

Revenue

Tax Briefing No 60

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Where still relevant it has been incorporated
into a Tax and Duty Manual
or other website text.

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Key Dates

August 2005

14 PAYE/PRSI

P30 monthly return and payment for July 2005

14 DWT

Return and payment of DWT for July 2005

14 PSWT

F30 monthly return and payment for July 2005

14 RCT

RCT 30 monthly return and payment for July 2005

1-21 Corporation Tax

2nd Instalment PT for APs ending between 1-28 February 2005

1st Instalment PT for APs ending between 1-30 September 2005

Returns for APs ending between 1-30 November 2004

Pay balance on APs ending between 1-30 November 2004

1-31 Corporation Tax

Returns of Third Party Information for APs ending between 1-30 November 2004

September 2005

14 PAYE/PRSI

P30 monthly return and payment for August 2005

14 DWT

Return and payment of DWT for August 2005

14 PSWT

F30 monthly return and payment for August 2005

14 RCT

RCT 30 monthly return and payment for August 2005

19 VAT

VAT 3 return and payment for July/ August 2005

1-21 Corporation Tax

2nd Instalment PT for APs ending between 1-31 March 2005

1st Instalment PT for APs ending between 1-31 October 2005

Returns for APs ending between 1-31 December 2004

Pay balance on APs ending between 1-31 December 2004

1-30 Corporation Tax

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

Funds in Life Assurance products

Introduction

In 2004 Revenue made it known that research was being conducted into the use of life assurance investment products by taxpayers to hide undeclared and undisclosed income / gains / acquisitions. As a result Revenue announced on the 11 April 2005 that an investigation would be launched but that in advance taxpayers would be given an opportunity to come forward voluntarily and make declarations and pay the outstanding liabilities. The approach was similar to that used in previous large scale projects, e.g. Bogus Non-Resident account investigation and Offshore Assets Investigation.



The deadline date (22 July 2005) for the voluntary disclosure phase has passed and preliminary indications are that it has been very successful.

It is interesting to note that the Revenue HELPLINE dealt with more than 20,000 phone calls in the voluntary disclosure phase and also that very considerable use was made of the Revenue website.

To date a total of 4,600 taxpayers have made disclosures with payments amounting to €312 million.

Notices of Intention to Disclose

During the voluntary phase notices of intention to disclose were filed by or on behalf of about 10,000 taxpayers. In some cases the notice was described as a precautionary / provisional one and more detailed research by the taxpayer/agent may have indicated that no liability arose. In others, although not so described the same conclusion may have been reached. Where in these instances there was no disclosure made taxpayers/agents are requested to send a follow up letter, clarifying the position, to:

Office of the Revenue Commissioners,
Investigations & Prosecutions Division
Underlying Tax (Insurance Products) Project,
4th Floor
1 Clanwilliam Court,
Lower Mount Street
Dublin 2

This will avoid unnecessary contact from Revenue.

Acknowledgement letters

The recording of the information contained in the disclosures and the issue of acknowledgement letters has commenced. When all disclosures have been recorded and all acknowledgement letters have issued Revenue will make an announcement to that effect in a later issue of **Tax Briefing**. Exceptionally if at that stage an acknowledgement letter has not been received for a client please contact the Insurance Products Investigation HELPLINE at 01 6474818 and the matter will be checked and a duplicate acknowledgement letter will be issued, if necessary.

Investigation Phase

Following on from the disclosure stage, the investigation stage has now commenced. Revenue investigators are currently engaging with the Insurance Companies in relation to the sampling exercise which is provided for in *Section 140 Finance Act 2005*. The information that will be ascertained in the course of this work together with that obtained from the voluntary disclosures will be used to support applications to the High Court for orders seeking information from insurance companies in relation to policies and policy-holders with a view to identifying taxpayers who have used life assurance products to conceal funds that have not yet been disclosed or declared for tax purposes.

Enquires on this article should be addressed to pcrowley@revenue.ie

VAT Implications for Waste Disposal

In recent times the treatment of VAT on waste disposal has been queried by a number of Waste Disposal Operators carrying on business in the industry. This article aims to clarify any misconceptions of VAT in this sector.

Legislation

The acceptance for disposal of waste material is a service and chargeable to VAT at the 13.5% rate in accordance with *Paragraph (viii) of the Sixth Schedule Irish VAT Act 1972* as amended.

Section 11 of the Waste Management Amendment Act 2001 gave the Minister for the Environment and Local Government the power to make regulations providing for the imposition of a landfill levy. The Waste Management (Landfill Levy) Regulations 2002 (S.I. No. 86 of 2002) imposed the levy with effect from 1 June 2002. The regulations provide that the accountable person is the person by whom the levy is payable, i.e. the operator of the landfill facility. Landfill facilities are in general operated by Local Authorities. The VAT position of local authorities is set out in *Article 4(5) of the EU Sixth VAT Directive*, which was transposed into Irish VAT law by *Section 8(2A) Vat Act* and is as follows:

Section 8(2A)(a) provides that local authorities shall be taxable persons only with respect to specified categories of supplies made by them of goods and services (other than certain sporting activities where there is distortion of competition which are specifically provided for in *Section 8(3E) VAT Act*) by the making of an Order by the Minister.

To date no such order has been made so accordingly they remain outside the scope of VAT for all other activities including the operation of landfill facilities.

Operation

Operators of landfill facilities pass on the levy to persons using the landfill facility.

Where a local authority charges fees and the levy to persons depositing waste in the licensed landfill facility no charge to VAT arises.

Where the person using the landfill facility in the course of operating a waste disposal business, charges a customer an amount for disposing of waste which includes the levy VAT is chargeable on the total consideration that the waste disposal operator becomes entitled to receive inclusive of the levy, or an amount equivalent to the levy.

There are a small number of landfill facilities operated by licensed private operators who like the local authorities are accountable persons for the levy. These operators charge a gate fee plus the levy, or an amount equivalent to the levy, to persons using the facilities. In these circumstances, VAT is chargeable on the total consideration that the landfill operator becomes entitled to receive inclusive of the levy, or an amount equivalent to the levy. A VAT registered waste disposal company using the private facility may deduct this VAT.

Where the person using the private landfill facility in course of operating a waste disposal business, charges customers an amount for disposing of waste which includes the levy, or an amount equivalent to the levy, VAT is chargeable on the total consideration that the waste disposal operator becomes entitled to receive inclusive of the levy, or an amount equivalent to the levy, but exclusive of Value Added Tax.

Charge by waste disposal operators to their customers.

In all circumstances where a waste disposal operator includes the levy in the amount which is charged to the customer, VAT is chargeable on the total consideration that the operator becomes entitled to receive inclusive of the levy.

Enquires on this article should be addressed to taxbrief@revenue.ie

Tax Treatment of Legal Fees

TaxBriefing (Issue 51) outlined the tax treatment of legal fees recovered by an employee as part of a court action to recover compensation for loss of office or employment, etc. The purpose of this article is to outline the tax treatment of legal fees paid by an employer on behalf of an employee or director in certain other circumstances.



Breaches of Employment Law

Revenue wishes to clarify that the tax treatment set out in **Tax Briefing** (Issue 51) referred to above applies also to legal fees recovered by an employee or director as part of an action taken for breaches of employment law by the employee or director against his or her employer.

Legal fees connected with disciplinary matters

The scope of the Schedule E charge is wide ranging and legal fees paid by an employer on behalf of an employee or director are within that charge. Notwithstanding this, the Revenue Commissioners are prepared to regard the payment of legal fees incurred by an employee or director and paid on his or her behalf by an employer as not giving rise to an income tax liability in the employee's/director's hands where those fees relate to an investigation / disciplinary procedure instigated by an employer and all of the following conditions are met:

- (i) The fees are what are termed 'legal fees' (i.e. fees due to a member of the legal profession arising from representing the employee/director)
- (ii) The payment on behalf of the employee/director represents a full or partial discharge of legal fees incurred by the employee/director only in connection with the investigation/disciplinary procedure instigated by her/his employer (i.e. the tax treatment outlined in this article does not apply to legal or other fees incurred on other matters)
- (iii) The legal fees are paid by the employer directly to the employee's/director's legal representative and only after having had sight of the invoice relating to such fees (i.e. on sight of the invoice issued to the employee/director by the employee's/director's legal representative)**
- (iv) Where the investigation/disciplinary procedure instigated by the employer, or the action taken by an employee/director, results in a settlement* being made to the employee/director by the employer, the discharge of the legal fees on behalf of the employee/director must form part of a specific term of any such settlement agreement.

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* The tax treatment of other elements of the settlement (e.g. chargeable under *Section 112* or *Section 123 TCA, 1997*, or whether they qualify for relief under *Section 192A TCA 1997*) will depend on the specific facts.

Pay and File 2005

Introduction

The Income Tax Pay and File deadline of the 31 October 2005 is still a few months away, but we are taking this opportunity to highlight a few issues which may be of interest to practitioners. In addition to this article, practitioners may find articles in previous issues of Tax Briefing useful, in particular issues 57, page 1 (summary of Pay and File 2004); issue 53, page 4 (Extract from Accounts pages); and issue 48 page 5 (general introduction to Pay and File and Questions and Answers).

Income Tax

Pay and File deadline

This year there is an extension to the Pay and File deadline for Revenue On-Line Service (ROS) customers who both pay and file on-line through ROS. The date for making the return and the date of payment will be extended to 17 November 2005, where both the return and payment are made through ROS. If the return is made through ROS before 17 November and the payment is being made through ROS, then the payment will not be debited until 17 November 2005.

The deadline of 31 October 2005 applies to all other customers.

Early Filers

As in previous 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 deadline you should submit the return before 31 August 2005. Customers who submit their return before that date will receive an assessment in advance of the 31 October. Returns received after that date will be processed as soon as possible and we will endeavour to get the assessment out before the 31 October. We cannot, however, guarantee to issue an assessment in time for the 31 October deadline to those who file after 31 August.

ROS

ROS offers many benefits to the practitioner in addition to the extended deadline mentioned above. These have been expanded upon in previous issue of **Tax Briefing**. For a list of all previous ROS articles see **Tax Briefing** Supplement 2005, page 16. There is also an article on ROS on page 20 of this Issue which contains a short note on ROS debit instructions and Practitioners' client lists.

RACs, PRSAs, and AVCs

Under Sections 787(7), 787C(3), 774(8) and 776(3) TCA 1997 relief may be claimed in respect of an RAC, PRSA or AVC payment made on or before the return filing date. Where an individual qualifies for the extended Pay and File deadline available to ROS customers, the deadline for making RAC PRSA and AVC payments and claiming the relief is also extended to 17 November 2005.

Personalised Paper Returns

Revenue would like to again stress the importance of only using personalised returns for the particular client named on the return. The use of these returns for any other individual delays the processing of the return and may result in the return or payments being incorrectly recorded.

If you do not have a personalised return, and you are not using ROS, 'non-personalised' returns may be obtained from Revenue's Forms and Leaflets Service at LoCall 1890 306 706, from any Revenue Office, or from the Revenue website, www.revenue.ie/forms/f11_04.pdf

Payslips

If you are not making an electronic payment via ROS you should use either the payslip that is part of the personalised Form 11, or the personalised payslip which accompanies the Preliminary tax reminder letters, which will issue in September / October 2005.

Capital Gains Tax.

October 31 is also the due date for capital gains tax due on disposals in the 2005 initial period, that is gains arising between the 1 January and 30 September 2005.

CGT Payslip A (for the purpose of making a payment of CGT for this initial period) is available on the Revenue website at <http://www.revenue.ie/forms/cgta05.pdf>, or from any Revenue office.

Enquires on this article should be addressed to bnrdking@revenue.ie

Value Added Tax and Property-Finance

The following is an extract from the Finance Act 2005 - Guidance Notes which are available on the Revenue website at www.revenue.ie/en/practitioner/law/notes/finance-act-2005.html

100. Amendment of Section 4 of the VAT Act (special provision in relation to the supply of immovable goods).

Summary

This section makes several amendments to Section 4 of the VAT Act which deals with property transactions. The amendments to subsection (3) deal with the treatment of properties for which VAT deductibility was available and which are diverted into exempt letting. They provide for the payment by the taxable person of an amount which represents an adjustment of deductibility when the exempt letting begins (and if such properties are subsequently sold, Section 104 of the Finance Act makes provision for the restoration of some credit against the VAT arising on that sale). Subsection (6) is re-drafted. Subsection (8) is also re-drafted and in addition contains one added rule concerning documentation. The amendment to subsection (9) ensures that the sale of a reversionary interest will be taxable only where the property has been developed by, on behalf of, or to the benefit of the landlord.

Details

Amendment of section 4(3)

Paragraph (a) is a technical amendment. Paragraph (b) inserts two new subsections 3(aa) and 3(ab) into Section 4 dealing with a surrender of possession of property for which VAT deductibility was available.

The new *Section 4(3)(aa)* provides for the termination of the old rule in *Section 4(3)(a)* when the new provision came into force.

The new *Section 4(3)(ab)* provides for a new rule where a property on which deductibility was available is diverted into exempt letting. The new rule substitutes a "deductibility adjustment" for the clawback that was provided for under the old rule. The new rule operates as follows. Where a person who was entitled to deductibility on the acquisition and development of a property surrenders possession of the property in circumstances that the surrender does not amount to a supply for VAT purposes (in effect a short-term letting i.e. for a period of less than 10 years) then this gives rise to a deductibility adjustment. This deductibility adjustment is treated as if it were tax due by the person who made the surrender of possession in the period in which that surrender of possession takes place.

The amount of this deductibility adjustment will equal the amount of VAT deductibility claimed less one twentieth for each year between the date of acquisition or the last development and the date of the diversion. (See final note in the example below in relation to an interest of less than 20 years). This amount is calculated in accordance with the following formula:

$$\frac{T \times (Y-N)}{Y}$$

where-

T is the amount of tax which the person who surrenders possession of the goods was entitled to deduct in accordance with Section 12 in respect of that person's acquisition of the interest in and development of the goods the possession of which is being surrendered,

Y is 20 or, if the interest when it was acquired by the person who surrenders possession of the goods was for a period of less than 20 years, the number of full years in that interest, and

N is the number of full years since that person acquired the interest in the immovable goods being surrendered or, if the goods were developed since that interest was acquired, the number of full years since the most recent development:

but if that N is greater than that Y, such deductibility adjustment shall be deemed to be nil.

Example (Operation of section 4(3)(ab))

A company acquires a 999 year lease in land and commences development of a block of 24 apartments in January 2007. The development is completed in December 2008.

Total cost (site and development) €5m plus VAT of €675,000

The company sells 18 of the apartments for €500,000 each in January 2009. The remaining 6 apartments are on the market for six months and in July 2009 the company leases them on a short term basis. The lease continues up to December 2010 and in January 2011 the remaining 6 apartments are sold for €550,000 each.

In its return for Jan-Feb 2009 the company accounts for VAT on the sale of the 18 apartments in the normal way. Since the company has diverted 6 apartments into exempt letting it must also account for a deductibility adjustment in respect of this diversion.

The deductibility adjustment in respect of the 6 apartments is calculated as follows:

The amount of the deductibility adjustment equals the amount of deductibility claimed in respect of the acquisition and development of the 6 apartments leased. Assuming a pro rata cost this is 25% of the total deductibility claimed.

Amount of deductibility adjustment €675,000 x 25% €168,750

The company accounts for this amount in its return for Jul-Aug 2009.

Notes:

- *As the time between the completion date and the date of the diversion of the properties into exempt short term letting is less than one year no reduction in the deductibility adjustment is allowed in respect of "N" in the formula.*
- *Where the interest when it was acquired by the landlord is for a period of less than 20 years substitute the number of full years in the interest for 20 in the formula.*

Where the apartments are subsequently sold the company will be allowed a credit for a proportion of the deductibility claimed prior to the diversion. (Please see notes on Section 104 for a calculation of this credit).

Records relating to the acquisition and development of the property and the deductibility adjustment paid must be kept by the person in order to calculate the credit due under section 12 of the VAT Act.

If a VAT deductible property is appropriated by a taxable person for a purpose other than the purpose of his or her business, the provisions of Section 3(1)(f) will apply and the person is liable to account for VAT on a self-supply basis (see Section 10(4) of the VAT Act).

Interaction of Section 4(3)(ab) and Section 4(3A) (Economic Value Test Rules)

With regard to the interaction of Section 4(3)(ab) and Section 4(3A) the position is as follows. Where a person disposes of an interest in property and that disposal fails the Economic Value Test (EVT) then such disposal is deemed to be an exempt letting of that property. Such a disposal amounts to a surrender of possession of the property and prior to 1 May 2005 the provisions of Section 4(3)(a) applied a tax charge on a self-supply basis (see section 10(4) of the VAT Act). With effect from 1 May 2005 a disposal which fails the EVT will trigger a deductibility adjustment in accordance with Section 4(3)(ab).

Note that where, following a disposal which fails the EVT, the tenant surrenders the interest back to the landlord and the landlord subsequently disposes of an interest for a period of 10 years or more in the property, the new Section 12(5) of the VAT Act applies at the time of that subsequent disposal (see notes on Section 104 below).

Amendment of section 4(6)

Paragraph (c) is a redraft of subsection (6). The redrafted subsection clarifies the circumstances in which the disposal of a property is exempt from VAT. The subsection ensures that the exemption from VAT applies-

- Where the person making the disposal had no right to a deduction for VAT incurred on the acquisition or development of the property, or
- Where the property was occupied before 1 November 1972, and was not developed since that date,

the exemption does not apply

- Where the disposal is a supply of property to which Section 4(5) of the VAT Act applies, or
- Where the acquisition of the property occurred as part of a VAT free transfer of business and if VAT had been chargeable,

the person would have had a right to a deduction in relation to that VAT.

Amendment of Section 4(8)

Paragraph (d) substitutes a new Section 4(8).

The new paragraphs (a) and (b) of subsection (8) deal with assignments and surrenders of interests in property. The subsection makes the recipient of the interest in the property liable for the VAT (instead of the person who actually makes the surrender or assignment), where the recipient is-

- (i) A taxable person,
- (ii) A Department of State or a local authority, or
- (iii) A person who acquires the property for making any of the following exempt supplies in the course or furtherance of business:
 - an exempt supply of property
 - financial services
 - exempt lettings of property- short term
 - agency services in relation to passenger transport, accommodation, and other financial services
 - insurance services
 - public postal services
 - public broadcasting services, and
 - passenger transport.

This is commonly referred to as the reverse charge mechanism.

The new paragraph (c) of subsection (8) ensures that a surrender or assignment of an interest in property continues to be treated as a supply of goods by the recipient. The person who makes the surrender or assignment continues to be entitled to deductibility in the normal way. Such a person is obliged to issue a document to the recipient of the property setting out the taxable value of the surrender or assignment and the amount of VAT involved. The reason for this requirement is that, once the transaction is treated as a supply by the recipient, the person who makes the surrender or assignment would, in the absence of such a requirement, no longer be obliged to issue a full VAT invoice.

Amendment of Section 4(9)

Paragraph (d) also substitutes a new Section 4(9).

Section 4(9) is redrafted and the exemption from VAT for the disposal of reversionary interests is extended in certain circumstances.

Section 4(9)(a) extends the existing exemption on the sale of reversionary interests to cover a disposal by a landlord where a property has been developed but that development is not by, on behalf of, or to the benefit of

that landlord. Usually, any such development, if not done by the landlord, is done by the tenant. In addition the provision is redrafted and clarifies the circumstances under which the disposal by a landlord of a reversionary interest in property is exempt from VAT.

Section 4(9)(b) enables Revenue to make regulations with regard to the operation of the new rule in Section 4(9)(a) if need be. No regulations are being made on the matter at the moment as in most cases it should be clear as to what developments are to the benefit of a landlord. In the case of arm's length transactions, there is little incentive for a tenant to carry out work on a property apart from what is required for the purposes of carrying out his or her business. Accordingly the bulk of development carried out by a tenant is not likely to be to the benefit of the landlord and thus will not impact on the tax status of the reversionary interests.

Circumstances could arise where substantial work is carried out during the course of the tenancy which significantly upgrades a premises and in such circumstances the provision will ensure that any sale of the reversionary interest by the landlord is taxable.

Commencement:

Paragraphs (a) and (b) of subsection (1) came into effect on 1 May 2005 by way of Ministerial Order. Paragraphs (c) and (d) of subsection (1) have effect from 25 March 2005.

104. Amendment of Section 12 of the VAT Act (deduction for tax borne or paid)

Summary

This section amends Section 12 of the VAT Act which deals with deductibility for tax borne or paid.

Details

Paragraph (a) amends Section 12(1) and is a consequential amendment arising from the amendments to Section 4(8) of the VAT Act which deals with the VAT treatment of a surrender or assignment of a property for which VAT deductibility was available. This change together with the amendment to Section 4(8) preserves the normal right to deductibility of both the person making the surrender or assignment and the recipient of the property.

Paragraph (b) introduces a new subsection (5) into Section 12 of the VAT Act.

The new subsection (5) provides for a deduction of input VAT when a person disposes of an interest in property in respect of which he or she had paid a deductibility adjustment in accordance with Section 4(3)(ab). The amount deductible is computed by writing off, over 20 years, (or over the number of years in the interest when acquired if less than 20) the original deductibility on the acquisition and development of the property. The amount is claimed on the VAT return for the period in which the tax due on the sale of the property is accounted for. It is calculated in accordance with the following formula:

$$\frac{T \times (Y-N)}{Y}$$

where-

T is the amount of tax which the person who previously surrendered possession of the goods was entitled to deduct in accordance with this section, prior to that surrender of possession, in respect of that person's acquisition of the interest in and the development of those goods,

Y is 20 or, if the interest when it was acquired by the person who surrendered possession of the goods was for a period of less than 20 years, the number of full years in that interest when it was so acquired, and

N is the number of full years since that person acquired the interest in the immovable goods being disposed of or, if the goods were developed since that interest was acquired, but before the deductibility adjustment in accordance with section 4 (3)(ab) was payable, the number of full years since that development:

but if that N is greater than that Y, such amount shall be deemed to be nil.

Example (calculation of credit in accordance with Section 12(5))

A company acquires a 999-year lease on a site and commences development of a block of 24 apartments in Jan 2007. The development is completed in December 2008.

Cost of Development €5m plus VAT of €675,000

The company sells 18 of the apartments for €500,000 in January 2009. The remaining 6 apartments are on the market for six months and in July 2009 the company leases them on a short-term basis. The lease continues up to December 2010 and in January 2011 the company sells the remaining 6 apartments for €550,000 each VAT inclusive

VAT on the sale of the 6 apartments (previously leased) = €392,510

A proportion of the deductibility claimed prior to the diversion into exempt letting is allowed against VAT due on the sale.

Calculation of credit due on sale

Deductibility claimed prior to diversion in respect of the 6 apartments = €168,750

No. of years which have expired since the development = 2

Calculation of credit

$$\frac{€168,750 \times ((20-2))}{20} = €151,875$$

Accordingly the company accounts for VAT of € (392,510-151,875) = €240,635 in its return for Jan-Feb 2011.

Commencement

Paragraph (a) of subsection (1) has effect from 25 March 2005.

Paragraph (b) of subsection (1) came into effect on 1 May 2005 by way of Ministerial Order.

111. Amendment of Section 32 of the VAT Act (regulations)**Summary**

This section amends Section 32 of the VAT Act which deals with the making of regulations.

Details

These amendments enable the Revenue Commissioners to set out in regulations

- the circumstances or conditions under which development work on property by a tenant will not affect the exempt status of the property if sold on by the landlord. This is consequential on the amendment to section 4(9) of the VAT Act, and
- the characteristics of lettings which are regarded as short-term lettings in the guest sector or holiday sector. This is consequential on the amendment to paragraph (xiii) of the Sixth Schedule of the VAT Act (see Section 113 FA 2005). These regulations will only be made with the consent of the Minister for Finance.

Enquires on this article should be addressed to taxbrief@revenue.ie

Industrial and Commercial Buildings

Expenditure Qualifying For Capital Allowances

Introduction

Capital allowances are given by reference to the capital expenditure incurred on the construction of an industrial building or structure. Refurbishment costs also qualify.

In general what constitutes an industrial building is set out in *Section 268 TCA, 1997*. Capital allowances are also available for buildings that are used for third level education purposes (*Section 843 TCA, 1997*), buildings that are used for certain childcare services (*Section 843A TCA, 1997*) and buildings that are used for certain commercial purposes in the various property-based tax incentive schemes such as the urban renewal scheme.



Capital allowances are generally only available to the person who incurs the capital expenditure on construction and who holds the "relevant interest" in relation to that expenditure. However, they are also available where the person who incurs the expenditure sells the building before it is used or within one year after it commences to be used. Capital allowances are also available to the purchaser of a used building provided that the building is sold within its tax life and there has been a balancing adjustment on the vendor.

Revenue wishes to remind owners of industrial and commercial buildings that only certain expenditure may be claimed for capital allowances purposes. The purpose of this article is, therefore, to outline how qualifying expenditure should be calculated and the type of expenditure that is taken into account in the different circumstances in which buildings are constructed or acquired. A previous issue of **Tax Briefing** (issue 29) contained an article on the purchase of refurbished buildings and the method of calculating capital allowances.

Amount of qualifying expenditure

The amount of the qualifying construction expenditure depends on how the expenditure is incurred.

(a) Construction by site owner

Where a person owns a site and engages a builder to carry out the construction work, the amount of the qualifying expenditure is the cost of having the property constructed i.e. the amount reflected in the contract with the builder. This will include the capital expenditure incurred directly on construction and the cost of site clearance and preparation as well as the builder's profit. It does not include the costs of acquiring the site or any cost attributable to the person's own labour. The same treatment applies in the case of a refurbishment project. Costs of acquiring the building or the cost of own labour are not allowable.

(b) Purchase of a property from a builder

A builder means a builder, developer or other person who sells newly constructed or refurbished buildings in the course of the trade of building/developing. Where a newly constructed building is purchased from a builder, the amount of the qualifying expenditure is calculated by using the "net price paid" formula in *Section 279 TCA, 1997*

$$A = \frac{B \times C}{C + D}$$

where -

A = amount of qualifying expenditure

B = amount paid for purchase of building

C = construction expenditure

D = expenditure on the acquisition of the site.

The construction expenditure and the site costs used in the formula are those incurred by the builder and not those charged to the purchaser by the builder. Expenditure qualifying for capital allowances is the expenditure incurred directly on construction and the cost of site clearance and preparation as well as a portion of the

builder's profit. The formula operates to exclude the site cost so that capital allowances are not available for the full amount paid to the builder. The same treatment applies in the case of a refurbishment project and the site cost and the cost of any buildings on the site are excluded.

(c) Purchase of a building from a person who is not a builder

Where a newly constructed building is purchased from a person who is not a builder, the amount of the qualifying expenditure is the **lower** of;

- the expenditure actually incurred on construction, excluding the site cost,

or

- the amount produced by the formula in paragraph (b) above.

Costs taken into account in calculating qualifying expenditure

Not all of the costs incurred by the purchaser, developer or builder in relation to the purchase of a newly constructed building are taken into account in calculating the amount of the qualifying expenditure for capital allowance purposes. Broadly speaking only the direct costs of construction and site clearance and preparation are allowed. Costs that are allowed in calculating the amount of the qualifying expenditure include:

- Direct construction costs (or refurbishment costs where a building is being refurbished) such as cost of building materials, hire of equipment, labour costs, administrative overheads, architects' fees, legal fees
- Site clearance and preparation costs such as laying foundations, walls, power supply, drainage, sanitation and water supply
- Interest paid on money borrowed to fund direct construction or refurbishment costs
- Fees paid to local authorities for the provision of certain infrastructure and services.

Costs that are not allowed in calculating the amount of the qualifying expenditure include:

- Cost of site acquisition or the cost of the acquisition of a pre-refurbished building in the case of a refurbishment project
- Costs associated with the acquisition of the site or building such as legal fees and stamp duty
- Interest paid on money borrowed to fund the purchase of the site or building and interest on other borrowings not directly related to the construction or refurbishment work
- Marketing and selling costs such as money spent on advertising the building and auctioneers' fees
- Costs attributable to a person's own labour where the person carries out work themselves.

In calculating relief, the purchase price or amount paid for a building (see formula at (b) above) should not include legal and other professional fees or stamp duty paid in connection with the purchase.

Grants and other payments received directly or indirectly from the State, any local authority or any public body must be deducted from the allowable construction costs in arriving at the amount of the expenditure that qualifies for relief.

Treatment of VAT

In accordance with *Section 319 TCA, 1997* VAT should only form part of the allowable construction costs if it is a net cost to the person who constructs the building, i.e. where the person is not entitled to a VAT input credit for the VAT paid. The allowable construction costs should exclude VAT where the person carrying out the work is able to reclaim VAT paid by them as part of those costs. Generally, therefore, where the work is carried out by a builder or a developer, the allowable construction costs will not include VAT. On the other hand, where a person who is not registered for VAT carries out the work themselves, or engages a builder to carry out the work, the allowable construction costs will include VAT. Likewise, where the "net price paid" formula is being used (see (b) above), the price paid for the building and the construction and site costs should only include VAT where there is no entitlement to a VAT input credit.

Enquires on this article should be addressed to mdorris@revenue.ie

Property-Based Incentive Schemes

Transitional Arrangements For Property-Based Incentive Schemes

Introduction

The Finance Act 2004 extended the termination date for a number of property-based tax incentive schemes from 31 December 2004 to 31 July 2006 subject to certain transitional requirements being met. The purpose of the extension was to facilitate the orderly completion of projects already in the pipeline. The new termination date of 31 July 2006 applies only to projects in respect of which a valid application for full planning permission was received by the relevant local authority on or before 31 December 2004. Thus, the benefit of the 31 July 2006 time extension applies to expenditure incurred on or before that date on the construction, refurbishment or conversion of a building or structure, where that expenditure is expenditure in respect of work which is covered by a valid application for full planning permission received by the relevant local authority on or before 31 December 2004. Under planning and development legislation local authorities may not accept planning applications during the period 24 December to 1 January. Despite some local authorities making arrangements to accommodate applicants, it appears that some who attempted to submit applications within the period 24 December 2004 to 31 December 2004 were unable to do so. **In the circumstances, Revenue are prepared to make allowances for this situation and will regard planning applications acknowledged as received by local authorities on or before 7 January 2005 as meeting the statutory deadline. Therefore, references throughout this article to 31 December 2004 should be read as references to 7 January 2005.**

The schemes affected are -

- Town renewal
- Rural renewal
- Student accommodation
- Living over the Shop
- Park and Ride

The Finance Act 2004 also extended the deadline for the urban renewal scheme to 31 July 2006 again where certain transitional requirements are met. The extension applies only to projects in respect of which 15% of the total project costs had been incurred on or before 30 June 2003 and a certificate to this effect had been received from the relevant local authority on or before 30 September 2003.

The purpose of this article is to clarify issues raised in relation to satisfying the various transitional requirements in order to qualify for the extended 31 July 2006 deadline. As well as the schemes mentioned above, similar issues arise in the case of the transitional requirements for certain hotel projects. For hotel projects for which the necessary requirements are satisfied, allowances may continue to be claimed over 7 years instead of the 25 year write-off period introduced for new hotel projects.

Planning applications

Section 372AL(1A) TCA 1997 provides the legislative basis for the extended deadline of 31 July 2006 for the residential element of the various schemes mentioned above. *Sections 372AA, 372L, 372A(1B) and 372U TCA 1997* do likewise for the commercial and industrial elements of the town renewal, rural renewal, living over the shop and park and ride schemes respectively. The provisions ensure that expenditure incurred on or before 31 July 2006 will qualify for relief **provided that it is expenditure incurred on work that is covered by a valid application for full planning permission that was received by the relevant local authority on or before 31 December 2004.** The time extension does not apply to projects where the application for planning permission was received after that date. It should also be noted that where a valid planning application for full planning permission was received on time, relief is only available in respect of expenditure on actual work covered by that particular application. It does not extend to expenditure on additional work as would arise where the applicant decides to extend the scale of the project subsequent to the qualifying planning application deadline.

In this regard, Revenue is concerned at some notices that have appeared in newspapers after the 31 December 2004 deadline indicating that "significant further information has been lodged with ____ County Council under planning reference xxx, 2004". In some cases the "significant further information" referred to would have the effect of substantially increasing the scale of projects already submitted. Where a project proceeds on the basis

of the planning application that is submitted by 31 December 2004, only expenditure incurred on the basis of the original project will qualify for relief and that expenditure incurred on any extension or addition to a project will not qualify for relief. In such a situation it will be necessary for the total expenditure to be apportioned between the qualifying and the non-qualifying work. If, on the other hand, the planned extension gives rise to the need to make a further planning application after 31 December 2004 to cover the revised or extended project, then none of the expenditure incurred on that project will qualify for relief. The position is the same where an applicant is required for any other reason to submit a further planning application in respect of a project after 31 December 2004. In all such cases no relief is available.

Sale of Site/Building

A person who owns a site or a building that is to be refurbished or converted may wish to sell the site or the building after he or she has applied for or obtained planning permission. In such a situation the purchaser of the site or the building will be treated in exactly the same way as the original applicant or vendor and will only qualify for relief to the extent that the work that is carried out on the project is that provided for in the original valid application for full planning permission received on or before 31 December 2004.

Qualifying expenditure incurred

Qualifying capital expenditure for the purposes of availing of the extended deadline of 31 July 2006 means capital expenditure incurred on construction, refurbishment or conversion work covered by a valid application for full planning permission received by a local authority on or before 31 December 2004. For capital allowances purposes the general position is that expenditure is incurred not when the amounts in question are paid but rather when those amounts become legally payable to the person carrying out the work. However, this does not apply in the case of the extended termination date for the incentive schemes covered in this article and for hotel projects. Instead, only so much of the expenditure incurred as is properly attributable to work that is actually carried out in the period up to 31 July 2006 can be treated as having been incurred in that period.

Following are a number of examples. These are for illustrative purposes only and are not intended to convey any view on the workings and decisions of the planning process.

Example 1

Mrs. Murphy submitted a valid application for full planning permission for the construction of a house to a local authority under the rural renewal scheme on 1 December 2004. Planning permission was granted for the house on the basis of the planning application received and no revisions were required. If all work on the house is carried out on or before 31 July 2006 in accordance with the planning application the full amount of the expenditure incurred will qualify for relief.

Example 2

Mr. O'Brien submitted a full and valid planning application for the living over the shop scheme on 5 December 2004. The local authority was not satisfied with the amount of private open space and refuse storage area that was proposed. However, it accepted the planning application but required Mr. O'Brien to provide an additional balcony and a covered storage area in the rear yard. Conditions relating to the additional work were attached to Mr. O'Brien's planning permission. The cost of constructing the additional balcony and the covered storage area will qualify for relief as this work was necessary to meet the local authority's requirements in relation to the valid planning application submitted before the deadline.

Non-qualifying expenditure

Where a planning application in respect of a project is received by a local authority after 31 December 2004, expenditure on that project will not qualify for relief. This is also the position where a planning application, originally made on time, is refused by a local authority and a further application is subsequently made after the 31 December deadline. The same position holds where an applicant, having successfully obtained planning permission before 31 December 2004, wishes to make changes to a project necessitating the submission of a further planning application after the deadline. Finally, any expenditure incurred on any additional work or any extension to a project outside or beyond the terms of a valid planning application received by 31 December 2004 will not qualify for relief.

Example 3

Mr. Ryan submitted a full and valid planning application for an apartment block to be used as student accommodation on 20 December 2004. In January 2005 he decided to alter the project by adding an extra floor comprising four apartments. The local authority required him to submit a further planning application for the entire apartment block. None of the expenditure incurred on the apartment block will qualify for relief as work on the project will have proceeded in accordance with the second planning application submitted after 31 December 2004.

Hotels

The Finance Act 2003 provided that the write-off of capital expenditure incurred on hotels would be made over 25 years instead of over 7 years. However, transitional provisions were put in place to retain the 7 years write-off regime to cater for certain pipeline projects. These transitional provisions ensure that where capital expenditure is incurred on a hotel project on or before 31 July 2006 and that project is the subject of a valid application for full planning permission received by the relevant local authority on or before 31 December 2004, the expenditure can be written off at the rate of 15% per annum for the first 6 years and 10% in year 7. For all other hotel projects the new 25-year write-off regime applies.

The position outlined above in relation to the treatment of the transitional provisions pertaining to the various property incentive schemes also applies in the case of pipeline hotel projects.

Holiday cottages

The Finance Act 2003 terminated the availability of capital allowances for expenditure incurred on holiday cottages. However, transitional provisions were put in place to cater for certain pipeline projects. These transitional provisions ensure that where capital expenditure is incurred on a holiday cottage on or before 31 July 2006 and that holiday cottage is the subject of a valid application for full planning permission received by the relevant local authority on or before 31 December 2004, capital allowances will be available in respect of that expenditure.

The position outlined above in relation to the treatment of the transitional provisions pertaining to the various property incentive schemes also applies in the case of pipeline holiday cottage projects.

Urban renewal scheme - 15% certificate

The 31 December 2004 deadline for the submission of planning applications does not apply in the case of the urban renewal scheme. Instead, to qualify for the extended termination date of 31 July 2006, a developer or other person must have incurred 15% of the total cost of a project on or before 30 June 2003 and a certificate to this effect must have been received from the relevant local authority on or before 30 September 2003. It is not open to the recipient of the certificate to subsequently increase the scale of the project for which the certificate was issued.

The relevant legislation requires the certificate to be given to the person carrying out the project or development. However, Revenue published a precedent in 1998 stating that -

"In the event of a development site being sold, the person constructing, converting or refurbishing the building may be regarded as the person to whom the relevant local authority has given a certificate under Section 339(2)(a) TCA 1997 if no change occurs in the project as submitted by the vendors."

Section 339(2)(a) TCA 1997 refers to the 1994 urban renewal scheme. Revenue also applies this precedent to the current urban renewal scheme and, in the circumstances, interprets it strictly. It does not hold in situations where the purchaser(s) of a site or a building for which a 15% certificate has been issued makes changes to the original project which was the subject of the certificate or substitutes new plans for those already submitted to the local authority by the vendor when applying for the certificate. While the physical aspects of a project must not change following the sale of the site or building, an increase in costs due to delay in proceeding with the project will not invalidate the project for relief purposes.

Where a site is split into separate parts before being sold on or otherwise transferred, the separate parts will be considered by Revenue as a whole for the purposes of deciding whether there has been a change in the project. Any development undertaken by or on behalf of the new owners of individual parts of a site, for instance, must combine to deliver the project in respect of which the local authority issued the original certificate. Therefore, the entitlement to relief of each of the parties carrying out the project will depend on the actions of the other parties involved.

Enquires on this article should be addressed to mdorris@revenue.ie

Section 23 and Owner-Occupier Relief

Treatment of Social and Affordable Housing Costs for Section 23 and Owner-Occupier Relief Purposes

When granting planning permission for residential housing developments a local authority may require a builder/developer to enter into an agreement with it in order to increase the supply of social and affordable housing. Such an agreement may take several forms. For example, a builder/developer may be required to transfer to the local authority, alone or in combination, land, serviced sites, completed houses or a sum of money. The agreement may refer to the land that is being developed or to other land owned by the builder/developer that is within the functional area of the local authority

The purpose of this article is to state that the monetary value of any land, serviced sites or houses that are transferred to the local authority or any sum of money that is paid to a local authority in respect of social and affordable housing is not a construction cost of the builder/developer for the purposes of calculating the amount of relief available for 'section 23' or 'owner-occupier' relief purposes. Such a cost is distinguished from the allowable construction costs that are paid to a local authority such as development levies paid in return for the provision of certain infrastructure and services. (see www.revenue.ie under publications/technical guidelines - "A Guide to Section 23 relief" and "A Guide to Residential Owner-Occupier relief" for the treatment of construction costs)

Where a newly constructed property is purchased from a person who carries on the trade of a builder, the amount of the relief is calculated by using the following formula -

Price paid to builder $\times \frac{A}{B + C}$

A = construction expenditure incurred in the qualifying period

B = total construction expenditure

C = expenditure on the acquisition of the site

The construction expenditure at A and B in the formula is the expenditure incurred by the builder and not that charged to the purchaser by the builder. It must not include any sums expended by the builder to a local authority in relation to the provision of social and affordable housing.

Enquires on this article should be addressed to mdorris@revenue.ie

Form 11 and CT1: Supporting Documentation

The position regarding documentation and attachments that are required with Forms 11 and Form CT1 was set out in Tax Briefing issue 52. That article stated that there was no longer a requirement to submit attachments or documentation with these forms in support of a claim for relief / allowances / credits. There are a small number of exceptions to this rule, e.g., where the accounts turnover was in excess of €13 million, or where there is an expression of doubt. These exceptions are clearly indicated on the Form 11 and Form CT1. This change to a policy of no attachments with the return was brought about in part by the introduction of electronic filing of returns through ROS.

This position remains unchanged and unless specifically requested, no documentation or attachments should accompany the paper return nor should any unsolicited documents be submitted to Revenue in support of a return filed on-line via ROS.

Notwithstanding this no attachment policy, Revenue may, on occasion seek documentation in support of any claim for relief/allowance/credit made on the return; this will be as part of an assurance check on the authenticity of the claim. Practitioners are asked not to submit documentation in anticipation of such a verification check. The operation of Pay and File regime for both income tax and corporation tax would be compromised if practitioners enclosed attachments with the tax returns in anticipation of a request for same from Revenue. This would hinder the speedy processing of return through the central filing location in the Collector-General's Division in Limerick.

Enquires on this article should be addressed to bnrdking@revenue.ie

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Capital Allowances

Capital Allowances for Hotels and Other Holiday Accommodation

Introduction

Section 34 Finance Act 2005 introduced a number of changes to the capital allowance regime for hotels, guesthouses, holiday hostels and holiday camps. Hitherto, capital allowances were available for capital expenditure incurred on buildings or structures in use or deemed



to be in use for the purpose of the trade of hotel-keeping. Thus, capital allowances could be claimed for capital expenditure incurred on hotels, holiday camps (these were deemed to be in use for the trade of hotel-keeping) and a very small number of large guesthouses found to be effectively operating as hotels.

The main changes see specific provision being made for the first time for capital allowances for **guesthouses and holiday hostels** registered in the appropriate register kept by Fáilte Ireland under the Tourist Traffic Acts. This applies in respect of capital expenditure incurred on or after 3 February 2005. The expenditure can be written off over 25 years at the rate of 4% per annum. Capital allowances for **hotels** have been made conditional on the hotel being registered in the register of hotels kept under the Tourist Traffic Acts. The registration requirement applies in respect of capital expenditure incurred on hotels on or after 3 February 2005 but is subject to transitional arrangements. Finally, the new measures provide clarification that **holiday camps** must also be registered in the register of holiday camps in order to qualify for capital allowances.

It should be noted that there is no entitlement to capital allowances for expenditure incurred on youth hostels, bed and breakfast establishments and holiday apartments that are registered with Fáilte Ireland.

The position in relation to hotels and other holiday accommodation is outlined in more detail below.

Hotels

The general position is that a hotel building must be registered in the register of hotels kept by Fáilte Ireland under the Tourist Traffic Acts in order to qualify for capital allowances in respect of expenditure incurred on the building on or after 3 February 2005. This new registration requirement is, however, subject to transitional arrangements. Where the conditions for transitional treatment are met, the requirement to be registered for capital allowances purposes is deferred and will only apply in respect of capital expenditure incurred after 31 July 2006.

The transitional arrangements involve certain planning conditions having been met by 31 December 2004. Where planning permission is required, a valid application for full planning permission for the work to be carried out must have been received by the relevant local authority by that date (or by 10 March 2002 where the application is made in accordance with the Local Government (Planning and Development) Regulations 1994). Where the work involved is exempted development for the purposes of the Planning and Development Act 2000, certain conditions must have been satisfied by 31 December 2004. There must have been a detailed plan in place in relation to the work to be carried out. There must also have been a written binding contract in place in relation to the expenditure to be incurred and work to the value of at least 5% of the development costs must have been carried out.

These transitional arrangements are similar to the transitional arrangements already in place in relation to the change in capital allowance rates for buildings used for hotel-keeping from 15% to 4% per annum (please see article also in this issue entitled "Transitional Arrangements for Property-Based Incentive Schemes"). The net position, therefore, is that a hotel project, which qualifies for transitional treatment, will not be concerned with the new hotel registration requirements for capital allowances purposes and may continue to claim allowances at the rate of 15% per annum in respect of all expenditure incurred on or before 31 July 2006. Expenditure incurred after that date on a hotel building will qualify for allowances at the rate of 4% per annum provided that the building is registered in the register of hotels.

Guesthouses

Capital expenditure incurred on or after 3 February 2005 on premises used as a guesthouse will for the first time qualify for capital allowances provided the guesthouse is registered in the register of guesthouses kept under the Tourist Traffic Acts. Allowances may be claimed at the rate of 4% per annum. This does not have any immediate effect on a small number of guesthouses that had already established an entitlement to capital allowances on the basis that they were effectively operating as hotels. The position outlined above, in relation to registration and

rates of capital allowances for hotels in the context of transitional arrangements, applies equally to any hotel-type guesthouse which may have qualified for transitional treatment. In any such case, the requirement to register as a hotel or guesthouse, as the case may be, for capital allowances purposes and the 4% capital allowance rate will only apply in relation to capital expenditure incurred after 31 July 2006.

Some registered guesthouses may be entitled to claim significant buildings relief under *Section 482 TCA, 1997*.

That section provides for relief for expenditure incurred on the repair, maintenance or restoration of a building which is intrinsically of significant scientific, historical, architectural or aesthetic interest and which is, inter alia, in use as a registered guesthouse for at least 6 months of the year including not less than 4 months in the period from 1 May to 30 September. The section specifically rules out relief for any expenditure in respect of which relief can be claimed under any other provision of the Tax Acts. Questions may, therefore, arise in relation to expenditure incurred on such a guesthouse as to whether it qualifies for capital allowances or significant buildings relief.

To qualify for significant buildings relief the expenditure must be incurred on **the repair, maintenance or restoration** of the guesthouse. Any expenditure incurred on new build, such as an extension or the addition of extra rooms to a registered guesthouse is outside the scope of the significant buildings relief. However, where such expenditure is incurred on or after 3 February 2005, it can qualify for capital allowances.

Holiday hostels

Capital expenditure incurred on or after 3 February 2005 on a premises used as a holiday hostel will also for the first time qualify for capital allowances provided the hostel is registered in the register of holiday hostels kept under the Tourist Traffic Acts. Allowances may be claimed at the rate of 4% per annum. Previously, a holiday hostel would only have qualified for capital allowances if the hostel could establish that it was effectively operating as a hotel. The position outlined above in relation to the transitional arrangements for hotels will also apply to any such hostel that establishes entitlement to transitional treatment.

Holiday camps

The pre-Finance Act 2005 position was that a holiday camp was deemed to be a building or structure in use for the purposes of the trade of hotel-keeping and thus entitled to capital allowances. While there is now a specific requirement from 1 January 2005 for holiday camps to be registered in the register of holiday camps kept under the Tourist Traffic Acts, this should have no effect on capital allowances entitlement. This is because the registration requirement has effectively applied all along as a premises could not have been described or held out to be a holiday camp unless it was so registered.

Holiday cottages

The Finance Acts 2003 and 2004 terminated the availability of capital allowances for expenditure incurred on registered holiday cottages subject to transitional arrangements. The Finance Act 2005 did not alter this position. The transitional arrangements ensure that capital expenditure incurred on a registered holiday cottage on or before 31 July 2006 will continue to qualify for capital allowances. To qualify for this treatment a valid application for full planning permission in respect of the holiday cottage must have been received by the relevant local authority on or before 31 December 2004.

Caravan parks

Revenue has previously published a precedent whereby a caravan park approved by Fáilte Ireland and included in its register of approved caravan parks could be regarded as a holiday camp for capital allowances purposes.

Accordingly, any building or structure erected in such a caravan park has been treated for capital allowances purposes as a building or structure in use for the purposes of the trade of hotel-keeping. This precedent is now being withdrawn. Accordingly, capital allowances will not be available in relation to capital expenditure incurred, but only with effect from 31 December 2005, on the construction of buildings or structures in caravan parks whether registered with Fáilte Ireland or not. Allowances in respect of expenditure incurred before that date will not be affected.

Registration

Fáilte Ireland administers a registration system for tourist accommodation such as hotels, guesthouses, holiday hostels and holiday camps. Details of the registration requirements are available at www.failteireland.ie.

There may be a delay of several months between the application for registration and the entry in the appropriate register as a building must be open and operating as a hotel, guesthouse etc. before it can be inspected and approved for registration. It may happen that expenditure is incurred on a building during a particular year or accounting period but because the building has not been registered before the end of that year or accounting period there is no entitlement to capital allowances for the expenditure incurred. In these circumstances, Revenue will accept a claim for capital allowances for expenditure incurred in a particular year or accounting period if the building has been registered by the return filing date for that year or accounting period. For

individual claimants this will be 31 October following the end of the year in question. For corporate claimants it will be 9 months following the end of the company's accounting period.

This practice applies only in relation to the year in which expenditure is incurred. It does not apply in relation to capital allowances for a subsequent year (for example, arising in relation to the same expenditure). Capital allowances cannot be claimed for any subsequent year for which the registration requirements are not met.

Enquires on this article should be addressed to mdorris@revenue.ie

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Rent Pooling - Income Tax

Revenue is concerned that residential housing developments are being marketed with the availability of rent pooling. Revenue understands rent pooling to mean the pooling of all of the expenses and rents for all of the houses or apartments in a development and the distribution of the net rental income to the individual house owners in proportion to their ownership share in the development. There is no provision in the Tax Acts for this type of arrangement. *Section 97(1)(c) TCA, 1997* specifically requires the amount of the rental surplus or deficiency to be calculated for each individual rent, i.e. each individual house or apartment. It is only after the net rental surplus or deficiency has been calculated for each individual house that the aggregate rental surplus or deficiency is calculated for all of the rental properties of a particular landlord. Therefore, a group of houses or apartments, whether owned by the same or different persons, should not be treated as a single composite rental unit.

In its "Explanatory Note on the operation of the provisions of the Taxes Consolidation Act, 1997 in relation to the Student Accommodation Scheme" (available at www.revenue.ie under publications / technical guidelines), Revenue accepted a limited form of rent pooling. This limited form of rent pooling provided that management and letting fees and other deductible expenses that are appropriate to all houses could be pooled while expenses that are specific to an individual house could not be pooled. That document stated that Revenue was prepared to allow rent pooling in the particular circumstances and context of the student accommodation scheme only and only in respect of rents received from students during the academic year. Rent and expenses for periods outside of the academic year were to be allocated in accordance with the provisions of the Tax Acts.

It should be noted that the situation as outlined above remains unchanged and that Revenue does not intend to extend its acceptance of rent pooling beyond the student accommodation scheme. Accordingly, in the event of a Revenue audit, an investor who has availed of a rent pooling arrangement, outside of the student accommodation scheme, may find that their rental income computation will not be accepted by the inspector.

Enquires on this article should be addressed to mdorris@revenue.ie

Student Accommodation Scheme

The Department of Education and Science has recently published a document on the student accommodation scheme that seeks to provide clarification on a range of issues that have arisen since that Department's guidelines on the scheme were published. It is available at www.education.ie. Some of the issues are of a minor technical nature while others are more substantive. The main changes are -

- The definition of a "student" has been amended to include certain foreign exchange students.
- A development can be certified by one or more educational institutions.
- There is a general requirement that a qualifying lease must be drawn up for the whole of the academic year regardless of whether the lease is drawn up between a certifying educational institution and another party or between any other parties. There are a limited number of situations where the qualifying lease can be for a shorter period than the full academic year. These are -
 - the year in which a development is first completed where it is not completed until after the start of the academic year
 - where the duration of the course is shorter than a full academic year in the case of certain foreign exchange students attending courses in Ireland
 - where a lease is unexpectedly terminated during an academic year. In such a situation, a new lease can be drawn up with another student of the certifying educational institution covering the remainder of that academic year.
- A lease that is drawn up between an owner of a student accommodation unit and a management company that will let the bed spaces to students of the certifying educational institution is regarded as a qualifying lease if certain conditions are met.
- The treatment of a caretaker unit is clarified. The original guidelines treated a caretaker unit as part of the "communal facilities and amenities". The intention was that such facilities and amenities would be provided for communal use and would also be owned communally. Under the Tax Acts the general position in relation to relief for investment in residential accommodation is that relief is only available where an investor owns a "house". Therefore, to qualify for relief for expenditure incurred on a share of the communal facilities and amenities, an investor must also have purchased a house. Relief is not available for expenditure incurred solely on communal facilities and amenities. However, expenditure incurred on a caretaker unit can qualify for relief, in its own right, as actual student accommodation if that caretaker unit meets the requirements of the guidelines, for example, occupation by at least three students of a certifying educational institution and the appropriate certification by the Department of the Environment, Heritage and Local Government. Essentially, the caretaker would have to be a student of the certifying educational institution.

Queries on the following issues should be addressed to the Department of Education and Science, Third Level Building Unit, Government Buildings, Tullamore, Co. Offaly.

- Certifying educational institutions
- Consultation process
- Certification procedure
- Meaning of student
- Qualifying areas
- Qualifying developments
- Communal facilities and amenities

Queries on the following issues should be addressed to the Department of the Environment, Heritage and Local Government, Housing Grants Section, Government Buildings, Ballina, Co. Mayo.

- Floor areas of premises
- Internal design and layout
- Site planning
- Certificate of reasonable cost
- Certificate of compliance

Queries on any other issue should be addressed to the relevant local Revenue office; see the [Contact Locator](#) (where the customer's tax reference number is known) or the *Contact Details* page on the Revenue website www.revenue.ie. Contact details are also available in the **Tax Briefing** supplement published in July 2005. Revenue has published guidance material on section 23-type relief that covers, inter alia, the student accommodation scheme. This document should deal with most queries that are likely to arise. It is available at www.revenue.ie under 'publications/technical guidelines'.

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ROS

Message from Margaret Whelan, ROS Strategy Manager

Due to recent reassignments in Revenue I have been reassigned to other duties within the Organisation. Sean Cosgrove has now been appointed ROS Strategy Manager in my place. I would like to take this opportunity to thank you all for your much appreciated support and belief in the ROS system during my four years here. I trust that you will give Sean every support as he moves into this role especially in his challenge to extend ROS services to our PAYE customers while continuing to provide services to the business community.

Notes on ROS Form 11 and ROS CT1

We have received a number of enquiries recently from practitioners in relation to recording of notes on the ROS Form 11 and CT1. Some practitioners are incorrectly using the 'Expression of Doubt' field on the 'Personal Detail' screen of the ROS Form 11 and on the Company Details screen of the ROS Form CT1 to record notes in relation to the completion of the return. Practitioners are reminded that entries should only be made under 'Expression of Doubt' where you are in doubt as to the application of law or treatment for tax purposes of any matter contained in the return.

Entries made under 'Expression of Doubt' are referred immediately to the customer's tax office for manual review.

The ROS Form 11 and CT1 provide for the inclusion of 'Additional Notes' in two different locations:

Form 11

- Under 'Self Employed Income' on the final screen of the 'Accounts Extract', and
- At the end of the 'Personal Tax Credits' page

CT1

- On the Company Details screen, and
- On the final screen of the 'Accounts Extract'

Entries made in these 'Additional Notes' areas on the Form 11 and CT1 are not referred to the customer's tax office for review but are available if the form is selected for review at a later stage e.g. during the screening process for audit.

Accounting Periods on Corporation Tax Returns (CT1)

When filing CT1 forms practitioners are reminded that they should check that the company accounting period is correct in advance of filing the CT1 returns online. To do this on ROS click on the Info. Services tab, complete the "Outstanding Returns" screen and you will then be taken to the "Returns Outstanding" page which will display the Accounting Period Begin and End Dates.

Where the accounting period shown is incorrect you should contact the company's tax district, by fax, mail or phone to arrange to have the record changed before attempting to file the return. Filing a Form CT1 with an incorrect Accounting Period will result in delays in the issue of a Notice of Assessment.

Corporation Tax - Form CT1

Form CT1 2004

A revised version of Form CT1 2004 is now available. Users of the ROS Offline Application should download this latest version by selecting the download tab in the Offline Application, Select Refresh and then select Upgrade on Version 4 of the CT1 to ensure you have the latest version of the form.

Form CT1 2005

The 2005 version of CT1 was released on 16 June to include the following:

- A new panel for Property-Based Incentive Scheme on the Trading Results page and the Irish Rental Income page. Property Incentive Information must be completed where Capital Allowances in respect of Property Incentive Schemes are claimed on these pages.
- An increase in the number of entries allowed in relation to Close Companies, Associated Companies and Group Companies on the Company Details page.

Pay and File 2005

Extension of filing date

Revenue announced the 17 November 2005 as the extended deadline for ROS Income Tax customers who both pay and file online through ROS this year. The deadline of 31 October 2005 applies to all other customers.

If the return is made through ROS before 17 November and the payment is also being made through ROS, then the payment will not be debited from the relevant account until 17 November 2005, unless otherwise directed by the customer or practitioner.

ROS Debit Instruction

If you intend to make payments in ROS the Debit Instruction method requires that customers complete a ROS Debit Instruction (RDI). The RDI, which can be completed online, includes details of the ROS customer's bank account from which Revenue will collect the appropriate liability at the due date. Once the RDI has been set up the taxpayer or practitioner acting on his behalf can authorise payments later as required. It is important to remember that the information supplied on a ROS Debit Instruction is no different than the information supplied on a cheque and that only amounts directed by the customer or practitioner can be debited from this account.

Practitioners' Client List

Practitioners should regularly check their client list online and advise the relevant Tax District in relation to any clients not recorded on the list. This will ensure that there will be no difficulties later when filing returns for these clients closer to the Pay and File deadline.

Notices of Assessment

We received reports recently from practitioners where long notices of assessment issued to customers when a short notice of assessment had been requested when filing the Return. We investigated this issue and have established that in certain circumstances e.g. in cases where there was no liability or in certain refund cases, a long Notice of Assessment incorrectly issued. We are arranging to rectify this in the next release of the ROS Service on 23 July 2005.

ROS Payments & US SEC Regulations

A separate Tax Advisor Identification Number (TAIN) may be required for US Securities and Exchange Commission (US SEC) clients as a result of the recently released ROS registration facility which blocks access to any ROS payments functionality. This can be achieved by current holders of ROS Administrator's digital certificates through a system of revoking their current digital certificate and applying for a new digital certificate.

Please contact rosmanager@revenue.ie if you need any information or assistance in relation to this issue.

Enquires on this article should be addressed to Conor Hegarty c/o rosmanager@revenue.ie

Professional Services Withholding Tax - FA 2005

Amendment of Chapter 1 (Payments in Respect of Professional Services By Certain Persons) Part 18 and Schedule 13 TCA 1997

This article deals with amendments to the legislative provisions governing Professional Services Withholding Tax in the Finance Act 2005 including:

- Additions and amendments to Schedule 13 (list of accountable persons authorised to operate Professional Services Withholding Tax.)
- Amendment to the definition of Relevant Payment

Section 15 FA 2005 relates to the Professional Services Withholding Tax scheme, which provides for the deduction of income tax at the standard rate by accountable persons (Government Departments, Local Authorities, Semi-State Bodies etc.) when making payments for professional services to individuals and companies.

The current statutory list of accountable persons, set out in *Schedule 13 TCA 1997*, has been amended to take account of 10 bodies who are authorised to deduct Professional Services Withholding Tax from payments for professional services, with effect from 1 May 2005. These have been added to the list as follows:

144. National Treatment Purchase Fund Board

145. The Mental Health Commission

146. Crisis Pregnancy Agency

147. Commission on Electronic Voting

148. Irish Medicines Board

149. National Educational Welfare Board

150. Oifig Choimisinéir na dTeangacha Oifigiúl

151. The Health Service Executive

152. Commission for Public Service Appointments

153. Commission for Taxi Regulation

In addition to the above, three further amendments have been made to Schedule 13 as follows:

- The removal of one body:
No 87 The Hospitals Bodies Administration Bureau
- A change of name of two others:
No 13 The Public Appointments Service formerly The Civil Service and Local Appointments Commissioners

No 35 Dublin Airport Authority public limited company formerly Aer Rianta cuideachta phoiblí theoranta

Finally, *Section 15 FA 2005* amends the definition of "relevant payment" in *Section 520(1) TCA 1997* to provide for a statutory exemption in relation to the operation of Professional Services Withholding Tax on relevant payments both between accountable persons (specifically governments departments and non-commercial state

sponsored bodies which have already been granted exemption from tax) and between accountable persons and exempt charities (granted an exemption from tax for the purposes of *Section 207 TCA 1997*).

Enquires on this article should be addressed to taxbrief@revenue.ie

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Retirement Relief - Capital Gains Tax

Sections 598 and 599 TCA 1997 provide for relief from capital gains tax where an individual disposes of his or her 'qualifying assets'. The relief applies only to individuals who are 55 years and over at the time of disposal.

Where an individual disposes of 'qualifying assets' before his/her 55th birthday the Revenue Commissioners will consider claims for relief where all the following conditions are present.

- The claimant is, due to severe or chronic ill health, unable to continue farming, or in his/her trade, profession office or employment or as a working director in a relevant company
- On cessation the claimant disposes of 'qualifying assets' - at the time of disposal the conditions for relief, other than the age requirement, are satisfied
- At the time of disposal the claimant is within 12 months of his/her 55th birthday

An individual claiming retirement relief on these grounds should provide medical evidence of the illness and outline the circumstances in which the relief is being claimed. This applies to disposals occurring on or after 14 May 2004.

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Reporting Requirements

New reporting requirements for certain termination payments

Under *Section 201(2)(a) TCA 1997*, payments made in connection with the termination of the holding of an office or employment on the death of the holder or made on account of injury to or disability of the holder of an office or employment are relieved from the charge to income tax.

Section 19 Finance Act 2005 introduced a mandatory reporting requirement for employers in relation to such payments and is effective for all such payments made on or after the 25 March 2005.

Details of all lump sum payments made and treated by employers as exempt by reference to *Section 201 (2)(a) TCA 1997* and made after 25 March 2005 must be reported to the Revenue Commissioners not later than 46 days after the end of the year of assessment in which the payment was made.

The details to be forwarded to the appropriate tax district responsible for the income tax affairs of the employee / office holder are -

- The name and address of the person to whom the payment was made;
- That person's personal public service number (PPS no.);
- The amount of the payment made; and
- The basis on which the payment is not subject to tax.

In circumstances where the payment is on account of injury or disability of the holder of the office or employment, particulars of the injury or disability must also be indicated.

Enquires on this article should be addressed to taxbrief@revenue.ie

Taxation of Exam Setters, Correctors, etc.

A number of queries have arisen recently with regard to whether exam setters, exam correctors, invigilators, etc. are engaged under contracts of service (employees) or under contracts for service (self-employed).

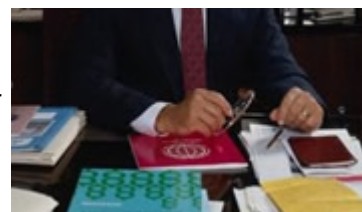
Whilst the facts of each case will determine whether an individual is either an employee or self-employed, it is Revenue's view that exam setters, exam correctors and invigilators etc. engaged by the State sector, private colleges or associations are, in general, likely to be employees and, consequently, deductions (tax, PRSI and health contribution) under the PAYE system should be made from the emoluments paid to them.

Enquires on this article should be addressed to pfg@revenue.ie

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