

Revenue Commissioners

Tax Briefing No 61

November 2005

This content is more than 5 years old.
Where still relevant it has been incorporated
into a Tax and Duty Manual
or other website text.

Table of Contents

Key Dates	2
Tax Implications Of The Single Payment Scheme.....	3
Income Tax Issues	4
Appendix.....	12
New Share Issues - Value Added Tax.....	14
Health Expenses - Income Tax.....	18
Capital Allowances in respect of Private Hospitals.....	20
Foreign Effective Rates	22
The Cooperative Approach to Tax Compliance	23
ROS Pay and File 2005.....	28
Motor Expenses and Subsistence Rates.....	33

This content is more than 5 years old.
Where still relevant it has been incorporated
into a Tax and Duty Manual
or other website text.

Key Dates

November 2005

14 - PAYE/PRSI

P30 monthly return and payment for October 2005

14 - DWT

Return and payment of DWT for October 2005

14 - PSWT

F30 monthly return and payment for October 2005

14 - RCT

RCT 30 monthly return and payment for October 2005

19 - VAT

VAT 3 return and payment for period September/October 2005

1-21 - Corporation Tax

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

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

Returns for APs ending between 1-28 February 2005

Pay Balance due on APs ending between 1-28 February 2005

1-30 - Corporation Tax

Returns of Third Party Information for APs ending between 1-28 February 2005

December 2005

14- PAYE/PRSI

P30 monthly return and payment for November 2005

14 - DWT

Return and payment of DWT for November 2005

14 - PSWT

F30 monthly return and payment for November 2005

14 - RCT

RCT 30 monthly return and payment for November 2005

1-21 -Corporation Tax

2nd Instalment PT for APs ending between 1-30 June 2005

1st Instalment PT for APs ending between 1-31 January 2006

Returns for APs ending between 1-31 March 2005

Pay Balance due on APs ending between 1-31 March 2005

1-31 - Corporation Tax

Returns of Third Party Information for APs ending between 1-31 March 2005

Tax Implications Of The Single Payment Scheme

1.1 The Scheme

European Council Regulation 1782/2003 established a scheme under the Common Agricultural Policy to significantly amend the availability of Subsidies/ Direct Aid to farmers within the EU. The new scheme, known as the Single Payment Scheme, is a move away from subsidies based on production.

This article refers only to the main features of the scheme and their tax significance. Persons requiring a more in-depth knowledge of the scheme are referred to Regulation 1782/2003 which may be viewed on-line at or to an Explanatory Guide issued by the Department of Agriculture & Food and available on that Department's website at www.agriculture.gov.ie.

References in this article to legislation are to the Taxes Consolidation Act, 1997, as amended, unless otherwise stated.

[Paragraphs 2.11, 3.7, 4.2, and 5.1 below reflect the position as amended by the *Sections 12, 70, 109, 118 Finance Act 2006*; this legislation is effective for the year 2005. If you wish to see the original text of these articles, [click here](#).]

1.2 Subsidies Replaced

For years 2005 and onwards, the Single Payment Scheme replaces the subsidies set out below: -

- Arable Aid Scheme
- Seed Production Aid Scheme
- Special Beef Premium (1st & 2nd age)
- Special Beef Premium (Bulls)
- Suckler Cow Premium
- Ewe Premium
- Supplementary Ewe Premium (Rural World)
- Slaughter Premium
- Extensification Payments
- National Envelope Top-Ups (relating to Ewe Premium, Dry Heifer, Calved Heifer & Slaughtered Heifers)
- Dried Fodder Scheme is 50% decoupled from 1 January, 2005
- Dairy Premium is decoupled from 31 March, 2005.

Although other support schemes will continue (e.g. Disadvantaged areas, Installation Aid, Afforestation Premium and Rural Environment Protection Scheme), the Single Payment Scheme will be the main EU support for farmers from 2005 until, at least, 2012.

1.3 Annual in nature

Each single payment covers a calendar year and will involve the Department of Agriculture & Food issuing a cheque to each eligible farmer as soon as possible after 1 December in that year. For example, cheques in respect of the year 2005 will be issued in December, 2005, although in cases where complications arise, the cheque may not issue until early the following year.

1.4 Payment Entitlement

Before receiving a payment under the scheme, each farmer must establish a payment entitlement. In most cases, this involved farmers making an application to the Department of Agriculture & Food by 15 May, 2005. Upon proper application, payment entitlements were, in general, given to farmers who actively farmed during all or any of the three reference years 2000, 2001 and 2002 and who received livestock premia and/ or arable aid payments at that time.

1.5 Single Payment

Having acquired a payment entitlement, a farmer becomes entitled to a single payment for each year if he or she complies with the terms of the scheme in respect of that year. Two significant sets of conditions must be complied with.

1.5.1 The Eligibility Condition

Each payment entitlement held by the farmer must be matched with an eligible hectare of land that is at the farmer's disposal for a minimum consecutive period of 10 months.

1.5.2 The Cross- Compliance Conditions

These include a range of Statutory Management Requirements (i.e. compliance with a range of EU Regulations) and compliance with Good Agricultural and Environmental Conditions as set by national Governments. They cover issues such as animal and plant health and welfare and good farming and environmental practices.

1.6 Inspections

The Department of Agriculture & Food will carry out inspections to assess compliance with Eligibility and Cross-Compliance conditions. Farmers not in compliance could lose some or all of their single payment, normally by deduction from the payment for the year in question.

1.7 The term "Farmer"

The EU definition of "farmer" allows persons to claim single payment even though they may not be engaged in the trade of "farming", as that term is defined for tax purposes. The [Appendix](#) to this article contains a comparative analysis of the terms "farming" and "farmer" as they apply for tax purposes and for the purposes of the single payment scheme respectively.

Income Tax Issues

2.1 Receipt as Income

The single payment is liable to tax as income. It will be taxed under Schedule D, either Case I or Case IV, depending on circumstances.

2.2 Annual Payment

Each single payment is paid in respect of a full calendar year, but the earnings basis of accounting might require income to be recognised in years either prior to or following the year of receipt (see 2.15 & 2.16).

2.3 Basis of Accounting

For simplicity, however, Revenue will allow single payments to be accounted for on either of the following basis:

2.3.1 Receipts Basis.

The single payment may be recognised as a receipt pertaining to the date the cheque is issued by the Department of Agriculture & Food.

For example:

If accounts are made up to September annually, the single payment for the year 2005, if paid on 20 December, 2005, will form a receipt of the year ended 30th September, 2006 (the 2006 tax year).

2.3.2 Annual Basis.

The single payment may be recognised as a receipt accrued over the year (January to December) in respect of which it was paid.

For example:

Accounts are made up to 30 September annually. The single payment for the year 2005, regardless of when it is paid, will form a receipt 9/12 of which will fall into the year ended 30 September, 2005 (2005 tax year) and 3/12 of which will fall into the year 30 September, 2006 (2006 tax year).

Revenue will accept either the Receipts Basis or the Annual Basis, as outlined above, provided taxpayers apply the basis consistently, commencing in the year 2005 (or on commencement of farming) and there is no significant loss of revenue over that which would arise if the accounts were prepared on a full earnings basis. Where the use of the receipts basis would result in no single payment being recognised in a 12 month basis period (e.g. where the issue of the single payment cheque is delayed until after the year-end), the returns of that and subsequent periods may be submitted on the Annual Basis. Revenue reserves the right to carry out reviews if persons change the basis on which their accounts are prepared.

Where a farmer makes up accounts for a period in excess of 12 months, such that an apportionment is required to determine the profits of any year of assessment, single payment should not be apportioned in a manner inconsistent with that applied to other income.

2.4 Criteria for Payment

In general, persons will receive a single payment because they meet the criteria of

- Holding a payment entitlement; and
- Holding land (or animals in the rare cases of Special Condition Entitlements) in accordance with specified conditions (see Eligibility Conditions at 1.5.1 and Cross Compliance Conditions at 1.5.2).

2.5 A Receipt of Farming

The vast majority of recipients will meet these criteria due to being engaged in the trade of farming, as that term is understood for income tax purposes. Their single payment receipts will be taxed under Case I as receipts of the trade of farming.

2.6 Other Trades

Some persons may be engaged in other trading activities involving the holding of land in accordance with the specified conditions of the single payment scheme. If those persons hold payment entitlements and receive single payments, then those payments will be treated as trading receipts of the particular trade in relation to which the land is held e.g. dealers in animals.

2.7 Forestry

Although land under afforestation may continue to be used to meet obligatory setaside requirements and may even have given rise to the occupier receiving setaside entitlements, land under afforestation cannot be used to meet eligibility requirements and no single payment will be made by virtue of the occupation of such land. Accordingly, the question of exemption from income tax under Section 232 TCA 1997 does not arise in relation to the single payment.

2.8 Miscellaneous Income

There may be persons who will hold a payment entitlement and receive a single payment while not engaged in a trading activity. Unless the non-trading status is temporary or transitory (e.g. a farmer moving from one farm to another), such receipts will be taxed under Case IV as miscellaneous income. Indeed, a Case IV charge may arise in the case of a person carrying on a trade, if the receipt of the single payment does not arise from the trade.

2.9 Cessations of farming trade

The decoupling of single payments from production may result in more farmers altering their farming activity in response to market signals and conditions. Revenue will have regard to this when considering whether cessation provisions, with their reviews and revisions should be applied in cases of temporary cessations or transition between activities. Although each case will be treated on its own merits, the following indicators would support the view that a continuing basis of assessment should apply:-

- Agricultural market conditions have prompted a change in direction to another type of farming
- Steps have been taken or preparations made to engage in that alternative farming activity
- The appropriate farming assets e.g. plant and machinery, have been retained
- The farmer has decided to suspend a seasonal activity for one season due to poor market conditions.

In general, if the farm is put to a non-farm use or let out, farming activity will be taken to have ceased. Also, the absence of trade income or expenditure over the course of a full tax year will imply a cessation.

2.10 Exempt Activities

The fact that a recipient of a single payment carries on a trade or activity, the profits or gains of which may otherwise be wholly or partly exempt from tax does not confer any exempt status on the single payment (e.g. Stallion services (Section 231 TCA 1997) or Greyhound services, (Section 233 TCA 1997)). The facts of each case will determine whether the single payment is treated as Case I trading income or Case IV miscellaneous income.

2.11 Income from Leasing Payment Entitlement

Payment entitlements linked to the requirement to occupy land may only be leased from one person to another if the lease also transfers an interest in land.

In these circumstances, income received in respect of the land will be taxed under Case V, while income received in respect of the payment entitlement will be taxed under Case IV as miscellaneous income. Even if agreements between lessors and lessees do not apportion the amounts payable in respect of land and in respect of payment entitlement, the lessor will be obliged to identify the amount received for payment entitlement separately when making a tax return. The relief available to certain farmers under Section 664, which allows them to lease out farmland with certain income being exempt, was extended by Finance Act 2006 to cover income under qualifying leases relating to single payment for years 2005 and later. Accordingly, there is no need to apportion receipts under such leases between amounts paid in respect of land and amounts paid in respect of payment entitlement.

Certain Special Condition Entitlements (e.g. those paid by reference to animals slaughtered rather than to land) may be leased without land. Income from such leasing will be assessable under Case IV.

2.12 Acquiring a Payment Entitlement

The cost of acquiring a payment entitlement will not be allowed as a deduction for income tax purposes, being expenditure of a capital nature. Capital allowances are not available.

2.13 Interest on borrowings

Where a single payment is treated as a Case I trading receipt, interest paid on a loan taken out on an arms length basis wholly and exclusively for the purpose of acquiring the payment entitlement that gave rise to that single payment will, in accordance with normal practice, be allowable as a trading expense.

2.14 Payment Entitlement treated as a Premium

Where the terms of a lease require the payment of a premium to a lessor, a portion of the premium is treated as a receipt of rent and taxed under Section 98 TCA 1997 as Case V income.

Where the terms of a lease stipulate that a lessor is to receive payment entitlement in place of rent or for no consideration or at an undervalue, the payment entitlement may be treated as the payment of a premium for the purposes of Section 98 TCA 1997. That section contains a formula for calculating the portion of the premium to be taxed as Case V.

2.15 Eligibility Conditions & Accounting on an Earnings Basis

To receive a single payment for any year, a person must match each payment entitlement with an eligible hectare of land at his or her disposal for a period of 10 consecutive months; the Eligibility Period. An eligibility period may commence any time between 1 September prior to the year of claim and 30 April within the year of claim. If a farmer does not select an eligibility period, the Department of Agriculture & Food will set his or her eligibility period as 1 February to 30 November. Although payment of the single payment will normally take place in December, in strictness, the payment is dependent on satisfying the eligibility conditions over a full 10 month period which may not have expired by December.

From an accounting perspective, it can be argued that accounting on an earnings basis requires that the single payment should not be recognised in the profit and loss account until the conditions for its receipt have been complied with. Taking this view would require that:

- If the accounts year ends within and prior to the end of a 10 month eligibility period, any single payment received within the accounts year by reference to that eligibility period should be carried forward in the balance sheet as deferred income/ creditor.
- If a 10 month eligibility period ends within the accounts year, the single payment should be recognised in the profit and loss account, bearing in mind the calendar year period in respect of which the single payment is paid.

The examples at 2.16 show how single payment and income would be affected in these circumstances.

Where this treatment is applied, any farmer engaged in seasonal activities, with two eligibility periods related to the same year of claim (e.g. for different crop-types), will be required to apportion the single payment to identify amounts received by reference to each eligibility period.

Taxpayers who submit accounts on an earnings basis, where the end of the eligibility period is regarded as a trigger for income recognition, will not be permitted to change their system of accounting to either of the simplified systems outlined at 2.3.

2.16 Examples

These examples demonstrate the significance of accounts year-end and eligibility period in the context of income recognition in accounts prepared on an earnings basis. In these examples, it is assumed that eligibility conditions and cross-compliance conditions are not breached and a single payment of €1,200 is received. It is immaterial whether the single payment is received before or after the accounts year-end.

Example 1

Farmer X makes up accounts to 31 December annually. His 10 month eligibility period ends on 31 August. His profit and loss account recognises the full single payment of €1,200.

Example 2

Farmer Y makes up accounts to 30 November annually. His 10 month eligibility period for 2005 ends on 31 January, 2006. His profit and loss account for the 2005 Tax Return recognises no single payment as the eligibility period had not ended by 30 November, 2005.

The following year, farmer Y's eligibility period for 2006 ends on 31 January, 2007. His profit and loss account for the 2006 Tax Return recognises the single payment of €1,200 paid for 2005.

Example 3

Farmer Z (like farmer Y) makes up accounts to 30 November annually. His 10 month eligibility period for 2005 ends on 31 January, 2006. His profit and loss account for the 2005 Tax Return recognises no single payment.

The following year, farmer Z changes his 10 month eligibility period so that for 2006, the eligibility period ends on 30 November, 2006. His profit and loss account for the 2006 Tax Return recognises both the single payment of €1,200 paid for 2005 and €1,100 of the single payment paid for 2006 (eleven twelfths, but not the one twelfth paid for December, 2006).

2.17 Cross-Compliance Conditions (see 1.5.2)

These conditions must be met throughout the 10 month eligibility period (see 1.5.1 and 2.15) and also for any period which might exist between the end of the eligibility period and 31 December in the year of claim. As these conditions are not unduly onerous and the inspection program of the Department of Agriculture & Food will impact on only a small sample of land users, income recognition should not be delayed on account of continuing cross-compliance obligations at the end of an accounting period, unless an inspection has taken place and the outcome of that inspection is unknown when accounts are being prepared.

2.18 Modulation

Under the terms of the scheme, all single payments will be calculated subject to a modulation deduction at source (3% in 2005, 4% in 2006 and 5% thereafter). The modulation deduction on the first €5,000 of the single payment, or up to the amount paid if the single payment is less than €5,000 will be refunded to the farmer in the year following the year of claim, by means of a separate cheque issued by the Department of Agriculture & Food. These amounts will be small and may be accounted for on receipt.

2.19 Partnerships

Where a single payment is paid to a partner, in, for example, a farming partnership, and the partnership agreement dictates that the single payment is not to be included in the income of the partnership, the single payment will be a source or part of a source of income from farming of the partner, notwithstanding that the partner received the single payment might not be engaged in farming activity outside the partnership. In these situations, the single payment will be assessed under Case I rather than Case IV.

2.20 Finance Act, 2005, Section 29

As the single payment scheme is to replace a range of subsidies, some of which were payable in arrears, a farmer who receives a subsidy in 2005 under any of the schemes listed in Section 29 and who also receives a single payment for 2005, so that both amounts would be taxable in 2005, can elect to spread the subsidy over three years, 2005, 2006 & 2007. This will spread the amount that would otherwise have been subject to tax for the year 2005.

To avail of this facility, some or all of the single payment paid for the year 2005 must be brought into the 2005 income tax return.

Capital Gains Tax Issues

3.1 Payment Entitlement is an Asset

Payment entitlement is a chargeable asset for capital gains purposes. Once acquired it may be disposed of by way of sale, gift etc. Accordingly, gains arising from transactions in payment entitlement will be chargeable to CGT in the normal manner.

3.2 The origin of Payment Entitlement

Payment entitlement came into existence on 1 January 2005 by virtue of EU regulations. It did not exist before that date.

Transactions carried out before 1 January 2005 involving a disposal of a future entitlement to payment entitlement will be treated as a disposal of an asset in the form of a right to future payment entitlement rather than a disposal of payment entitlement itself.

3.3 Payment Entitlement is not part of the land

Payment entitlement does not form part of the land for capital gains purposes. As it is a separate asset, not derived from any pre-existing asset, its base cost is nil in relation to an original claimant.

3.4 Payment Entitlement is not a Wasting Asset

Payment entitlement is not a wasting asset within the meaning of Section 560 TCA, 1997. A wasting asset is one with a predictable life of less than 50 years at the time of acquisition.

3.5 Consolidation of Entitlements

The single payment scheme contains a procedure to allow for consolidation of payment entitlements in certain circumstances. If availed of, this results in a farmer holding a smaller number of entitlements but each of a higher unit value. Where payment entitlements having no base cost are consolidated, their consolidation should not be treated as a disposal for capital gains purposes. In these circumstances, the newly acquired consolidated entitlements will be treated as having been acquired on the date of acquisition of the old entitlements (normally 1 January, 2005) at no base cost.

3.6 Business Assets

Whether payment entitlement is a business asset for capital gains purposes will depend on the facts of each case. The simple receipt of single payment is not evidence that a person is carrying on a trade for tax purposes. Broadly, if the income from payment entitlement is charged to income tax as the profits of a trade carried on by the recipient then payment entitlement is likely to be a business asset for capital gains purposes.

A right to future payment entitlement existing before 1 January 2005 is a non-business asset for capital gains purposes. Composite transactions involving the disposal of farming land and a right to future payment entitlement entered into before 1 January 2005 must be treated as separate disposals in relation to the land and the right to future payment entitlement for the purposes of calculating chargeable gains or allowable losses.

3.7 Retirement relief

Section 70 FA 2006 provides, with effect from 1 January 2005, that a payment entitlement is a qualifying asset for retirement relief purposes where it is disposed of at the same time and to the same person as land that would support a claim to payment in respect of that entitlement.

3.8 Other subsidies

Quotas that ceased before 1 January 2005 are now worthless and negligible value claims under Section 538 TCA 1997 may arise where the quota had been acquired on purchase. A negligible value claim may result in an allowable loss available to set against chargeable gains of the same or a later tax year.

3.9 Milk Quotas

Milk quota continues to exist and, like payment entitlement, it is not a wasting asset under Section 560 TCA 1997. Gains arising on the disposal of milk quotas continue to be charged in the normal manner.

Capital Acquisitions Tax Issues

4.1 General

Transfers of payment entitlement whether by way of gift or inheritance are liable to capital acquisitions tax as any other asset and are subject to the normal capital acquisitions tax rules.

4.2 Agricultural Relief

Agricultural relief can apply to "agricultural property" only. This is defined in Section 89(1) Capital Acquisitions Tax Consolidation Act, 2003 as:

(a) agricultural land, pasture and woodland situate in the State and crops, trees and underwood growing on such land and also includes such farm buildings, farm houses and mansion houses (together with the lands occupied with such farm buildings, farm houses and mansion houses) as are of a character appropriate to the property, and farm machinery, livestock and bloodstock on such property, and

(b) a payment entitlement (within the meaning of Council Regulation (EU) No 1782/2003 of 29 September 2003 (OJ No L270 of 21 October 2003, p.1).

A payment entitlement can therefore qualify for agricultural relief.

Agricultural land which is taken out of production can still qualify for agricultural relief when transferred because Section 89 CATCA, 2003 does not require the land to be in production either continuously or at a specific time. So, for example, agricultural land set aside to rotational, or even permanent fallow, can still qualify as agricultural property within the definition of Section 89 CATCA, 2003.

4.3 Business Relief

Agricultural property can qualify for business relief if the donee or successor, for whatever reason, fails to obtain agricultural relief. The agricultural property can qualify for business relief, if it is an asset of a trading business which satisfies the normal conditions of the relief as set out in Part 10, Chapter 2 CATCA 2003.

Business relief is available for transfers of "relevant business property" which the transferor has owned for two years in respect of an inheritance taken on the death of the donor and five years in every other case. However, there is no requirement that the payment entitlement itself, as an individual asset of the business, be held for a minimum period in order to qualify for business relief.

"Relevant business property" includes certain categories of business (or an interest in a business, for example a partnership interest) and some types of shares and securities. Payment entitlement will qualify for business relief as an asset of the business on the assumption that the resulting payment will be used in the business or be required for future use in the business. Payment entitlement will still qualify for business relief where the owner has put farmland out of production, for example into set-aside in order to receive a single payment, provided the farmer is still carrying on a business on a commercial basis, and provided the nature of the business remains essentially that of a trading concern rather than one that consists of dealing in land or making or holding investments. As with any asset, the transfer of payment entitlement by someone who is not carrying on a trading

business will not qualify for business relief. Similarly, the transfer of payment entitlement as an individual asset, rather than the business itself, or an interest in the business, will not qualify for business relief.

Stamp Duty Issues

5.1 Transfer of Payment Entitlement

Section 101A Stamp Duties Consolidation Act, 1999 (SDCA) provides for an exemption from stamp duty on the sale, transfer or other disposition of a payment entitlement.

This exemption applies to instruments executed on or after 1 January 2005.

Apportionment

Where the payment entitlement forms part of a transaction consisting also of chargeable property, the consideration is to be apportioned on a just and reasonable basis as between the payment entitlement and the other property. The part of the consideration attributable to the payment entitlement should be disregarded when determining the liability to stamp duty on the chargeable property.

5.2 Consanguinity Relief

Transfers between certain blood relatives qualify for a reduced rate of stamp duty. The reduced rate is half the rate of stamp duty which would otherwise apply. A transfer of payment entitlement is capable of qualifying for the reduced rate where the appropriate relationship certificate is included in the deed of transfer.

5.3 Young Trained Farmer Relief

Section 81A SDCA, 1999 provides for an exemption from stamp duty on the transfer of land to young trained farmers where certain conditions are met. "Land" is defined in Section 81A of that Act as agricultural land including such farm buildings, farm houses and mansion houses (together with lands occupied with such farm buildings, farm houses and mansion houses) as are of a character appropriate to the land. As payment entitlement is a separate asset from land, the exemption in Section 81A would not apply to the transfer of payment entitlement.

Value Added Tax Issues

6.1 No Supply

A single payment does not represent consideration for any supply between the farmer and the State and is, therefore, outside the scope of VAT. However, as payment entitlement is transferable either with or without land, there are situations in which a VAT liability will arise.

6.2 Sale of payment entitlement Only

If payment entitlement is sold without land then VAT will be due at the standard rate on the sale if the sale proceeds exceed the relevant threshold for registration (currently €25,500 per 12 month period). A farmer who exceeds the threshold by virtue of selling payment entitlement will be permitted to register for VAT in respect of that single transaction. Non-VAT-registered farmers who purchase payment entitlement and suffer VAT will not be permitted to register in respect of the single transaction, but will have the normal registration option open to them.

6.3 Leases

If payment entitlement is transferred with underlying land in a leasehold arrangement, the payment entitlement will follow the liability of the land transfer, provided the acquisition of the land is the principal driver behind the transaction.

6.4 Sale of payment entitlement and Land

Where payment entitlement and land are sold together as part of a single transaction, the VAT liability will depend upon the actual circumstances of the sale but it is likely that two supplies will be taken to have occurred, each with their own liability.

6.5 Sale of Business

Where a farm business, including payment entitlement, is sold to a person who intends to carry on the farming business, then the sale may be treated as the transfer of a business or part thereof, provided all the relevant conditions are met. If the sale fails to meet the necessary criteria then the sale of the payment entitlement will be taxable as described in either 6.2 or 6.4.

6.6 Cases not in business

Where the single payment is the only income received, and the farmer has no intention of pursuing taxable business income, there will be no entitlement to VAT registration.

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

Appendix

Meaning of the words "Farming" & "Farmer"

The Single Payment will not be paid exclusively to persons engaged in "farming", as that term is understood for tax purposes.

For tax purposes, the word "farming" is defined in Section 654 TCA, 1997 as:

"...farming farm land, that is, land in the State wholly or mainly occupied for the purposes of husbandry, other than market garden land".

The word "land" is interpreted at point 14 in the Schedule to the Interpretation Act 1937 as including:

"... messuages, tenements, and hereditaments, houses and buildings, of any tenure."

The word "occupation", in relation to any land, is defined in Section 654 TCA, 1997 as:

"...having the use of that land or having the right by virtue of any easement (within the meaning of Section 96) to graze livestock on that land."

Thus, to be engaged in "farming" for tax purposes, a person must have the use of farm land, or the right to graze livestock thereon; and the land must be wholly or mainly occupied for the purposes of husbandry, and it must not be market garden land.

For the purposes of the single payment scheme, EU Regulation 1782/2003, Article 2, defines "farmer" as:

"a natural or legal person, or a group of natural or legal persons, whatever legal status is granted to the group and its members by national law, whose holding is situated within Community territory, as referred to in Article 299 of the Treaty, and who exercises an agricultural activity".

The Article goes on to define "agricultural activity" as:

"the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the land in good agricultural and environmental condition as established under Article 5".

The latter part of this definition ensures that a "farmer", i.e. someone who can receive a single payment under the EU Scheme is not necessarily someone who would be treated as farming for tax purposes. The EU definition is not necessarily linked to productive activity or husbandry.

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

This content is more than 5 years old.
Where still relevant it has been incorporated
into a Tax and Duty Manual
or other website text.

New Share Issues - Value Added Tax

VAT deductibility in relation to new share issues - implications of the European Court of Justice decision in the Kretztechnik AG case.

Introduction

Kretztechnik was an Austrian company involved in the development and sale of medical and technical appliances. Sales of its products were subject to VAT and therefore entitled to VAT deductibility on business inputs. The company decided to increase its share capital and so became listed on the Frankfurt Stock Exchange. In order to obtain this listing, it had to pay for certain services, such as legal and audit fees, on which it was charged VAT.

The tax authorities refused Kretztechnik's deduction of the input tax on the grounds that the share transactions for the purposes of which those costs had been incurred were exempt transactions. Kretztechnik challenged that interpretation before the local tax tribunal and a preliminary reference was made to the European Court of Justice to clarify the matter.

This is the first time that the Court has had to consider the issue of new shares by a limited company.

The tax treatment as administered by the Austrian authorities would have accorded with that of Irish Revenue to date in relation to deductibility (in line with the judgment Revenue had always regarded the issue of shares to increase capital as an outside the scope activity). In the light of the judgment this treatment is now being reviewed.

The questions submitted to the Court

The following three questions were referred to the Court:

- 1) In becoming listed on a stock market and in issuing shares in that connection to new shareholders in return for the issue price, does a public limited company make a supply for consideration within the meaning of Article 2(1) of the Sixth Directive.
- 2) If the first question is answered in the affirmative: are Article 2(1) and Article 17 of the Sixth Directive to be interpreted as meaning that all services obtained in connection with a listing on the stock market are to be attributed to an exempt supply and that for that reason there is no right to a deduction of input tax question.
- 3) If the first question is answered in the negative: is there a right under Article 17(1) and (2) of the Sixth Directive to deduct input tax on the ground that the services in respect of which a deduction of input tax is claimed (advertising, agent's fees, and legal and technical advice) are used for the purposes of the undertaking's taxable transactions question.

Judgment

In response to the above questions the Court ruled as follows (question 2 fell automatically because of the answer to question 1):

1. "A new share issue does not constitute a transaction falling within the scope of Article 2(1) of Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995.

2. Article 17(1) and (2) of Sixth Directive 77/388, as amended by Directive 95/7, confer the right to deduct in its entirety the VAT charged on the expenses incurred by a taxable person for the various supplies acquired by him in connection with a share issue, provided that all the transactions undertaken by the taxable person in the context of his economic activity constitute taxed transactions."

Detail of the judgment

The judgment addressed two principal issues, firstly, whether the issue of new shares is within the scope of VAT and, secondly, the question of deductibility of costs associated with such an issue.

In considering whether the issue of shares constitutes a supply the Court pointed out that "it is settled case law that the mere acquisition and holding of shares is not to be regarded as an economic activity within the Sixth VAT Directive" (paragraph 19 of judgment).

It went on to say in the same paragraph that "if therefore, the acquisition of financial holdings in other undertakings does not in itself constitute an economic activity ... the same must be true of activities consisting in the sale of such holdings".

The Court considered that the issue of new shares could not be regarded as a supply of goods as the shares "are securities representing intangible property" (paragraph 22 of judgment).

Neither was it the supply of a service as the aim of the company was to raise capital and not to provide services. In answer to the first question therefore the Court concluded that the issue of shares was not an economic transaction for the purposes of the Sixth VAT Directive and was therefore an 'outside the scope' of VAT activity.

Having reached this conclusion, the Court considered whether there is any right to deductibility in respect of such an 'outside the scope' activity.

The answer to this question is the critical part of the Kretztechnik judgment, as deductibility has never been allowed to outside the scope activities.

The Court outlined the basic rationale for the system of deductibility clarifying that "for VAT to be deductible, the input transactions must have a direct and immediate link with the output transactions giving rise to a right of deduction" (paragraph 35).

In paragraph 36 of the judgment the Court found that in this case:

- The reason for the share issue was to raise capital
- For the benefit of the company's general economic activities
- The costs incurred in acquiring this capital would feed in to the price of the company's products
- Therefore, the costs relating to the share issue form part of its general overheads and so carry entitlement to deductibility.

Full entitlement applies only where the taxable person engaged exclusively in taxable activities; apportionment applies if the taxable person is engaged in taxable and exempt activities. No entitlement applies if the person is engaged only in exempt or outside the scope activities.

Opinion of Advocate General Jacobs

Because the Court endorsed the views of the Advocate General the comments contained in his opinion are valuable in interpreting the judgment itself.

Issue of shares: Advocate General Jacobs felt that the issue of shares was not a supply and did not form part of the company's turnover. As VAT is a tax on consumption purchasing shares involved becoming part owners of a company, not acting as consumers as such. He stated that "when a company issues new shares ... there is an acquisition of capital, not a supply, and thus no transaction capable of being taxed or exempted" (paragraphs 59-60).

Deductibility: he then went on to consider whether deductibility should be allowed as the referring court had found that the disputed costs related exclusively to the company's admission to the stock market.

Referring to previous case law he stated that "in order for VAT to be deductible, the relevant input transactions must have a direct and immediate link to taxed output transactions" (paragraph 26).

In addition he pointed out that the Court considers general overheads to be a component of the final cost of taxable products (paragraph 27) and so deductible.

The important, and crucial, point in determining deductibility is therefore the establishment of a link between input costs and taxable outputs (see paragraph 74).

In this case the link was between general overheads of the company, which fed in to the cost of the final consumer product.

Revenue interpretation of the judgment

Revenue will implement the judgment fully where the circumstances of the Kretztechnik case are replicated. Revenue also accepts that deductibility will extend to companies who decide to raise new capital by means of a rights issue, i.e., giving existing shareholders the right to apply for a given number of new shares in proportion to their existing holdings.

The judgment is not however regarded as applying to costs associated with the issue of bonus shares, which are essentially a means of distributing profits rather than the raising of new capital.

Does the judgment apply to issues of bonds and securities question

In line with the reasoning of the ECJ in the case of Harnas & Helm (case C-80/95) where it was held that there was no reason to treat the issue or holding of bonds differently from the issue or holding of shares, Revenue accepts that the judgment applies to the issue of new bonds or securities where the circumstances outlined in paragraph 36 of the judgment, outlined above, are replicated.

Revenue will also apply the judgment to other means of raising capital such as note issues, eurobonds and similar instruments provided the essential test for deductibility is satisfied, i.e., the input transactions must have a direct and immediate link with the output transactions giving rise to a right of deduction (paragraph 35 of judgment).

Mergers & Acquisitions

The rationale for mergers and acquisitions is different from that of issuing shares, bonds and securities in order to raise capital. Essentially, Revenue is of the view that mergers and acquisitions are not primarily aimed at raising new capital and therefore do not fall within the ambit of the judgment, therefore giving no entitlement to deductibility.

When as a result of company mergers, new shares are issued in the merged company in exchange for existing shares, the issuing company does not increase its capital for the benefit of its activities in general (paragraph 36 of judgment). Revenue does not accept that the judgment applies in these circumstances and is not allowing deductibility in relation to expenses incurred in such transactions.

While this is the general Revenue view as regards the application of the judgment to costs relating to mergers and acquisitions, Revenue is conscious of the complexity of the issues and the number of possible circumstances in which such transactions may arise. Accordingly, Revenue will consider submissions in specific cases where the taxpayers or their advisors consider that the costs related to a merger or acquisition come within the judgment. Any such submissions should indicate in detail, supported by relevant documentation, the basis on which it is considered the judgment applies.

Deductibility in relation to other share transactions

The VAT treatment of other transactions in shares remains unchanged. At a meeting of the VAT Committee in Brussels in 1990 it was agreed that any expenses incurred in relation to buying or selling shares relate to an

exempt activity and therefore do not qualify for input credit. Accordingly, no deductibility will be allowed in respect of costs directly attributable to the buying or selling of shares.

This guideline remains operative. In other words, the sale of existing shares is regarded an exempt supply.

Time limit for repayment claims

The time limit for repayment claims is provided for in Section 20(4)(b) VAT Act, 1972. It is fixed at four years in relation to any taxable period commencing on or after 1 May 2003, and on or after 1 January 2005 in relation to any other taxable period. No refunds shall be made outside these time limits.

Interest

In accordance with Section 21A VAT Act, 1972, interest on refunds of tax will be payable in respect of valid claims to which the Kretztechnik judgment applies.

Cases where the ECJ finds against a Revenue interpretation of the law are regarded as entitled to repayment due to a mistaken assumption by Revenue in the application of the law. A detailed article on repayments, interest and time limits is contained in [Tax Briefing issue 56](#) which is available on the Revenue website www.revenue.ie.

Queries

Individual queries or repayment claims should be made to the taxpayer's Inspector of Taxes in the first instance. Queries regarding the general interpretation of this or any other ECJ judgment can be addressed to

Revenue Commissioners
VAT Interpretation Financial Services and Property Branch,
Stamping Building,
Dublin Castle,
Dublin 2.

Enquiries on this article should be addressed to dbarry@revenue.ie.

Health Expenses - Income Tax

Kidney Patients

In the case of kidney patients, tax relief may be claimed on the following under the heading of health expenses for 2004.

Hospital Dialysis Patients

Where the patient attends hospital for treatment, relief under the heading of health expenses may be allowed in respect of expenditure incurred travelling (unlimited journeys) to and from hospital at the following rate -

2002	2003	2004
€0.35 per mile	€0.35 per mile	€0.35 per mile

Home Dialysis Patients

Where the patient uses a dialysis machine at home, relief under the heading of health expenses may be allowed in respect of the following expenditure -

	2002	2003	2004
Electricity	€1,115	€1,270	€1,380
Laundry	€1,595	€1,675	€1,735
Telephone	€110	€250	€260
Travel to and from Hospital	€0.35 per mile	€0.35 per mile	€0.35 per mile

Chronic Ambulatory Peritoneal Dialysis [CAPD]

Where the patient has treatment at home without the use of a dialysis machine, relief under the heading of health expenses may be allowed in respect of the following expenditure -

	2002	2003	2004
Electricity	€880	€1,010	€1,090
Telephone	€110	€250	€260
Travel to and from Hospital	€0.35 per mile	€0.35 per mile	€0.35 per mile

Child Oncology Patients and Children with Permanent Disabilities

In the case of child oncology patients and children with permanent disabilities, tax relief may be claimed on the following under the heading of health expenses for 2004.

Telephone

Where the child is treated at home, a flat rate of €260 to include telephone rental and calls may be claimed where the expenses are incurred for purposes directly connected with the treatment of the child.

Overnight Accommodation

Payments made by the parent/guardian to a hospital, hotel or B&B in respect of overnight accommodation in or near the hospital where the child is a patient where such overnight stay is necessary for the treatment of the child.

Travel

The cost incurred in travelling (unlimited journeys) to and from any hospital in respect of:

- (i) The patient and accompanying parents/guardians; and
- (ii) Parents/guardians of the patient

where such trips are shown to be essential to the treatment of the child.

If a private car is used, €0.35 per mile may be allowed for the year 2004.

Hygiene products and special clothing

The cost incurred in respect of these items subject to a maximum of €500 per year.

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

This content is more than 5 years old.
Where still relevant it has been incorporated
into a Tax and Duty Manual
or other website text.

Capital Allowances in respect of Private Hospitals

Introduction

Capital allowances are available in respect of capital expenditure incurred on the construction or refurbishment of buildings used for the purposes of a trade which consists of the operation or management of a qualifying private hospital. A leaflet titled *Capital Allowances in Respect of Private Hospitals* dated March 2003, which sets out the main conditions of the scheme, can be

found on the Revenue website.



The purpose of this article is to:

- Restate that consultants' rooms and offices are specifically excluded from the definition of "qualifying hospital",
- Confirm that consultants and certain other categories of persons are not entitled, in any circumstances, to capital allowances in relation to expenditure incurred on any part of a private hospital, and
- Clarify that the unitisation rules and restrictions in relation to the sideways set off of capital allowances apply to investors in private hospital buildings.

Consultants' rooms and offices

It has been suggested that consultants' rooms are regarded as part of a qualifying private hospital. This is not the case. Consultants' rooms and offices are specifically **excluded** from the definition of a "qualifying hospital" in Section 268(2A) TCA 1997. This exclusion applies even where consultants' rooms might be used exclusively for the assessment or treatment of patients.

Exclusion of consultants and certain other persons

The legislation provides that a "qualifying hospital" is not regarded as a building to which capital allowances apply as regards a claim by any of the following categories of persons:

- A company
- The trustees of a trust
- An individual involved in the operation or management of the qualifying hospital either as an employee or director **or in any other capacity**. By virtue of this provision all consultants and other individuals associated with the operation or management of a private hospital - whether employed or self-employed or involved in any other capacity - are excluded from entitlement to capital allowances in relation to expenditure incurred by them on any part of that private hospital building.
- A property developer, where the property developer or a connected person incurred the capital expenditure on the private hospital building. *[See page 16 of [Tax Briefing Issue 41](#) (regarding the exclusion of property developers from other schemes) which explains the definition of "property developer" and the tests to be applied].*

It should be noted that entitlement to capital allowances is ruled out for these persons irrespective of the manner in which they may hold the relevant interest in relation to any expenditure incurred.

Unitisation Rules

Section 408 TCA 1997 restricts the manner in which capital allowances on buildings may be set off by investors participating in a "property investment scheme". This is any scheme or arrangement which facilitates the sharing of income or gains from an interest in a building or part of a building by the public or by a section of the public. However, an exception is made for any such scheme or arrangement where the manner of sharing of the income or gains and the number of persons who are involved is in accordance with a practice which commonly prevailed in the State in the 5 year period to January 1991. As indicated in Tax Instruction [12.4.3](#) (published on the FOI

section of the Revenue website under *Income, Corporation and Capital Gains Tax - Operational Instructions*) direct joint ownership was the practice which prevailed in that period and the number of participating investors can be up to thirteen.

Where Section 408 applies, the investors in the scheme are **not entitled** to have **any** of the capital allowances in respect of the building concerned set off against non-rental income. Thus, while investors are not denied the benefit of the capital allowances, the allowances are only available against rental income. The Section 408 restrictions apply to property investment schemes involving private hospitals.

Limit on offset of allowances for individual passive investors

If the unitisation rules do not apply, other restrictions still apply in the case of passive investors in private hospitals. Section 409A TCA 1997 imposes a limit of €31,750 on the amount of excess capital allowances which an individual passive investor (e.g. who leases a hospital property to a health service provider) may set against non-rental income in any year. In such a situation, the capital allowances of the year are firstly given against rental income. If they exceed the rental income, a claim can be made to have an amount up to €31,750 of the excess set, firstly, against the investor's other income and, subsequently, against the income of his or her spouse for the particular year. Any balance remaining can be carried forward to the next year but is only available for set off against rental income.

The €31,750 restriction also applies to a partner in a partnership carrying on a hospital trade where the individual is not an active partner in relation to that trade. An active partner is a partner who works for the greater part of his or her time on the day-to-day management or conduct of the partnership trade. In this situation, the annual limit of €31,750 applies to the amount of excess capital allowances which the individual (passive) partner may claim against income other than that arising to him or her from the partnership trade.

Incorrect claims made

Any consultant or investor who may, mistakenly, have claimed capital allowances in relation to consultants' rooms or offices should contact their local Revenue District in order to regularise their affairs. Likewise, any category of excluded person who may have claimed capital allowances in error in relation to any part of a private hospital, or any person to whom the provisions of Sections 408 or 409A apply who may have made an incorrect sideways claim, should also notify their local Revenue District. All self corrections will be dealt with in accordance with paragraph 10.5 of the [Code of Practice](#) for Revenue Audit.

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

Foreign Effective Rates

The following effective rates are applicable from 1 January 2005

Belgium	44%
Canada*	34%
France	44%
Germany	37%
Italy	43%
Japan	44%
Luxembourg	33%

Note:

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

*For Canada this rate applies only until the end of 2005, as a new Convention will come into effect from 1 January 2006. This new Convention does not provide for credit for underlying tax where portfolio investors are concerned.

The Cooperative Approach to Tax Compliance

The Cooperative Approach to Tax Compliance - Revenue Working with Large Business

Introduction

The following is the text of the Co-operative Approach to Tax Compliance which was placed on the Revenue website in October 2005.

The purpose of this publication

This publication explains what cooperative compliance is about and how Revenue and large business in Ireland can work together to promote tax compliance.*(See note)

The publication is intended primarily for -

- Large business taxpayers
- Revenue managers and staff
- Tax Advisors.

What is Cooperative Compliance?

Cooperative compliance envisages a new form of relationship between Revenue and large business, one where both parties work together to achieve the highest possible level of compliance across the taxes for which particular businesses need to account.

This cooperative model is increasingly becoming a feature of the relationship between large business and Revenue administrations across the world, reflecting the growing sense of a mutual interest in being as certain as possible about tax liabilities and in ensuring that there are no surprises in any later reviews of these liabilities. The most important feature of these relationships is the understanding reached about the actions that both business and the Revenue administration need to take to achieve high compliance standards.

The Irish model will involve voluntary understandings between individual large businesses and Revenue that will set out what each side needs to do to enable the business to achieve the compliance objective. These understandings, which will essentially be the platform for compliance, are outlined in this publication.

What cooperative compliance is not, is any kind of special treatment for an elite group of taxpayers. It is essentially a hard-edged practical element of Revenue's overall compliance strategy that seeks to copperfasten the flow of revenues from the small group of very large taxpayers responsible for up to two-thirds of all exchequer finances.

Why Cooperative Compliance?

Worldwide, regulatory compliance and particularly tax compliance has become an increasingly important focus for business. The passage of the Sarbanes-Oxley Act 2002 in the United States and legislation and practice with similar objectives in Ireland and in a number of other countries have resulted in a heightened awareness of effective tax risk management as an important aspect of good corporate governance.

Regulatory requirements apart, Revenue's interaction with Irish large business management suggests that there is, in any event, a strong desire to have certainty in relation to the incidence of taxes of all kinds before accounts are signed off.

For businesses searching for ways of ensuring this kind of longer-term certainty in relation to tax exposure, the cooperative compliance approach opens a door to the kind of dialogue with Revenue that can help them to achieve this objective.

Cooperative compliance also offers an important opportunity to Revenue, business and tax advisors to work together to arrive at solutions that do not compromise the law or the interests of the wider community. Experience in Ireland for many years past has demonstrated the strength of public interest in tax equity and the extent to which the view of fairness is driven by perceptions of the degree of compliance among large taxpayers.

Are formal agreements necessary?

No. There is no intention to create any kind of legal commitment - the model depends on a high degree of trust. What is important is what both sides actually do to ensure high compliance. The Irish model will involve understandings worked out in discussions and in joint reviews of tax risk. These reviews will lead towards agreed compliance action plans. The willingness of both sides to engage and the actions which each proposes to take can simply be confirmed by letter.

Does engagement in Cooperative Compliance imply poor compliance?

No. Revenue accepts that many businesses already have a strong compliance ethos and would see themselves as broadly compliant while many others are pursuing a similar goal. Tax, however, is complex. Revenue's experience is that, even where there is no deliberate default, the volume of tax law and regulation, with which large business has to comply, can leave room for inadvertent error. This can be caused by lack of understanding, carelessness, poor systems, inexperienced staff, etc. any of which can mask significant unexpected tax exposure.

The proposed reviews of tax risk will allow Revenue to contribute its experience of risk areas that may need to be taken on board by a business in its assessment of the tax risk dimension of overall regulatory risk.

What if a business does not wish to engage in Cooperative Compliance?

There is no obligation to engage in the cooperative approach to tax compliance - this is entirely voluntary. Businesses which engage may also decide to opt out at any stage. Equally, Revenue may discontinue cooperative compliance with businesses that do not operate on the basis of the understandings reached.

What the cooperative model is offering is a partnership approach towards creating high compliance from which, of course, there can ultimately be no opt out.

What benefits will business get from Cooperative Compliance?

- A relationship with Revenue based on trust, mutual understanding, openness and transparency
- A Revenue approach based on a better understanding of the business and a recognition of the distinction between business-driven and tax-driven decisions
- An ability to predict with reasonable confidence what Revenue's position will be in relation to tax issues
- A better understanding of Revenue's approach and philosophy
- The possibility of reduced compliance costs
- Less audit intrusion from Revenue since the audit and enforcement focus will be biased towards those not committed to high compliance standards
- Greater certainty in relation to tax exposure
- The opportunity to highlight problems with the tax code or its administration.
- What benefits will Revenue get from Cooperative Compliance?
- A relationship with business based on trust, mutual understanding, openness and transparency
- An ability to predict with reasonable confidence what the position of a business will be in relation to tax issues
- A better understanding of business
- Greater certainty in relation to forecasting tax yield
- Business insights to inform the debate on the tax code and on its administration
- Greater impact on non-compliance through focusing greater audit and enforcement resources on the cases presenting the highest risk
- Accurate and timely tax returns and payments

- The possibility of reduced administrative costs.

Tax Advisors and Cooperative Compliance?

Revenue recognises the very important role tax advisors play in the administration of the tax code and the significant contribution they make in leveraging tax compliance. The constructive relationship that exists between tax advisors and Revenue will not change because of the advent of the cooperative compliance approach or because of the direct interaction between Revenue and business management that this involves.

The cooperative compliance approach is structured so as not to undermine, in any way, the relationship between business taxpayers and their tax advisors. The dialogue with business that Revenue has developed will operate in parallel with its traditional relationship with tax advisors.

The extent of involvement of tax advisors in any aspect of the tax affairs of a business, including cooperative compliance, is a matter for the business and its advisors. In practice much of the discussion on tax risk analysis and on the formulation and implementation of action plans for tax risk management is likely to involve tripartite contact between Revenue, business and their tax advisors.

What is needed to make Cooperative Compliance work?

- Commitment to jointly build a positive professional approach to ensuring high compliance, based on mutual trust, understanding and openness
- Recognition of the need to eliminate behaviour from either party that could undermine trust
- Recognition that a co-operative relationship does not limit Revenue's right to test compliance through audit, with such audits being conducted in accordance with the Code of Practice for Revenue Auditors
- Commitment by business to being open with Revenue in relation to its tax planning strategies
- Recognition that, within a cooperative relationship, disagreement or differences of opinion on the interpretation of tax law may still arise and may have to be determined at appeal
- Commitment by both sides to demonstrating that community expectations of compliance are being met and that the tax system is working effectively
- Carry through of the commitments that each side makes to the other to support the attainment of high levels of compliance.

How Cooperative Compliance will work in practice.

To begin the programme Revenue will engage with a number of the companies dealt with in Revenue's Large Cases Division with a view to seeking the agreement of these companies to put in place cooperative compliance arrangements. Depending on the results, Revenue may extend the approach to other companies.



• Internal responsibilities for compliance

Each side will define where responsibility lies for ensuring that the commitments that support compliance are honoured. At the business level, it will be clear how the compliance obligation is positioned as a dimension of good corporate governance and where responsibilities lie at Board, management and operational levels. In Revenue, there will be a similar outline of responsibilities and Compliance Managers will be assigned to each large business with responsibility for ensuring service and managing all aspects of the relationship between Revenue and the business.

- **Action plans to achieve compliance**

- Revenue, the business and, where necessary, its tax advisors, will draw up and agree a set of action points for each side, with timeframes, for a review of tax risk and the implementation of a set of compliance actions for each tax
- The first step, for each tax, will involve the parties engaging in a risk review meeting at which Revenue will give an overview of its perspective on potential tax risks for the business and its sector, and the business will point up risk areas of which they are aware - essentially working towards an agreed view of an initial tax risk profile for the business
- The business will then prepare and implement annual tax risk management plans focusing on agreed risk areas
- Revenue audits will, where considered necessary in particular years, be part of the overall action plan. These audits will, as far as possible, be signalled to the business as part of each year's overall risk management plan and will be the least intrusive possible for businesses genuinely engaging in cooperative compliance. Risk analysis driven by profiling and business intelligence will, however, continue for all businesses and business sectors. Exceptionally, where necessary, audits beyond the programme envisaged in the cooperative compliance plan may be conducted.
- The audit dimension of the cooperative approach will therefore be reflected in a mix of self-audit and Revenue audit. The risk profile emerging from the engagement of both sides in reviewing risk will drive both forms of audit.
- While Revenue recognises tax planning as an important dimension of financial management, it will nevertheless expect that a business will, as an element of Cooperative Compliance, be open with it in relation to its tax planning strategies. Being open in this way need not preclude different viewpoints on whether aspects of that tax planning constitute tax avoidance.
- Businesses will have the opportunity, as provided for in the Audit Code of Practice, to make unprompted disclosures of issues thrown up by its initial and ongoing compliance reviews. Where Revenue audit letters have already issued the rules applying to prompted disclosure will apply.
- Revenue will respond, as quickly as possible, to requests for interpretation assistance from business and their tax advisors. Ideally this assistance would take the form of consultation at the earliest possible stage. This could be of particular benefit to businesses engaged in projects with potential major tax significance, such as mergers, takeovers, investment projects, etc.
- Revenue will respond promptly to well-founded complaints from business about potentially unfair tax-based competitive advantages allegedly being enjoyed by competitors.

The overall engagement and the action plans are intended to create, over reasonable timeframes, a momentum leading to rolling internal review of tax risk and to voluntary disclosure of any liabilities detected. This will also lead to clarification of interpretation and practice and to the opportunity to ensure consistent application of tax law across each business sector.

- **Feedback of difficulties with the tax code or tax administration**

The interaction between Revenue and business in cooperative compliance will provide an important opportunity to crystallise and feed back views in relation to particular difficulties with the tax code or with how it is being administered

- **Compliance cost and efficient tax management**

The dialogue can particularly facilitate ongoing exchanges of views on both compliance costs for large business and on the efficient use of resource in Revenue - leaving open the possibility of agreement on ways of working which can offer efficiencies in both areas.

Monitoring the effectiveness of Cooperative Compliance.

- **Dialogue between Revenue and business**

The ongoing interaction between business and Revenue will provide a channel for constructive dialogue within an environment of trust where the positives or negatives that may emerge as cooperative compliance evolves can be resolved in a professional manner.

- **Disagreements within Cooperative Compliance**

Businesses engaging in cooperative compliance or their advisors will, of course, where they find it necessary, have full access to the appeal process and to the facility to seek internal review within Revenue or external review. Decisions by businesses and their advisors to opt for the appeal route or any form of review will be regarded as fully compatible with the cooperative compliance approach.

An additional feature, which can be brought into play to help solve emerging problems, will be the right of either party to escalate the problem issue to senior management in the business and in Revenue.

- **Reviewing Cooperative Compliance**

Structures will be put in place to provide for consultation between Revenue, business interests and the tax advisory bodies on cooperative compliance as it unfolds.

Note: For the purposes of this document "tax" means all taxes and duties administered by Revenue.

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

ROS Pay and File 2005

Introduction

Under new Instructions recently issued paper returns that are incomplete or require a lot of repair will be sent back for proper completion with surcharge implications if there are delays in resubmitting.



One of the benefits of e-filing is that ROS prompts filers to give all the information required to issue a notice of assessment without further intervention from Revenue staff. Filing through ROS also gives you the peace of mind of an instant acknowledgement of the return, a prompt assessment and a speedier refund if there is a repayment of tax due.

If you intend filing Forms 11 through ROS for the first time this year, you should ensure that you register well in advance of the filing deadline as the whole registration process typically takes 8 working days. You will need to retrieve your certificate as soon as possible to ensure that you can log on to ROS successfully. If you experience problems while attempting to retrieve your certificate you should contact your local ROS Liaison Officer.

Details of the various software, hardware and system requirements needed for ROS can be found on the ROS System Requirements page on the [ROS homepage](#), accessible through www.revenue.ie.

Pay & File - Extension of filing date in 2005

As already published in Tax Briefing Issue 59, April 2005, the extended deadline for self-assessment customers who both pay and file their return through ROS is available again this year. Last year over 53% of timely filed Forms 11 were filed on ROS.

This year the due date for filing has been extended to 17 November 2005 for filing 2004 returns and submitting payments through ROS for:

- Preliminary Tax for 2005
- Income Tax balance due for 2004 and
- Capital Gains Tax on gains arising in initial period 2005 (01/01/2005-30/09/2005)

To qualify for the extension, customers must both pay and file through ROS. Where only one of these actions is completed through ROS, the extension will not apply.

The normal deadline of 31 October 2005 still stands for those who pay or file by means other than ROS.

Extended deadline for ROS Customers in respect of RACs, PRSAs & AVCs

Under Sections 787(7) and 787C(3) TCA 1997 relief may be claimed in respect of a Retirement Annuity Contract (RAC) or a Personal Retirement Savings Accounts (PRSA) payment made on or before the return filing date. Where an individual qualifies for the extended Pay and File deadline available to ROS customers by both filing and paying online, the deadline for making RAC and PRSA payments and claiming the relief is also extended to 17 November 2005.

This extended deadline also covers payments of Additional Voluntary Contributions (AVCs) made under Section 774(8) or Section 776(3) TCA 1997, where the individual qualifies for the extended Pay and File deadline.

Tips for Pay & File 2005

Below are just a few reminders to consider in advance of the Pay & File filing date:

File Early

- File the returns when ready - don't wait until the last minute. This year, a total of 59,852 Income Tax Forms 11 have already been filed on ROS by the end of September which is an increase of 23% over the same period last year.
- Have you considered a broadband connection to the internet? Broadband is not essential for ROS but it will help speed up the e-filing process.

Existing ROS Customers

- Have you got a valid digital certificate and can you remember your password? If you have forgotten your password you can now arrange to have it sent to you in the post. Simply enter the [secure services section](#) from the ROS homepage, accessible through www.revenue.ie, and click on the **Forgot your Password?** link.
- Have you changed your PC recently? If so, you should have copied your digital certificate from your old PC to your new PC. You should verify this by logging in to ROS on your new PC. Digital certificates are stored on your PC at c:/ros/roscerts and consist of two files - .p12 and .txt.
- Have you changed your email address recently? If so, you should amend it on ROS by clicking on the Profile tab at the top of the screen. A screen will display the email address and this can be changed at any stage by clicking "Update" at the bottom of the screen. The screen will immediately acknowledge that the email address has been updated.
- Have you checked your client list recently to ensure that all the clients for whom you intend filing ROS returns are included on the list? If your list is not up to date, you should contact your local tax office to have it updated so there will be no delay in processing the return. The updating process typically takes 3 working days, so be sure to start the process well in advance of the Pay & File deadline. A return filed for a client to whom you are not yet linked will be accepted on ROS but will not be processed until the client is included on your list.
- Dublin based practitioners may forward requests for additions to and removals from their client listings by e-mail to dublinagents@revenue.ie. For contact details of the RLO in your area just click on the Help icon on the ROS Homepage and then the ROS Liaison Officer link or your local Revenue office.
- If you intend to file an Income Tax Form 11 for a client please check that the client is currently registered for Income Tax and that you are registered with Revenue on the client list as their agent.
- If you plan to upload offline returns or payments in batches during the peak Pay and File period we recommend that you restrict the size of the batches to a maximum of 100 to avoid any unnecessary problems.
- ROS now provides agents and tax practitioners with a list of the last 10 clients they have accessed when signing in to ROS. Selecting one of the clients shown on the list will bring you to that client's "Client Services Page". This enhancement provides you with quicker access to information regarding your client.
- Pay and File Notices with Single Debit Authority were issued early last month, on paper, to Income Tax customers regardless of whether they were ROS customers or paper filers. Don't forget that you can avail of the Pay & File extended deadline of 17 November if you file your Statement of Net Liabilities (SNL) together with the payment, if due, through the ROS system. **Remember the bank accounts will not be debited until that date**, whereas if you completed a paper Single Debit Authority, you will have paid on 31 October. You will also receive an instant acknowledgement in your ROS inbox. If you do not submit a payment with your SNL you will not receive a reminder to file your payment.

ROS Offline Users

- You can use the ROS Offline application to complete Form 11s offline before connecting to the internet.
- Check that you are using the correct version of the offline application by clicking on the **Help** button followed by the **About** button. ROS Offline Application 5.0 or 5.1 should appear. Any version lower than version 5.0 is incorrect. You can download version 5.1 directly from the ROS site by clicking on the **Download** button at the top of the ROS homepage.
- Ensure you have downloaded the latest version of the ROS Offline Form 11. Click on the **Refresh** tab on the **Download** page of the offline version, if **Upgrade** appears click on this button for the latest version.
- You can also prepare your clients payments using the ROS Offline Payment facility thereby saving time and internet costs when filing online.

Form 11 Tips

- When completing the "Self Employed Income" page in the offline facility you need to click on the **Accounts Extract** tab on this page and select one of the Accounts menu options. If you do not do this you will receive a warning message "ROS will not accept this Form 11 at upload stage in the absence of a completed Accounts Menu" when you attempt to click on the Continue tab on this page.
- Please note that PAYE Tax Credit is no longer granted automatically on the ROS Form 11 for 2004. Where the PAYE Tax Credit is due it should be claimed in the personal Tax Credits page by ticking the relevant box.
- Social Welfare benefits should be entered on the PAYE/BIK/Pensions page.
- Some practitioners are incorrectly using the "Expression of Doubt" field on the "Personal Detail" screen of the ROS Form 11 to record notes in relation to the completion of the return. You 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 provides for the inclusion of "Additional Notes" under "Self Employed Income" on the final screen of the "Accounts Extract" and also at the end of the "Personal Tax Credits" page.
- It has come to our attention that a large number of Income Tax Forms 11 were filed last year using a valid PPS Number followed by the letter W. While this format is valid for PAYE cases it is not valid for Income Tax cases. Returns filed using this additional W character will not be processed. Practitioners should ensure that all Forms 11 filed show the client's correct Income Tax registration number. Failure to file a return using the correct number may result in delays in the issue of a notice of assessment.

ROS Administrators

- Ensure all linked users have retrieved their Digital Certificates.
- Ensure all linked users know their Digital Certificate password. You can check their passwords yourself by clicking on the Admin Services tab.
- Ensure all linked users have been granted the necessary permissions to file returns and/or make payments. You can check their permissions under the Admin Services tab.

Payments

- The easy way to assist your clients in meeting their tax obligations is by paying their tax on ROS. Payment transactions on ROS during 2005 are increasing rapidly, with 166,883 payments made online by the end of September, an increase of 78% over the same period last year.
- You can now prepare the payments offline using the ROS Offline Payment facility.
- Submit your client's payment instructions early. **The money will not be taken from their account until 17 November** if that is specified as the payment date. The money will only be taken out earlier if an earlier payment date is specified.
- If planning to pay using the ROS Debit Instruction (RDI), ensure this has been set up beforehand.
- Clients who are unwilling to have payments made by you should be encouraged to register for ROS and to set up the RDI themselves so that they can avail of the extended deadline of 17 November 2005.

- Ensure that the bank account details and bank sort code are correct. The facility to amend a bank account number and Bank Sort code on an RDI will be available shortly on ROS. Any changes involving account name, payment amount or taxheads associated with the mandate will still need to be referred in writing to the ROS/SDA Unit, Collector-Generals Division, Apollo House, Tara Street, Dublin 2.
- You must also ensure that the bank account nominated is suitable for debit. Some banks will not allow debits from certain types of account e.g. deposit accounts. If in doubt, check with your bank.
- If a payment has been filed and it is subsequently discovered that an incorrect amount has been entered, any amendments to the payment amount should be notified in writing as soon as possible to: ROS/SDA Unit, Collector General's Division, Apollo House, Tara Street, Dublin 2. (Fax. No. 01-6798224).
- If you use the Online Banking Payment Method, you must also log on to the relevant bank's Online Banking System to authorise the debit of the specified amount from the account. Your clients' instruction to the bank should also include their PPS Number as a reference.
- If you make payment through ROS, do not complete the Single Debit Authority mandate attached to the paper return forms (Form 11) or the Pay and File Reminder form (P&FD). Otherwise, payment could be deducted twice from your bank account.

ROS Liaison Officers

Revenue has developed a network of over 100 ROS Liaison Officers (RLOs) throughout the country. Their job is to provide assistance and support, particularly for practitioners. For contact details of the RLO in your area, just click on the **Help** icon on the ROS Homepage and then the **ROS Liaison Officer** link. Please contact your local RLO if you require assistance with ROS.

Customer Information Service

The ROS Customer Information Service allows agents and tax practitioners access to their clients' Revenue account. This hugely popular service is currently receiving over 300,000 requests for information per month. Prior to submitting returns for your clients you can check the Revenue account for the following details:

- Returns filed and outstanding
- Payments made
- Refunds and Repayments
- Details of tax outstanding
- The Event List which shows recent activity
- Registration details

You can also request that a clients' Revenue account statement be sent to your ROS inbox.

Phasing out of Diskette

Tax Credit Certificates

ROS currently supports 2 electronic formats for the submission of data: ROS and diskette. The diskette service will end this year and the last delivery of employers' copies of employees Tax Credit Certificates will be in January 2006. After this date, Tax Credit Certificates will be delivered only through ROS or on paper. Currently diskettes are issued annually during the bulk issue at the beginning of the tax year. ROS delivers this annual bulk issue electronically, as well as any amended Tax Credit Certificates, every week directly to the employer's secure ROS inbox. This information, which is supplied in exactly the same format as the diskette version, can be easily integrated into the employer's payroll package.

Forthcoming Developments

In 2006 the ROS service will be extended to the PAYE customer, who will then be able to conduct business with Revenue online on ROS. ROS will use the Government's Public Service Broker (Reach) for the registration and authentication process for these customers.

Initially, PAYE customers will be able to avail of the following services:

- View, claim and amend tax credits; and claim additional tax credits,
- Reallocate tax credits between employments and reallocate tax credits between spouses
- Request and view balancing statements starting with the tax year 2005
- Claim health expenses
- Amend their personal information such as address changes, date of birth and contact details
- Access their own customer information services

The PAYE services available on ROS will be extended to a full range of services in the future. When tax return filing is in place for PAYE customers, facilities will be made available for agents and practitioners to file these returns on behalf of their clients.

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

This content is more than 5 years old
Where still relevant it has been incorporated
into a Tax and Duty Manual
or other website text.

Motor Expenses and Subsistence Rates

Revised rates for Employees motoring Expenses and Employees' subsistence expenses

Motor travel rates effective from 1 July 2005

Rates per mile

Motor Cars			
Official Motor Travel in a calendar year	Engine Capacity		
	Up to 1,200cc	1,201cc to 1,500cc	1,501cc and over
Up to 4,000 miles	83.92 cent	97.91 cent	124.23 cent
4,001 and over	42.47 cent	48.77 cent	57.39 cent

Rates per kilometre (1 mile = 1.609 kilometres)

Motor Cars			
Official Motor Travel in a calendar year	Engine Capacity		
	Up to 1,200cc	1,201cc to 1,500cc	1,501cc and over
Up to 6,437km	52.16 cent	60.85 cent	77.21 cent
6,438km and over	26.40 cent	30.31 cent	35.67 cent

Domestic Subsistence rates from 1 July 2005

The schedule of rates based on the current Civil Service Subsistence Rates for absences within the State is set hereunder. For details of the rules, etc. in relation to the application of these rates refer to Revenue's Information Leaflet IT54, Employee's Subsistence Expenses.

Class of Allowances	Overnight Rates			Day Rates	
	Normal Rate	Reduced Rate	Detention Rate	10 hours or more	5 hours but less than 10 hours
A - Rate	€ 138.41	€ 127.60	€ 69.19	€ 40.01	€ 16.32
B - Rate	127.49	109.04	63.77	40.01	16.32