www.revenue.ie under Forms, Forms for Individuals, Capital Gains Tax or from your local Revenue Office. ■

REPAYMENTS, INTEREST & TIME LIMITS S. 17 FA 2003

Claims for repayment, interest on repayments and time limits for assessment. *Section 17 FA 2003 changes*

New Scheme for Claims for Repayments of Tax, Interest on Repayments and Time Limits for Assessments

Repayments and Time Limits for Assessments

Section 17 Finance Act, 2003 provides for a new scheme to deal with claims for repayments, interest on repayments and Revenue's right to raise assessments. *Section 17 FA 2003* takes effect by way of a Ministerial Commencement Order, which was signed on 31 October 2003.

The purpose of this article is to explain how the new scheme affects income tax repayments.

Main features of the new scheme

The main features of the scheme are:

- There is now a new general statutory right to repayment of tax.
- The repayment is subject to a claim being made to Revenue within 4 years from the end of the period to which it relates. This is subject to transitional arrangements for the existing time limits for repayment, the longest of which is 10 years. These are explained in more detail below.
- The 4 year time limit applies to immediate claims as and from 31 October 2003, which were not previously provided for by statute, and to all claims made for chargeable periods beginning on or after 1 January 2003 and later years.
- Where a claim to repayment for an earlier year is currently subject to a longer time limit, e.g. a claim to repayment of preliminary tax can be made within 10 years, the 10 year time limit remains in place until 31 December 2004.
- Interest will in future be paid on repayments at a rate of 0.011% per day or part of a day. This interest is tax free in the hands of the taxpayer.
- Where the repayment arises because of a mistaken assumption of the law by Revenue, the interest will be calculated from the end of the tax period to which the repayment relates or, if later, from the date when the tax was overpaid. In all other cases, including repayments of preliminary tax, interest will run from 6 months after a valid claim to the repayment is made.
- Finally, apart from cases where fraud or neglect is suspected where there are no time limits, from 1 January 2005 Revenue's right to raise assessments and make enquiries is reduced to a 4 year period in line with the limitation on the taxpayer's right to claim repayment.

General pre-Finance Act 2003 position

Instances of statutory rights to repayment of income tax

Apart from the common law right of repayment of tax under a mistake of law, there are many instances of repayment of income tax contained in the Taxes Acts. The most common instances of repayment are as follows:

- Right of repayment of **preliminary tax** exists under *Section 953(7) TCA, 1997*. If the preliminary tax paid exceeds the net tax payable (after deducting credits and reliefs against tax), the amount of the excess is repayable to the chargeable person with interest.
- Right of repayment of overpaid income tax where a **taxpayer made an error or mistake** claim in accordance with *Section 930 TCA, 1997* and this claim has been accepted. This repayment does not attract interest. *Section 930* only applies where tax is charged by an assessment and not where excess tax has been suffered by deduction at source.
- Right of repayment of income tax overpaid in accordance with a determination of Appeal Commissioners and where the assessment was appealed and subsequently altered by either a High Court or Supreme Court order: *Section 941 TCA, 1997*. This repayment may attract Court interest.
- Right of repayment of income tax overpaid in accordance with a determination of the Appeal Commissioners and where the assessment was appealed and altered by Circuit Court or by subsequent agreement with the Inspector: *Section 942 TCA, 1997*. This repayment attracts interest.
- Right of repayment of tax by reference to losses under *Section 381 TCA, 1997*.

Some existing time limits for repayment of income tax

- The general limit of time for income tax repayment claims is contained in *Section 865 TCA, 1997*. This provides that any claim for repayment must, unless otherwise specifically provided, be made within 10 years of the end of the year of assessment or accounting period to which it relates.
- The time limit for a claim to repayment of income tax paid by way of error or mistake in a tax return made by a person is not later than **6 years** after the end of the year of assessment in which the assessment was made: *Section 930 TCA, 1997*.
- The time limit for a claim to repayment of income tax by reference to losses is **2 years** after the end of the year of assessment.

The pre FA 2003 position is in general summarised in a Table A on page 11.

REPAYMENTS, INTEREST & TIME LIMITS

Interim measures for interest on preliminary tax overpaid

To facilitate the transition to the new scheme for repayments, interest on repayments and assessments, the Commencement Order provides three main operational dates for *Section 17 FA 2003* to take effect for different purposes. These are outlined in the **Table B** on page 12.

For repayment with interest purposes, the most important of these is the measure affecting repayment of preliminary tax under *Section 953 TCA, 1997*. In general, this right to repayment of income tax in *Section 953* with interest no longer exists from 1.11.2003 as respects payments of preliminary tax made on or after that date. However, *Section 953* continues to have effect for the year of assessment 2003 (ceasing only on 1.11.2004) where preliminary tax has been paid before 1.11.2003 and where the return for 2003 is lodged with the Collector-General on or before 31.10.2004 - the 2003 return filing date. This means that repayment of tax and interest arising on PT payments made after 31.10.2003 is subject to the new *Section 865* and *Section 865A* rules.

Example 1

Repayment of PT for 2003 with interest where timely return made

A taxpayer made a payment of preliminary tax of €6,000 for 2003 on 30.11.2003 as income tax for 2003 (30 days late). Following the submission of the taxpayer's income tax return on 30.11.2004 (30 days late), the inspector made an assessment based on the return determining the taxpayer's income tax payable for 2003 as €4,500. The inspector instructs the Collector-General to repay the €1,500 overpaid.

The taxpayer is entitled to receive interest on the overpayment. As the payment of preliminary tax was made after 1.11.2004 and the return for 2003 was filed 30 days late, the taxpayer's entitlement to a repayment arises under the new *Section 865 TCA, 1997*. The taxpayer's entitlement to interest on this tax arises under *Section 865A TCA, 1997*. This section is explained in more detail on page 9.

New scheme from 31.10.2003 and onwards

New general statutory right to repayment of tax overpaid

Section 17 FA 2003 substitutes a new *Section 865 TCA, 1997* with effect from the day of the making of the Commencement Order, i.e. 31 October 2003. The new section provides for a general right to repayment of tax overpaid subject to a 4 year claim limitation period. Previously there was no general statutory right to repayment of tax overpaid.

It provides in subsection (2) that where a taxpayer

overpays tax, which he/she was not obliged to pay, for whatever reason including an error or mistake in a return or statement made for the purposes of an assessment, then the taxpayer is entitled to repayment of the tax overpaid.

In the context of the claim to repayment of tax *Section 865(3)* provides that a taxpayer must make a valid claim in order to be entitled to a repayment.

What is a valid claim?

A valid claim to repayment of tax is regarded as having been made by a taxpayer in any of the three following circumstances:

A valid claim arises where a statement or return which the taxpayer is required to furnish under the Acts, contains all the information which the Revenue would reasonably require to determine the amount, if any, of the repayment.

Example 2

A taxpayer filed his return of income Form 11 for 2004 on 31.10.2005. The return correctly stated the amount of each item of income to be taxed and full and correct details of all deductions, tax credits and reliefs claimed for the chargeable period. On receipt of the return the inspector made an assessment based on the return, which resulted in a repayment of income tax. The taxpayer's return is taken as a valid claim for a repayment and is effective from 31.10.2005 because it contained all the necessary information to determine the amount of the repayment.

or

A valid claim is made where such a statement or return is either not required or it does not contain all the necessary information, when all that information is furnished.

Example 3

A taxpayer filed his return of income Form 12 for 2004 on 31.10.2005. The return correctly stated the amount of each item of income to be taxed but did not contain the correct details of PRSA relief claimed. The taxpayer had inserted in the PRSA panel "details to follow". On receipt of the Form 12 the inspector wrote to the taxpayer and asked for full details of the amount paid for which relief was claimed for 2004. The taxpayer did not furnish this information until 31.3.2006. The claim for relief resulted in an overpayment of PAYE for 2004, but the claim did not become a valid claim until 31.3.2006 when all the information to determine the amount of a repayment was furnished to the inspector.

or

A valid claim arises where a repayment of tax arises from a correlative adjustment when the two States agree the amount of the adjustment in writing. A correlative adjustment means an adjustment of a taxpayer's profits, which happens under the terms of a Double Taxation Treaty.

Continued on page 8

REPAYMENTS, INTEREST & TIME LIMITS Continued from page 7

Time limits for repayment claims

Subsections (4) and (5) of *Section 865 TCA, 1997* provide for time limits for repayment claims (not just “valid claims”) as follows:

Preservation of old time limits

Where a claim to repayment is made **on or before 31.12.2004 where there was an existing right** to repayment in relation to a chargeable period ending on or before 31.12.2002, e.g. there was an existing right to repayment of preliminary tax under *Section 953 TCA, 1997* for the year of assessment 2002, the time limit for claiming this repayment is the existing **10 year time limit**.

This means that a taxpayer can claim a repayment before 31.12.2004 under *Section 953 TCA, 1997* for any year of assessment the end of which is within 10 years of the date of claim. In practical terms the taxpayer can claim a repayment of preliminary tax overpaid back as far as 1994/1995 provided he/she claims before 31.12.2004.

Example 4

Repayment of PT where existing right under *Section 953*

A taxpayer made a payment of preliminary tax for the year of assessment 2002 on 30 October 2002 (1 day before the due date) of €10,000. Following the submission of the taxpayer's return of income (Form 11 for 2002) on 30 October 2003, the inspector made an assessment based on the return determining the taxpayer's income tax liability for 2002, as €8,000. The inspector instructs the Collector-General to repay the €2,000 with interest under *Section 953 TCA, 1997*, which the Collector-General does on 30 November 2003. The claim was made before 31.12.2004 and is allowable under *Section 953* as it is made within the old 10-year time limit.

Example 5

Repayment where existing right under *Section 930*

A taxpayer made a computational error in his tax return for 2001, which resulted in him being overcharged to income tax for that year. He must apply to the Revenue Commissioners under *Section 930 TCA, 1997* and state that the assessment was excessive due to the error or mistake in the return made by him for the purposes of the assessment. He must make this application in writing under *Section 930 TCA, 1997* on or before 31.12.2004. Such a claim will be successful being within 6 years of the end of the year of assessment to which it relates (2001). If the claim is not made before 31.12.2004 it cannot be dealt with under *Section 930 TCA, 1997* and will instead be dealt with under the new *Section 865 TCA 1997* with its 4 year time limit on claims.

New time limit of 4 years for certain claims

This applies where:

- There was no existing right to repayment under the Acts,
- For claims in respect of all chargeable periods going forward from 2003, i.e. chargeable periods beginning on or after 1.1.2003, and
- For claims made on or after 1.1.2005

In all cases the time limit is **4 years** after the end of the chargeable period to which the claim relates.

Example 6

Repayment for chargeable period 2003 where return repaired

A taxpayer paid preliminary tax for the year of assessment 2003 on 31.10.2003 of €5,000. Following the submission of the taxpayer's return of income (Form 11 for 2003) on 30 October 2004, the inspector made an assessment based on the return determining the taxpayer's income tax liability for 2003, as €5,000. An assessment was raised in accordance with the return and as the preliminary tax paid discharged the net tax payable there was no additional tax due. The assessment issued on 20 January 2005. After the assessment issued the taxpayer noticed that he had not claimed film relief and requested a repair of the return on 25 September 2005. The Inspector repaired the return in accordance with the practice of “repairing” returns as outlined in Tax Instruction 39.2.1. The Inspector made an amended assessment, giving rise to a repayment of €2,000, in accordance with *Section 955 TCA, 1997*. Under the new *Section 865 TCA, 1997* the taxpayer has until 31.12.2007 to make the request to repair the return to give rise to the repayment.

Example 7

Repayment where claim made after 1.1.2005

A taxpayer paid preliminary tax for the year of assessment 2004 of €3,000 as income tax for 2004 on 31.10.2004. Following the submission of the taxpayer's income tax return on 31.10.2005 [the specified due date for 2004], the inspector made an assessment based on the return determining the taxpayer's income tax payable for 2004 as €2,500. The submission of the return, which allowed the inspector to determine the amount of the repayment, constitutes a valid claim for the purposes of *Section 865(3) TCA, 1997*. The inspector instructs the Collector-General to repay the €500 overpaid. The taxpayer is entitled to interest under *Section 865A TCA, 1997* in respect of the repayment and not under *Section 953 TCA, 1997*. He/she has until 31.12.2008 to make a claim for repayment.

REPAYMENTS, INTEREST & TIME LIMITS

Interest on tax Overpaid

Pre-FA 2003 position where preliminary tax overpaid

Under the old *Section 865 TCA, 1997* (which is still operative in certain circumstances as outlined above), there is provision for interest to be paid where an overpayment of preliminary tax arises because the amount of preliminary tax paid exceeds the income tax finally due as determined after the tax return has been filed.

The rate of interest **payable by Revenue** since 1971 on preliminary tax overpaid is outlined below.

0.75% for any **month** or part of a month commencing on or after 1/8/1971

1.50% for any **month** or part of a month commencing on or after 1/5/1975

1.25% for any **month** or part of a month commencing on or after 1/8/1978

1.00% for any **month** or part of a month commencing on or after 27/5/1982

0.60% for any **month** or part of a month commencing on or after 1/8/1990

0.50% for any **month** or part of a month commencing on or after 27/3/1998

0.0161% for any **day** or part of a day commencing on or after 1/9/2002

New scheme for repayment of tax with interest where tax (not just preliminary tax) overpaid

New Scheme

Section 17 FA 2003 inserted the new *Section 865A TCA, 1997* in relation to repayments of tax made after on or after 1.11.2003. The section provides for a general scheme of interest on repayments of income tax, corporation tax and capital gains tax.

The provision amends the interest rate on **all tax overpaid** (including preliminary tax overpaid) to **0.011%** for any **day** or part of a day commencing on 1.11.2003.

The new rate amounts to approximately 4% per annum.

All repayments must be subject to a **valid claim**.

The claim to repayment [not just valid claims] must be made within **four years** from the end of the period to which it relates.

The taxpayer is not entitled to interest on an overpayment of tax if the interest is less than €10.

The interest is receivable without deduction of tax and is not treated as income for any tax purpose.

Interest does not apply for any period where a repayment is withheld in accordance with *Section 1006A TCA, 1997* (offset of taxes provision) or withheld because a return is outstanding.

Repayments due to mistaken assumption by Revenue

Where the repayment due arises from a mistaken assumption by Revenue in the application of the law, then the interest will be paid from the end of the chargeable period or, if later, when the tax was paid until the repayment is made.

Mistaken assumption cases would be those where, for instance, the High Court or the Supreme Court or the ECJ had found against Revenue's interpretation of the law. Repayment cases where a settlement was reached with the taxpayer would not normally fall into this category.

Other repayments

In the case of all other repayments, including repayments of preliminary tax, interest will be paid from 6 months after a claim becomes a valid claim until the repayment is made. Included here are cases where there has been an administrative delay on the part of Revenue in processing a valid claim. However, no interest is payable in respect of days when a repayment is withheld pending the receipt of information which the taxpayer was reasonably obliged to submit with a valid claim. This can arise where the taxpayer inserts the phrase "details to follow" on a return form. In such a case the claim is not a valid claim until the information is furnished.

Example 8

Repayment of PAYE

A taxpayer with Schedule E PAYE income made a return of income (Form 12) for the year of assessment 2004 on 31.10.2005 showing Schedule E income with a credit for PAYE deducted. During the tax year 2004 the taxpayer incurred certain qualifying medical expenses in that he paid €30,000 for the maintenance of his ailing mother in a nursing home. He made a claim for these expenses when submitting the Form 12 on a Med 1 Form, which resulted in an overpayment of €12,000 PAYE tax. However, on 31.3.2006 the inspector queried the overpayment and requested a medical certificate to the effect that the taxpayer's mother has need of the nursing services. The taxpayer did not receive his repayment until 30.5.2006. The claim to repayment became a valid claim on 31.10.2005 when the taxpayer furnished his Form 12 and Med 1, which contained all the information for Revenue to determine the amount of the repayment. The taxpayer

Continued on page 10

REPAYMENTS, INTEREST & TIME LIMITS Continued from page 9

is entitled to interest on this repayment of PAYE from 1.5.2006 (a period of 6 months after the date on which the claim for repayment became a valid claim), i.e. 30 days. The interest is calculated as follows:

Interest on PAYE of $12,000 \times 0.011\% \times 30 \text{ days} = \text{€}39.60$

Example 9

Repayment of PSWT and PT

A taxpayer who suffered PSWT of €10,000 in 2004 paid preliminary tax of €20,000 as income tax for 2004 on 31.10.2004. Due to an oversight on his part he did not make a return of income for the year of assessment 2004 until 31.10.2006 when he was filing his return for 2005. Following the submission of the taxpayer's 2004 income tax return on 31.10.2006 the inspector raised a query in relation to the PSWT credit claimed, as the PSWT credit on the return was not shown - rather the panel was completed "details to follow". When the relevant information was submitted on 1.1.2007 the inspector made an assessment based on the return determining the taxpayer's income tax payable for 2004 as €25,000 (including a surcharge for filing the return late). This resulted in an overpayment of both PSWT and PT amounting to €5,000. €2,000 of this overpayment arose from PSWT. The inspector did not make the assessment until 31.8.2007.

The taxpayer is entitled to receive interest on this overpayment under the new *Section 865A* for a period of two months July and August 2007 (62 days) only as the taxpayer is denied interest for the first six months after the claim for the repayment becomes a valid claim. The repayment only arises when the taxpayer made a valid claim under *Section 865 TCA, 1997* (as inserted by *Section 17 FA 2003*). In this case the date the taxpayer submitted the relevant PSWT credit figure is the date of the valid claim, i.e. 1.1.2007. This date is within the time limit of four years of the end of the chargeable period 2004 to which the claim relates. It therefore constitutes a valid claim made within the time limit.

The interest is calculated as follows:

Interest on PSWT of
 $\text{€}2,000 \times 0.011\% \times 62 \text{ days} = 13.64$

Interest on PT of
 $\text{€}3,000 \times 0.011\% \times 62 \text{ days} = 20.46$
 Total interest on overpayment 34.10

PT payments made before 1.11.2003

There is a qualification to the general position above, in the case of preliminary tax payments made before 1.11.2003 where the return has been lodged with the Collector-General by 31.10.2004. In such cases the old *Section 953* scheme and the old rate of interest on overpaid tax contained in *Section 953 TCA, 1997* applies.

Example 10

PT for 2003 overpaid

An architect taxpayer paid preliminary tax of €10,000 on 31.10.2003 as income tax for 2003. He suffered PSWT of €2,000 in 2003 on 31.12.2003. Following the submission of his return on 30.10.2004 the inspector made an assessment based on his return determining the taxpayer's income tax payable for 2003 as €9,000. The inspector did not make the assessment, which resulted in an overpayment of €3,000 until 31.7.2005 due to a large volume of tax returns to be processed. The overpaid tax was repaid on that date. €2,000 of the overpayment arose from overpaid preliminary tax. The balance of the overpayment arose from the PSWT deducted.

The taxpayer is entitled to interest on this overpayment as follows:

Interest on the overpayment of PT is based on the old scheme under *Section 953 TCA, 1997* as the PT for 2003 was paid by the due date and the taxpayer had filed his return on time.

This is calculated as follows:

PT overpaid
 $\text{€}2,000 \times 0.0161\% \times 273 \text{ days} = 87.90$

The repayment of PSWT overpaid is based on an entitlement to repayment under the new *Section 865 TCA, 1997* and interest on this repayment is calculated in accordance with *Section 865A TCA, 1997* as follows:

The taxpayer is denied interest for the first 6 months after the date of the valid claim, i.e. 6 months from 30.10.2004. This leaves a period of 3 months - May, June and July for interest (92 days).

PSWT overpaid
 $\text{€}1,000 \times 0.011\% \times 92 = 10.12$

The total interest repayable is €98.02

REPAYMENTS, INTEREST & TIME LIMITS

Table A
Summary of General Pre-FA 2003 position

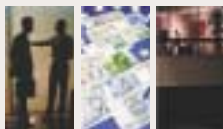
Tax overpaid	Pre-FA 2003 position	Pre FA 2003 Time limit for repayment	Pre FA 2003 Interest on overpayment
Preliminary tax	S. 953(7) TCA, 1997	10 years	Yes.
Tax paid by way of error or mistake	S. 930 TCA, 1997	Application in writing within 6 years after the end of year of assessment within which assessment made	No.
Income tax paid in accordance with determination of Appeal Commissioners and assessment altered by High Court or Supreme Court order	S. 941(9) TCA, 1997	10 years	Interest, if any, as the Court may allow.
Income tax paid in accordance with determination of Appeal Commissioners and altered by Circuit Court or agreement with Inspector	S. 942(6) TCA, 1997	10 years	Yes.

Table B
FA 2003 Changes and Transitional Provisions
Repayments and Interest on repayments

Taxes Consolidation Act	What it does	FA 2003 change	Date old provision operative until	Date operative or deleted
865	Provides a 10-year time limit for repayment of IT, CT or CGT.	S. 17(1)(a) substitutes a new S. 865	31.10.2003	Operative 1.11.2003. New time limits and claim to repayment rules
865A	Interest on repayments	New provision inserted by S.17(1)(a)	31.10.2003	Operative 1.11.2003 in relation to repayments of tax made after that date
941(9)(a)	Repayment of tax arising under S.941 by virtue of an order/judgment of High or Supreme Court	S. 17(1)(b) substitutes a new S.941(9)(a). Attracts interest under S.865A	31.10.2003	Operative 1.11.2003 for repayment arising under s.941 under High or Supreme Court orders or judgments made on or after 1.11.2003
942(6)(b)	Repayment of tax arising from a determination by Circuit Court judge under S.942 or an agreement referred to in S.942 (8)	S.17(1)(c) substitutes a new S.942(6)(b). Attracts interest under S.865A	31.10.2003	Operative 1.11.2003 for repayment arising under S.942 from Circuit Court determination or Inspector agreement

Table C
Sections repealed in their entirety

Taxes Consolidation Act	What it does	FA 2003 change	Date old provision operative until	Date operative or deleted
930	Error or mistake claim by taxpayer within 6-year time limit. Repayment does not attract interest.	S.17(1)(d) deletes the provision.	31.12.2004	Deleted 1.1.2005 but without prejudice to any application for relief made under s.930 before that date
953	Right to repayment of preliminary tax with interest.	S.17(1)(d) deletes the provision subject to a transitional period.	Generally deleted w.e.f. 1.11.2003 as respects payments of preliminary tax made on or after 1.11.2003. But see 2003 PT transitional rule	Deleted w.e.f. 1.11.2004 as respects payments of preliminary tax made before 1.11.2003 unless return is lodged with CGs by 31.10.2004.



PROFESSIONAL SERVICES WITHHOLDING TAX

Credit

This is a reminder to practitioners that when claiming credit for PSWT on either the Form 11 or the Form CT1, the full amount of PSWT credit due for the year should be entered, even if any interim refunds/claim has already been made. The amount of any interim refund will automatically be deducted from the amount claimed.

Accordingly if you only enter the amount of credit now due (that is the amount less the interim refund/claim) the assessment will show a reduced credit, if any.

Example:

PSWT deducted in y.e. 30/09/2003	€14,000
Interim refund received August 2003	€ 3,500
Remaining credit available for offset against 2003 liability	€10,500
Amount entered in 2003 Form 11	€14,000

In support of the claim for PSWT you must have Forms F45/F43 for all of the tax withheld. These forms should not be submitted with the Form 11/CT1 but must be retained by your client as they may be required at a later date for the purpose of a verification check on the claim - see **Tax Briefing** Issue 52. ■

“Not Resident Elsewhere”

S. 195 and S.234 TCA 1997



Meaning of “Not Resident Elsewhere” for the purposes of Sections 195 and 234 Taxes Consolidation Act, 1997.

Introduction

To qualify for artist exemption relief, *Section 195 TCA, 1997* an individual must, inter alia, be “resident in the State and not resident elsewhere” or “ordinarily resident and domiciled in the State and not resident elsewhere”. Similarly, the exemption of income derived from certain patent royalties *Section 234 TCA, 1997* is also conditional on a person being a resident of the State which is specifically defined as “any person resident in the State for the purposes of income tax and not resident elsewhere”. The purpose of this note is to clarify what is meant by “not resident elsewhere”.

Residence in the State

Irish rules of residence are set out in *Section 819 TCA, 1997*. The section provides that an individual is resident in the State if he/she spends 183 days or more in the State in a tax year. Alternatively, residence is established if an individual spends 280 days or more in the State over two years. There is also provision for an individual to elect to be resident, for example, in the year of arrival in the State if he/she has the clear intention of being resident in the State the following year. However, the focus of *Section 819* is on residence in the State and it provides no

assistance as to whether or not an individual is also resident elsewhere.

Residence Elsewhere

Whether an individual is resident elsewhere or not is a question of fact based solely on the tax laws of other relevant jurisdictions. Because of the diversity of countries’ residence rules and the fact that residence in the State does not preclude residence elsewhere in the same year, cases of double residence arise from time to time. Such cases may arise for a variety of reasons. An individual, for instance, electing to be resident in the State in the year of arrival from another country is quite likely to be resident also in the other country because of the number of days spent there etc. in the particular tax year. Where a move to the State involves living here on a full-time basis double residence is likely to arise only in the year of arrival. However, where an individual continues to spend time in another country, double residence may arise on an ongoing basis.

Treatment of Double Residence Cases

As indicated already, the legal provisions governing artists exemption, *Section 195*, and the exemption of certain income from patent royalties *Section 234*, require an individual to be resident in the State and not resident elsewhere. To deal with cases of double residence, Revenue has decided to look beyond the particular provisions in question and further consider such cases against the background of any relevant double taxation treaty provisions where a double taxation treaty is in place. Thus, in the circumstances of a particular case, if the double taxation tie breaking rules between the contracting states determine residence in Ireland, Revenue is prepared to accept that the individual or person is resident in the State and not resident elsewhere for the purposes of *Section 195* or *Section 234*. If, on the other hand, the tie breaking rules determine residence to be in the other state, then residence elsewhere will have been established and no exemption will apply. ■

VAT AND PROPERTY

The 10% Rule



This article sets out guidelines to bring greater clarity and to achieve a consistent approach in determining whether or not a property was developed after 31 October 1972, or subsequent to its acquisition after that date (if not already developed).

This article also increases the de-minimis rule from €100,000 to €300,000 and is effective from 1 July 2004.

Introduction

The so-called 10% rule is a simplification rule designed to assist in determining whether the creation of an interest in property is taxable. The rule provides where relatively insignificant amounts of extension, alteration or demolition work have been carried out to the property prior to its disposal the property will be regarded as not having been developed. The rule has been in place since 1973 and has been operated without difficulty in the vast majority of appropriate property transactions. It provides the necessary clarity to determine whether or not the supply of a property may be regarded as taxable.

The rule is of course merely a simplification measure and has no statutory authority. It was pointed out in a 2001 High Court case (*Forbes and Tobin*) that the rule cannot be relied on by a purchaser where the vendor insists that the property has been developed even though the vendor may not have incurred expenditure in excess of 10% (or the de minimis amount) of the sale value in carrying out the development of the property.

The Revenue Commissioners have reviewed the 10% rule and have decided to issue the following guidelines to bring greater clarity to the application of the rule. At the same time the maximum expenditure permitted within the rule is being increased from €100,000 to €300,000.

It should be remembered that once a property is regarded as developed after 1 November 1972 it remains developed irrespective of the amounts of expenditure incurred thereafter by its owner or subsequent owners. The taxability or otherwise of such a property depends on the normal rules for taxability and the 10% de-minimis rule has no relevance as regards any further disposal of the property. (See example D).

Legislation

Section 1 VAT Act 1972 as amended defines development as “development” in relation to any land, means-

- (a) the construction, demolition, extension, alteration or reconstruction of any building on the land, or
- (b) the carrying out of any engineering or other operation in, on, over or under the land to adapt it for materially altered use,

and “developed” shall be construed correspondingly

Meaning of Extension, Alteration or Demolition where there is no essential change of use for the purposes of the 10% Rule in determining the taxable status of a property.

In determining whether or not a property was developed after 31 October 1972, or subsequent to its acquisition after that date (if not already developed), relatively small and routine outlay on extensions, alterations or demolitions carried out periodically (which did not adapt the property for materially altered use) for the purposes of the persons taxable activities may be ignored notwithstanding that a vat credit or deduction may have been claimed in relation to such outlay. In practical terms this may be taken as meaning that, where there is **no essential change** in the use of the property or where the expenditure was not carried out to adapt the property for such a change, such outlay may be ignored if it is reasonably clear that its cost would not exceed 10 per cent of the total amount on which tax would be chargeable if the work in question were treated as a development, or €300,000 whichever is the lesser.

The carrying out of any engineering or other operation in, on, over or under the land to adapt it **for materially altered use**, is **always** regarded as development and the 10 per cent rule, as outlined above, does not apply in determining whether or not a supply of immovable goods so developed is subject to Value Added Tax. ■

Continued on page 14

VAT AND PROPERTY

Continued from page 13

Examples

	Properties undeveloped for VAT purposes at the time of acquisition by the supplier			Property developed at time of acquisition
	Example A Retail Shop	Example B Factory Building	Example C Field/Site	Example D Office Building
Being sold for (or capitalised value of rent)	€1,000,000	€8,000,000	€1,500,000	€3,000,000
Outlay on alterations subsequent to acquisition by the supplier	£90,000	€700,000	£90,000	£275,000

What are the VAT implications?

Example A

A shopkeeper purchased a retail shop in 1986. The retail shop was undeveloped for VAT purposes at the time of acquisition by the shopkeeper. Since the acquisition the shopkeeper incurred outlay of €90,000 on various alterations. The retail shop is now being sold for €1,000,000.

The property which **has not** been adapted for materially altered use would be regarded as not having been developed subsequent to its acquisition by the shop-keeper, because the outlay on subsequent alteration did not exceed €300,000 and is also less than 10% of the selling price. Consequently, the supply would be regarded as outside the scope of VAT.

Example B

A manufacturing company purchased a factory building in 1996. The factory was undeveloped for VAT purposes at the time of acquisition by the manufacturing company. Since the acquisition the manufacturing company incurred outlay of €700,000 on various alterations. The factory building is now being sold for €8,000,000.

The property, which, although it **has not** been adapted for materially altered use, would be regarded as developed by the manufacturing company because the outlay (of €700,000) on subsequent alteration exceeded €300,000. Consequently, the manufacturing company is liable to tax on the supply, provided all the other requirements for taxability are satisfied. VAT would be chargeable by reference to the full supply value of €8,000,000.

Example C

An investor purchased a field in 2001. The field was undeveloped for VAT purposes at the time of acquisition by the investor. Since the acquisition the investor incurred outlay of €90,000 involving the laying of roads, sewers and service cables over the entire area of the field. The field is now being sold for €1,500,000.

The field, **has been** adapted for materially, altered use, involving the carrying out of an engineering or other operation in, on, over or under the land. Consequently, the investor making the supply would be liable to tax on its supply, provided all the other requirements for taxability are satisfied. This is so because the

development involved the carrying out of an engineering or other operation in, on, over or under the land to adapt it for materially altered use and this type of development is not covered by the 10% rule as outlined in this memo. VAT would be chargeable by reference to the full supply value of €1,500,000.

Example D

An accountancy firm purchased an office building in 1999. The office building was developed in 1999 by a developer who supplied it to the accountancy firm. Since the acquisition the accountancy firm incurred outlay of €275,000 on various alterations. The office building is now being sold for €3,000,000.

The office building was developed after 1 November 1972. It remains developed for VAT purposes irrespective of the amounts of expenditure incurred thereafter by the accountancy firm. The taxability or otherwise of such a property depends on the normal rules for taxability and the 10% de-minimis rule has no relevance as regards any further disposal of the property. VAT would be chargeable by reference to the full supply value of €3,000,000.

VAT AND PROPERTY

S. 4(8) VAT Act 1972



This article outlines the circumstances where the reverse charge may or may not apply on a surrender or assignment of a leasehold interest in property in accordance with Section 4(8) VAT Act, 1972.

Circumstances where the reverse charge applies:

Where VAT is chargeable on a surrender of a leasehold interest or on an assignment of a leasehold interest to any of the following classes of person:

- ◆ A taxable person (for VAT purposes),
- ◆ A Department of State or a local authority, or
- ◆ A person supplying goods of a kind referred to in paragraph (a) of the definition of 'exempted activity' in Section 1 VAT Act, 1972 [property, the supply of which is not chargeable to VAT], or

- ◆ A person supplying services of a kind referred to in paragraphs (i), (iv), (ix), (xi), (xia), (xiii) and (xiv) of the First Schedule to the VAT Act, 1972, in the course or furtherance of business¹,

then, for VAT purposes, these persons are deemed to supply those goods in the course or furtherance of business and they, rather than the person making the surrender/assignment, will be liable to pay the VAT on the surrender/assignment. They must declare the VAT liability in their VAT return and where they are taxable persons² they may be entitled to claim a deduction (or input credit) for the VAT, in accordance with Section 12 VAT Act 1972.

Example 1

Joe, a builder and taxable person, is the lessee under a 35 year lease of an office and yard (developed since 1/11/1972). He assigns the lease to Melanie, another taxable person, who operates a garden centre. In the normal course, Melanie will account for VAT on the value of the assignment, even though she is the customer in the transaction.

Circumstances where the reverse charge does not apply:

The reverse charge does not apply and VAT must be applied in the normal way by the person making the supply/assignment in all other circumstances where VAT is

chargeable on a surrender /assignment of a leasehold interest.

It is not possible to compile a comprehensive list of those persons who should be charged VAT on such surrenders or assignments, however, the following is a non-exhaustive list:

- ◆ Private persons
- ◆ School Bodies
- ◆ Doctors or Dentists
- ◆ Certain Hospital Authorities
- ◆ Bookmakers
- ◆ The National Lottery
- ◆ Undertakers

Example 2

Fred, a florist and taxable person, has a 35-year lease of a unit (developed since 1/11/1972) in a Shopping Centre. He assigns his lease to Larry, a bookmaker. In this case, Fred must account for VAT on the supply. He will therefore invoice Larry.

Example 3

Suzy, an accountant and a taxable person, has a 20-year lease of a ground floor office. The property was developed since 1/11/1972. Donal, the landlord, who resides in the upper section of the property, agrees to take a surrender of the lease. He will use it to expand his residence and will not use it for business purposes. Suzy must account for VAT on the surrender. ■

¹ See appendix A to Revenue Guide to VAT www.revenue.ie/pdf/vatguide_03pdf

² A taxable person for this purpose is a person liable to register for VAT - see Revenue Guide to Value Added Tax, Chapter 2.1 www.revenue.ie/doc/proptran.doc

EMPLOYER INFORMATION

Collector General

Employer Information and Support Service Tel: 1890 25 45 65

Irrespective of the size of a business, employers may be faced with several different tax related payroll issues at any time. In recognition of this the Collector-General's Division has established an Information and Support Service for Employers. This service is located in Nenagh, Co. Tipperary and irrespective of where a business is located this number may be used for general information and support. The phone lines are open from 9.30am - 5pm.

We provide assistance to employers in:	<ul style="list-style-type: none"> ■ Completing the P35 and P60 forms ■ Completing TDCs ■ Completing P45s ■ Completing the P11D
We provide general information to employers on:	<ul style="list-style-type: none"> ■ PAYE regulations and system ■ PRSI system including PRSI rates and classes ■ Operation of Benefit-in-Kind ■ ROS - employer registration and filing ■ Taxation of social welfare benefits ■ Tax credits / standard rate cut off points ■ Schedule E expenses ■ Motor expenses and subsistence allowances ■ Emergency Tax ■ Bonuses ■ Lump sum payments ■ Share options ■ PRSAs ■ P45 issues ■ Redundancy payments ■ Registration procedures ■ Cancellation procedures
We deal with specific queries on:	<ul style="list-style-type: none"> ■ P30 and P35 payments made ■ Demands and estimates ■ P35 amendments and supplementaries ■ P35 overpayments ■ Changing payroll systems ■ Change of addresses ■ Change of agent
We deal with requests for:	<ul style="list-style-type: none"> ■ P35 stationery ■ Blank P60s ■ Statements of account ■ Re-issue of TDCs or TCCs ■ Confirmation of details submitted

Employers will still need to contact the district in which their business is managed. The districts will deal with issues such as amendments to employee PAYE records, certificates of tax credit for new employees, registration or cancellation of employer registration numbers or employees PPS numbers. ■

FORM CT1

2004

The following article highlights some of the main changes to the 2004 Form CT1. It also contains notes on the completion of sections of the return that have given rise to problems with completion in recent years.

Explanatory Notes on completion of Form CT1 2004 - are available on the Revenue website, www.revenue.ie.

Panel 1 - Trading Profits

The order of Manufacturing and Non-Manufacturing trading profits has been changed, with Non-Manufacturing profits now appearing first. Care should be taken that the correct panel is completed and only companies that qualify for Manufacturing Relief are entered in the Manufacturing trade section.

Trade Charges

Only trade charges should be entered in this panel. Non-trade charges should be entered in panel 9 at code H8.

Elections

At the end of Panel 1 an election box has been added to cater for elections under *Section 80A TCA* (inserted by *Section 35 FA 2004*) - taxation of certain short-term leases. See note on *Section 35 FA 2004* on page 7 of *Tax Briefing* Issue 55.

Extracts from Accounts (Accounts Menu)

The only change to these pages is the addition of two questions at the start of the 'menu'. These apply only where the Accounts Menu itself does not require completion, i.e., accounts have previously been submitted or the turnover of the company is in excess of €13 million.

Panel 2 - Rental income.

An issue was identified in relation to the claiming of Relief for Rented Residential Accommodation, commonly known as 'Section 23 relief'. The correct treatment of this relief is to allow it as an expense in

the year in which it is first claimed and then any unused portion becomes part of losses carried forward to subsequent years. Therefore on the Form CT1 in the initial year of claim the amount of rental income net of this relief should be entered at line D5 and in subsequent years the loss forward figure should be entered at line S5.

Panels 5, 6 and 29

Three new specific panels have been incorporated into the return which request information in relation to income from Foreign Life Policies and Offshore funds. This information would have previously been returned in Panel 4 - Foreign Income.

Panel 5 - Foreign Life Policies

Companies resident or ordinarily resident in the State should include details of any Foreign Life Policies issued in the accounting period from a Member State of the EU, EEA, or the OECD with which Ireland has a double taxation agreement. (*Part 26 Chapter 6 TCA 1997*)

Panel 6 - Offshore Funds

Companies resident or ordinarily resident in the State must include details of acquisitions of material interests in all offshore funds in the EU, EEA, or in a Member State of the OECD with which Ireland has a double taxation agreement. An interest is a material interest if it is capable of realising an amount equal in value to the proportion of the underlying asset of the offshore fund represented by that interest. An offshore fund can take the form of an investment in

- A company which is resident outside the state, or
- A unit trust scheme the trustees of which are not resident in the state, or
- Any arrangements which do not fall within paragraph (a) or (b), which take effect by virtue of

the law of a territory outside the State and which under that law, create rights in the nature of co-ownership.

Panel 29 - Other Offshore Products

Information on other offshore products (not included in Panel 6) should be entered in this panel.

Panel 10 - Reliefs

In previous years returns some agents have incorrectly entered the tax value of the relief rather than the gross loss/charge/group relief to be offset, leading to the issue of incorrect assessment, additional contacts, etc. The figure required in this panel is the amount of the **gross** loss/charge/group relief as appropriate, to be offset.

Panel 12 - Research and Development Tax Credit

This new panel caters for claims for relief under *Section 766 and 766A TCA 1997*. The figures required here are the actual credit amounts due to the company in accordance with the legislation. For example, if a company has incurred relevant expenditure of €100,000, and is due a credit of €20,000 (i.e., 20%), the figure that should be entered is €20,000.

Panel 14 - Amendment to prior year returns

This panel has been expanded to cater for the carry back of losses under *Section 396A(3) TCA 1997*.

If the return in which you are claiming the carry back of trading losses under *Section 396A(3) TCA 1997* is submitted late there is a restriction to the amount of the loss that can be carried back as follows:

- By 25% of the loss required, where the return is submitted within two months of the return filing date, or

Continued on page 18

FORM CT1

Continued from page 17

- By 50% of the loss required where the return is submitted more than two months late.

Panel 16 - Other credits■ **RCT**

Do not include any credit due for Relevant Contracts Tax (RCT) in this panel. The claim for credit of RCT must be made direct to the company's Revenue Office, accompanied by supporting RCTDCs.

■ **PSWT**

When claiming credit for Professional Services Withholding Tax (PSWT) enter

all tax for which credit is claimed in the accounting period. Relief will be given for the amount claimed, less interim refunds. See separate note on page 12 of this issue of *Tax Briefing*.

Panel 22 - Exempt Profits

Additional information is sought on net profits or gains from Patent Income, Stallion Fees, Woodlands, and Greyhound Stud Fees in accordance with *Section 35 FA 2003*. Information on the latter three sources is only required where the Company's accounting period commenced on or after 1 January 2004.

Panel 31 - Stapled Stock Arrangements

This new panel is to capture information on Stapled Stock Arrangements. A Stapled Stock Arrangement is, broadly speaking, an arrangement whereby a non-resident company makes a distribution to a person and the person has under any agreement, arrangement, or understanding exercised a right to receive distributions from the non-resident company instead of receiving relevant distributions from an Irish resident company. See separate article below. ■

STAPLED STOCK ARRANGEMENTS

This article is written as a reminder to practitioners of the reporting requirements of certain resident companies in relation to Dividend Withholding Tax.

Some Irish resident companies have arrangements with associated non-resident companies whereby the shareholders can elect to take distributions either from the resident or the non-resident company. Such arrangements are referred to as 'stapled stock arrangements'.

Section 172L TCA 1997 provides for the reporting of distributions made

under stapled stock arrangements. Where under a stapled stock arrangement a non-resident company makes distributions in any month, *Section 172L* requires the resident company to make a return to Revenue within 14 days of the end of the month showing:

- ◆ The name and tax reference number of the resident company
- ◆ The name and address of the non-resident company which made the distributions
- ◆ The name and address of each person to whom a distribution

was made in the month concerned

- ◆ The date the distribution was made to that person, and
- ◆ The amount of that distribution

In general the return must be made in an electronic format approved by Revenue. In certain circumstances the return may be made in writing in a form prescribed or authorised for that purpose by Revenue. It must also be accompanied by a declaration made by the company, on the prescribed or authorised form, to the effect that the return is correct and complete. ■

DWT

ROS

Update

Introduction

The last issue of Tax Briefing noted the very successful take up of ROS for Income Tax filing in 2003 and dealt with ROS technical performance issues that arose last year. It also outlined our plans to improve the service and this article is an update of the situation and gives details of new developments.

Release 22 May 2004

In the May release we made the first step to increasing the capacity of the ROS service by upgrading our web and application servers and software to increase processing capacity and further improve performance and stability. Performance tests indicate that response times of ROS on the new platform are already 60 to 70% faster than on the previous platform. ROS is now also using the new Government Hosting Virtual Private Network (VPN), which will result in significantly increased bandwidth to the site, further speeding up response times.

Next Release 25th July 2004 (Pay & File)

In the next release of ROS service at the end of July 2004 there will be further enhancements to the ROS service to assist tax agents using the system, particularly during the busy Pay & File period.

Many of these enhancements are as a direct result of requests from and consultation with agents and representative bodies.

◆ **Offline Payment facility for Income Tax Filing**

In addition to the facility to prepare returns offline and subsequently upload them in batches to the ROS service, we will now provide a similar facility to complete payment screens offline and subsequently upload the payment instructions in batches. The functionality and

validation included in this offline facility is exactly the same as that used in the on-line payment screens. Although initially being introduced for Income Tax filing only, the service can be extended to Corporation Tax filing at a later date if there is sufficient demand for this facility.

◆ **Batch printing of Notices of Assessment**

Agents will now be able to select up to 10 notices of assessment from their inbox and arrange to print them together at one time.

◆ **ROS Debit Instruction (RDI) set up by sub users**

Sub users were previously only allowed to file returns. These users will also now be allowed to complete ROS Debit Instructions (RDIs)

◆ **Returns Outstanding (search by date)**

Agents will now be able to get details of returns outstanding for a particular client for a particular year or range of years.

The July release will also include the following features which will be of interest to agents:

◆ **Common Agricultural Policy**

A facility to capture and process export declarations for CAP products qualifying for export refunds is being introduced. This development will include interfacing with the Department of Agriculture and Food for speedier processing of refunds using the Inter Agency Messaging Service provided by Reach, the Government Public Services Broker.

◆ **Corporation Tax**

Form CT1 2004 will be available.

◆ **Income Tax**

When filing 2003 returns on ROS in a small number of cases agents would have received an acknowledgement of the successful upload and a note

advising them that due to technical reasons the notice of assessment would not issue until July. Assessments in these cases will now issue after this release.

Advanced ROS Training

A presentation has been prepared to advise practitioners of the most efficient way to use the ROS System. This presentation will be available on request throughout the country during the summer months through the network of local ROS Liaison Officers (RLOs).

The presentation will cover topics such as Administrator Services, Statements of Account, Use of Client Lists, Returns Outstanding as well as issues surrounding Digital Certificates, Form 11 issues, House Keeping of documents etc.

If you are interested in learning how to use the ROS System more effectively and would like to receive this presentation please contact your local RLO or contact ROS Directly by sending an e-mail to rosmanager@revenue.ie. A list of all RLOs is available on the Revenue website www.revenue.ie under ROS Contacts on the home page.

ROS Information Helpdesk Upgrade

To improve our Information **Helpdesk 1890 20 11 06**, we have installed touch dial options on the service to enable callers to select particular areas where they require assistance. These options will ensure that we direct your call to a person in the area of concern to you, for example Digital Certificates, uploading forms, Vehicle Registration Tax etc. This new technology will also help in balancing the calls between the two Help Desk locations more effectively.

Continued on page 20

ROS

(Continued from page 19)

Client Revenue District Details

In August, it is planned to provide this new service for all agents registered for ROS. When displaying the client list the full contact details for the Revenue Office for each client will also be displayed.

ROS Digital Certificates

In April Revenue changed the service provider of the ROS digital certificates.

This changeover from the old to the new service provider was a near seamless transfer with only a very small number of customers experienced some difficulties; these difficulties have all now been resolved and Revenue apologises for any inconvenience caused.

Customers should be assured that the security provided for ROS was never at issue and that it continues to be provided to the same very high standard as before.

A significant number of ROS customers have not yet changed their digital certificate to the new provider. Revenue strongly advises that customers log in and update their certificate to the new provider as soon as possible. If you experience any difficulties please contact the **ROS Help Desk at 1890 20 11 06** or e-mail us at roshelp@revenue.ie

APPROVED PROFIT SHARING SCHEMES

Approved for the purposes of Chapter 1, Part 17, Taxes Consolidation Act 1997 and Schedule 11 of that Act

Basis of Entitlement for shares

Background to this article

A number of queries have arisen in relation to accepted methods that can be used as a basis of entitlement to shares for the purposes of satisfying the "similar terms" provisions in the legislation governing approved Profit Sharing Schemes. Revenue's position on this matter is set out hereunder. Practitioners should note in particular sections headed Bonuses and Flex Plans below.

Profit Sharing Schemes

Basis of Entitlement for Similar Terms

The original intention and spirit of the legislation was that companies would give free shares to employees with the cost being borne by the company. This would usually only occur when substantial profits were made. Under the provisions of

Paragraph 4, Schedule 11, Taxes Consolidation Act, 1997, all employees and directors meeting the qualifying conditions must be eligible to participate in Profit Sharing Schemes at the same time and must do so on "similar terms".

The purpose of the "similar terms" requirement is to ensure, based on objective criteria, the fair distribution of shares between participants. The formula used must ensure a straight line progression from those participants at the bottom of the earnings scale to those participants at the top of the earnings scale. This does not mean that every participant must be allocated the same number of shares. Rather, a scheme may provide for the

appropriation of shares to participants by reference to their levels of remuneration, their length of service or other similar factors. Where levels of remuneration are used, these should relate to basic remuneration. Any fluctuating emoluments (i.e. overtime, bonuses, etc.) must be excluded. Shift premium payments are treated as part of basic remuneration for this purpose.

Bonuses

A number of the queries giving rise to this article relate to bonuses. In general, there are two types of bonuses -

- (a) non-discretionary (also known as 'fixed bonuses'); and
- (b) discretionary bonuses

Non-Discretionary Bonuses (also known as 'fixed bonuses')

It appears that a practice may have developed over the years in some approved Profit Sharing Schemes whereby non-discretionary bonuses are used as the basis of entitlement to shares for the approved Profit Sharing Scheme. In particular, it would appear that bonuses to which employees have an entitlement under their contracts of employment may have been included in approved profit sharing scheme and used as the basis for entitlement for shares under such scheme. However, this is not a permitted basis of entitlement to benefits under an approved Profit Sharing Scheme as, in Revenue's view, it amounts to salary substitution. **In future, Revenue will not approve new Profit Sharing Schemes, which have a non-discretionary bonus as a basis of entitlement. Neither will existing approved Profit Sharing Schemes be allowed to amend the basis of entitlement to include a non-discretionary bonus.**

APPROVED PROFIT SHARING SCHEMES

Discretionary Bonuses

Companies allocate, at their discretion, bonuses to staff. Historically, Revenue have, by way of concession, allowed companies to use discretionary bonuses, based on objective criteria, payable to all directors/employees as a basis of entitlement to shares under approved Profit Sharing Schemes.

However, where a company allocates discretionary bonuses which are not payable to all members of staff, then such bonuses do not fulfil the “similar terms” criteria required for approved Profit Sharing Schemes [i.e. such bonuses cannot be used as a basis of entitlement to shares under an approved Profit Sharing Scheme].

2.3

Examples of Similar Terms

Some examples of ‘similar terms’ include all eligible employees being entitled to receive

- ◆ A number of shares based on the same percentage of their basic salary
- ◆ The same number of shares
- ◆ A number of shares for each year of service
- ◆ A number of shares calculated by reference to the proportion (percentage) an individuals’ salary bears to the total salaries of the company
- ◆ Shares based on the results of a Performance/Appraisal scheme.

Salary Banding

It is acceptable to appropriate shares by reference to salary banding

provided the following guidelines are adhered to:

- The maximum amount allowed between Bands is €6,350
- All the Bands must have the same amount between them
- The same point on the Band must be used for all
- The Bands cannot cross over
- The same percentage must be used for all Bands.

Service and Salary

The appropriation of shares by reference to an agreed formula which allows the addition of service and salary is also acceptable. A straight line progression from those participants with the lowest service to those participants with the highest service must be achieved.

Example

Years Service	0-1	1-2	2-3	3-4	4-5	5-6	6-7
€500 paid for each year	€0	€500	€1,000	€1,500	€2,000	€2,500	€3,000
1 year qualifying service							

Basic Salary	€20,000	€22,000	€25,000	€30,000	€40,000
€100 per €1,000 salary	€2,000	€2,200	€2,500	€3,000	€4,000
5 per cent of salary	€1,000	€1,100	€1,250	€1,500	€2,000

Taking a combination of years service and €100 per €1,000 salary

An eligible employee with 3½ years service and earnings of €25,000 could receive €4,000 worth of shares (€1,500 plus €2,500).

Taking a combination of years service and 5 percent of salary

An eligible employee with 4½ years service and earnings of €30,000 could receive €3,500 worth of shares (€2,000 plus €1,500).

Note

It is not acceptable to use a formula which allows for the multiplication of salary and service. The end result of such a multiplication would be highly disproportionate to the salaries paid.

Continued on page 22

APPROVED PROFIT SHARING SCHEMES Continued from page 21

Performance/Appraisal Schemes

The appropriation of shares by reference to Performance/Appraisal schemes may also be acceptable subject to the following conditions being satisfied:

- ◆ The scheme must be objective, non-discriminatory and in accordance with the “similar terms” provisions in the legislation
- ◆ The same percentage range must apply to all employees
- ◆ There must be no salary substitution
- ◆ There must be no tax planning, and
- ◆ The performance scheme must be for sound commercial reasons.

Age, Status (Seniority) or Grade

The appropriation of shares by reference to the age of the participant or the status or grade of the participant will not be regarded as meeting the “similar terms” requirements.

Flex Plans

Flex Plans are generally introduced as part of a broad negotiated agreement for changes in the terms and

conditions of employees. They provide employees with an opportunity to design the pay and benefit packages that most suit their needs. This concept of flexibility on offer from the employer is then matched by the employees agreeing to be flexible in other areas, such as working arrangements, working hours, etc.

In the past, Flex Plans in companies could be used as the basis of entitlement to shares under an approved Profit Sharing Scheme. However, arising from a review of the these type of plans, it is Revenue's view that bonuses from Flex Plans cannot be used as a basis of entitlement for approved Profit Sharing Schemes.

With effect from 1 January 2004, the Revenue Commissioners will not approve Profit Sharing Schemes which include Flex Plans as a basis of entitlement.

Approved Profit Sharing Schemes currently using Flex Plans as a basis of entitlement may continue to do so until 31 December 2004. With effect from 1 January 2005 a new basis of entitlement to benefits must be established and approved by the Revenue Commissioners.

Previous Articles on approved Profit Sharing Schemes are contained in *Tax Briefing* Issue No's 20, 38, 40, 46 and 54 ■.

PAY & FILE 2004

IT & CT

Introduction

Pay and File is now an established feature of income tax and corporation tax self-assessment. Under Pay and File there is an onus on taxpayers to calculate their own tax liability and pay any outstanding taxes on a single date. This article summarises the main features of Pay and File for income tax and corporation tax for 2004 and addresses some issues that arise when completing returns. At the end of the article is a summary of the Pay and File Calendar.

Use of Revenue On-Line Service (ROS)

Whether for income tax or corporation tax, ROS offers the best, easiest and most efficient way of filing returns and paying tax. It is available 24 hours a day, 365 days of the year. In addition it gives an instant calculation of your tax liability. Furthermore, for income tax customers Revenue has announced an extension of the Pay and File deadline in 2004 to 18 November for those who both pay and file on ROS (See summary at the end of this article).

ROS can be accessed through the Revenue website at www.revenue.ie

Place of Filing

Under Pay and File tax returns are submitted to a central location, namely Collector Generals Division, PO Box 354, Limerick.

Personalised Paper Returns

If you are filing paper returns you will normally receive a personalised tax return and payslip for each of your clients. These returns are bar-coded and have other electronically coded data that is personal to the client. It is important therefore that you only use these personalised returns for the person named on the return and only for the year stated on the return, i.e. no striking out of any of the data on the return and using it for a different client/tax year, etc. Failure to do this may result in the return and/or payment being credited to the wrong year/taxpayer. If you do not have a personalised return, 'blank' returns may be obtained from Revenue's *Forms and Leaflets Service* at LoCall 1890 306 706, or from any Revenue Office.

PAY & FILE 2004

Attachments to Tax Returns

In general, there is no need to send any attachments with returns in support of the figures on the return. Instead you should retain such supporting documentation, accounts schedules etc. in case they are subsequently requested by Revenue for verification check or audit at a later date. See separate article on this in *Tax Briefing*, Issue 52 May 2003 (page 6).

Extract From Accounts - trading/professional income

The extract from accounts pages on the returns must be completed in most cases where there is a Case I/II source of income. Where there is an entry in the accounts, the corresponding section of the Extract from Accounts pages on the return must be completed. Detailed articles on the completion of Extracts from Accounts pages are contained in *Tax Briefing* Issues 53 and 54. Failure to complete these pages where appropriate will result in a return being sent back for proper completion.

Early Filers - Income Tax

As in earlier years, if you are filing a paper return for your client and you want Revenue to calculate the liability in time to meet the Pay and File obligations you should submit same before 31 August 2004 and Revenue guarantee to issue a notice of assessment in time to meet the Pay and File obligations and have certainty in the amount of tax payable by 31 October.

Summary of Pay & File Calendar

Income Tax and Capital Gains Tax

- ◆ 31 August 2004 last day for submission of return where you want Revenue to issue an assessment by the return filing date. Revenue cannot guarantee that any return received after that date will be processed and an assessment issued by the 31 October.
- ◆ September - Issue of reminder preliminary tax letters, together with a payslip.

- ◆ 31 October 2004:
 - filing date for 2003 tax return
 - Payment date for balance of income tax liability 2003
 - Payment date for preliminary tax 2004
 - Payment date for capital gains tax liability for initial period - liability on disposals made in period 1 January to 30 September 2004.
- ◆ 18 November 2004: extended pay and file deadline for those who both pay and file through ROS - see *Tax Briefing* issue 55 page 17.

Corporation Tax

In general, Corporation Tax Returns must be filed nine months after the end of the company's accounting period. Under Pay and File the company must also pay any outstanding balance of tax due with the return. If the accounting period ends after the twenty-first of the month, the filing date and payment date are brought forward to the 21st of the month. Thus for a company with an accounts year ending on 31 January 2004, the latest date for paying the balance of tax and filing the return is 21 October 2004.

Preliminary Tax remains payable in two instalments, the first, one month prior to the end of the accounting period and the second six months after the end of the accounting period. Thus, in the above example the tax is/was payable as follow:

First instalment of PT	21 December 2003
Second instalment of PT	21 July 2004
Balance of tax	21 October 2004 (i.e. on the return filing date under Pay and File, as stated above.)

See *Tax Briefing* Issues 48, 49 and 53 for more details on the payment of Preliminary Corporation Tax. ■

REVENUE NEWS

Update

European Communities (Mutual Assistance in the Field of Direct Taxation, Certain Excise Duties and Taxation of Insurance Premiums) Regulations 2003. (S.I. No. 711 of 2003)

The Minister for Finance signed statutory Instrument No.711 on the 18 December 2003, with an operative date of 31 December 2003. This Statutory Instrument gives effect at national level of the EEC Council Directive of 19 December 1977 concerning mutual assistance (exchange of information) by the competent authorities of Member States, as required by an amending Council Directive of 7 October 2003. These Regulations also consolidate and give effect, in one set of regulations, to Council Directive 77/799/EEC as amended.

Finance Act 2004 - Guidance Notes

Guidance Notes on the Finance Act 2004, are now available on the Revenue website, www.revenue.ie under What's New. These are guidance notes only and do not purport to be a definitive legal interpretation of the provisions of that Act.

Finance Act 2004- Stamp Duty Changes

The Finance Act 2004 was signed on the 25th March 2004 and brought into effect certain changes in relation to Stamp Duty. Information of the following changes is available on the Revenue website, www.revenue.ie, under What's New.

- ◆ New Revenue certificates required in deeds of transfer of new houses and apartments - refer to the notice **SD1 Budget2004** and the leaflet **SD10A**.
- ◆ New academic qualifications and training requirements for the exemption from stamp duty for Young Trained Farmers - refer to the notice **SD2 Budget2004** and the leaflet **SD2A**.
- ◆ Exemption from stamp duty for intellectual property - refer to the notice **SD3 Budget2004**.

Revenue Contact Locator

A new Contact Locator on the Revenue website enables tax practitioners to speedily ascertain appropriate Revenue contact details applicable to their clients. These include telephone number, e-mail and postal address, fax number and the office to which they should call, if they require personal attention. Entering your client's PPS Number provides access to this information. This facility can also be used by the customers themselves.



Revenue eBrief

A list of Revenue eBriefs which issued since the publication of the Tax Briefing supplement in May 2004 follows. These, together with earlier eBriefs can be accessed on the Revenue website www.revenue.ie on the practitioners page. If you like to receive Revenue eBrief forward your e-mail address to EBrief@revenue.ie

- No.27. Vat on Property
- No.26. Revenue Defaulters List
- No.25. Revenue opinion as to whether specified activities can be classified as 'trading activities'
- No.24. Collector-General - Employer Information and Support Service
- No.23. Invitation to Dublin Region Information Seminar-Amendment to e-Brief 22.
- No.22. Invitation to Dublin Region Information Seminar
- No.21. New Website Contact Locator
- No.20. New Vehicle Registration Certificate
- No.19. May Offshore Investigation: New Deadline 10th June
- No.18. May Issue Tax Briefing Supplement.

New Leaflets

The following new information leaflets have been published:

Taxation Issues for Milk Production Partners ■



Revenue