

Revenue Commissioners

Tax Briefing No 65

2006

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.

Contents

ROS Update.....	2
Offshore Funds Legislation.....	4
Capital Allowances and Property-based Incentive Schemes.....	5
Calculation of Base Cost of Fyffes shares and Blackrock International Land shares	7
Tonnage Tax.....	8
Property-based Incentive Schemes - 15% test	13
Property-Based Incentive Schemes - Inducements for purchase of property	16
Registration of Tenancies and Property-based Incentive Schemes	17
Capital Allowances for Registered Holiday Cottages.....	18
Single Farm Payment - Finance Act 2006 Amendments.....	19
VAT Treatment of Staff Canteens - Role of Commercial Caterer.....	21
Opticians and VAT	23
Foreign Executive Rates (with effect from 1 January 2006).....	27
Important Information for Principals and Subcontractors RCT	28
Some recent VAT publications.....	30
Capital Acquisitions Tax - Regionalisation of CAT Audits	31
Employed Person Taking Care of Incapacitated Individual.....	33
Revenue News	34
Mandatory Licences for Employees in Private Security	35
About Tax Briefing.....	36

ROS Update

Pay & File Results 2006

Revenue Chairman Frank Daly thanked practitioners for their continued use of the Revenue On-Line Service (ROS) during the recent successful Pay & File campaign. He said that the excellent filing figures demonstrate strong customer confidence, particularly by practitioners, in the security and efficiency of ROS. Revenue is encouraged by the increases in timely filing and payment of taxes and would like to thank all practitioners and taxpayers who contributed to this positive outcome.

By midnight on 16th November, the tax deadline for electronic filers, a total of 244,114 income tax returns were filed through ROS. Over 86,000 payments were made online this year (an increase of 29% over last year).

Early indications suggest that over 70% of timely filers used the electronic route this year. This compares very favourably with the 65% achieved last year and 53%, 40% and 9% in the preceding years.

Online payment of tax also increased this year with over €2.2 billion paid this year compared to €1.4b at the same time last year.

A record number of returns (over 30,000) were successfully filed on the last day.

The ROS helpdesk (1890 20 11 06) which remained open until midnight, took over 1,900 calls on that final day assisting practitioners and customers to file returns and make payments right up to the midnight deadline.

The numbers of Forms 11 filed, the numbers of payments received and the value of those payments, as at midnight on 16th November 2006, together with the corresponding figures for the final day in 2005 are outlined below

	2005	2006	% Increase
Form 11s filed	205,887	244,114	18.6%
Number of Payments	67,273	86,524	28.6%
Value of Payments	€1.4 billion	€2.2 billion	57%

Notices of assessment for all ROS returns filed between 14th and 21st November issued on 22nd November and are now available in practitioners' inboxes.

Capital Gains Tax Registration

Some practitioners have experienced difficulty in making CGT payments on ROS where the customer is not registered for CGT.

ROS has been enhanced to allow practitioners to set up a ROS Debit Instruction for these customers and to make a CGT payment for them. When such a payment is made we will automatically register the customer for CGT and process the payment accordingly.

Unregistered Clients

To assist practitioners during the busy Pay & File period ROS introduced a facility for practitioners which allowed them to file Income Tax Forms 11 for clients who were either not yet registered for Income Tax or who were not recorded on the Agents client listing. In these circumstances the Form 11 is held in ROS until the internal Revenue Systems are updated to register the client for Income Tax or to record that the agent is acting in the case. Practitioners are advised when filing returns in such circumstances that while the return has been received it has not yet been processed fully. Practitioners are reminded that they should follow up on these returns with the local tax office if the notice of assessment is not issued in timely fashion.

Practitioners should note that this facility to file returns for such clients is available during the busy P & F period only and will not be available at other times of the year. Practitioners should contact the local tax office to register such clients before attempting to file these returns at other times of the year.

Discontinuation of Diskette Services

Revenue has decided to discontinue the diskette services for P35 filing and for the delivery of Employer copies of Tax Credit Certificates (P2C). Practitioners, Employers and Software Developers have been informed of this decision and have been encouraged to use ROS for filing P35s and for receipt of Tax Credit Certificates.

Tax Credit certificates can be received electronically via ROS by the customer/employer selecting the "P2C via ROS" option on their ROS Profile Page.

We strongly recommend that you encourage your clients to register for ROS if they have not already done so and encourage them to file their P35s and to receive their tax credit certificates electronically.

When they opt to receive tax credits online they will also get any amended certificates during the year as well as the annual bulk issue of certificates. The certificates can be easily downloaded from ROS for uploading into their payroll packages. A MS Excel based tax credit cert viewer which allows the customer to look at the details contained in the tax credit file before uploading to the payroll package and a MS PowerPoint presentation showing how to download tax credit certificates on ROS are available to download at www.revenue.ie/en/online/ros/index.html

To assist practitioners who look after payroll for their clients we have recently provided a new facility that will allow practitioners direct access to their ROS registered employer clients' copies of tax credit certificates. To avail of this service the client must be registered for ROS and have selected the option "P2C via ROS" on the Profile page. This development eliminates the need for a client to download these certificates and to forward them to a practitioner who looks after the payroll on their behalf.

CT1 2006 - Revised Version 6

A revised version of form CT1 is currently available on the ROS Offline Application. To install this upgraded version of the form open the ROS Offline Application icon, select **Downloads** followed by **Refresh** and then select the **Upgrade** button that appears beside Version 6 of the Form CT1.

PAYE Services for Employees on ROS

Since June 2006 ROS has been extended to allow employees to conduct business with Revenue online.

PAYE anytime on ROS enables employees to adjust tax credits, claim repayments and amend personal details. Recognising the different profile of these customers, an alternative method of registration and authentication has been introduced using a combination of a Revenue PIN and Reachservices, the Government Public Services Broker. All employees in the country have at this stage been issued with an explanatory letter explaining this and other self-service options available to them. This explanatory letter contains the Revenue PIN that is required for the services. A forgotten PIN facility is available at www.revenue.ie under PAYE anytime Self Service for Employees. Employees using ROS are granted flexible access to their Revenue account from home, work or internet café. Find out more at www.revenue.ie.

Offshore Funds Legislation

Transactions within Transparent Entities such as Partnerships

A number of queries have been received as to whether certain types of foreign entities and structures fall to be taxed as offshore funds. The purpose of this article is to state that in Revenue's view the offshore funds legislation does not apply to certain foreign entities.



Background

The offshore funds legislation (*Sections 740 to 747 TCA, 1997*) was introduced in 1990. It was supplemented by further provisions (*Sections 747B to 747E*) in 2001 to bring the taxation of offshore funds within the EU closer to the regime applying to Irish domestic funds.

The offshore funds legislation was introduced to address a situation where Irish taxpayers were investing in non-transparent foreign entities within which income was being generated and rolled up. These investors were not subject to Irish income tax on profits generated by their investments as it was not possible to tax the investors on a look-through basis on income arising, as would have been possible for investment via transparent entities.

Transparent Entities

Transparent entities or look-through entities are so called because, for income tax purposes, income arising to the entity is treated as income of those who invested in or have the underlying interest in the entity. The most common example of this is the direct taxation of partners on income arising within a partnership.

Foreign Investment Vehicles

A wide variety of foreign entities can be used for investment purposes, with their precise characteristics being determined by the laws of the relevant foreign state. Some of these entities have characteristics similar to an Irish company. Others more closely resemble our partnerships and more have, what appear by Irish standards to be, hybrid characteristics.

Foreign Entities Treated in Ireland as Transparent

As the charging provisions of the offshore funds legislation contained in *Section 747D TCA 1997* are triggered by the receipt of payments from an offshore fund, it would not be appropriate to apply those provisions where investors are directly chargeable to either income tax or capital gains tax on income or gains arising within a transparent foreign entity.

Accordingly, the receipt of payments from foreign entities that are treated in Ireland as transparent does not generally give rise to a further liability to tax under the offshore funds provisions. Instead, taxation by first principles applies in such cases. In the same way that partners are taxed directly on income and gains arising within an Irish partnership, Irish investors in foreign entities that are treated in Ireland as transparent, will be taxed in Ireland on their share of the income and gains arising within the foreign entities as those income and gains arise.

Capital Allowances and Property-based Incentive Schemes

Introduction

[Tax Briefing 64](#) contained an article on the Finance Act 2006 changes to the property-based incentive schemes and addressed a number of issues raised in a previous article. It also contained an example illustrating the application of the various restrictions put in place affecting hotels and certain other commercial and industrial projects, etc. benefiting from the extended 31 July 2008 deadline. The example featured an industrial building in an urban renewal area with an element of expenditure on the building



being incurred outside the qualifying period for the urban renewal scheme in August 2008. It has been drawn to our attention that, being an industrial building, such expenditure, though not qualifying under the urban renewal scheme, would qualify for relief under the general industrial buildings capital allowance regime. The purpose of this article is to point out that the example in Tax Briefing 64 more correctly reflects the position for a commercial building than an industrial building. A revised example is now attached illustrating the position for an industrial building and taking account of the fact that relief is available for such buildings outside the ambit of the various property-based incentive schemes.

Example Illustrating the Application of Finance Act 2006 Restrictions

A builder purchases a site in a qualifying Urban Renewal area for €100,000 and constructs an industrial building on it for a cost of €420,000. The building is completed in August 2008 and, without having been used, the builder sells it to X on 1 October 2008 for €600,000 and X immediately takes it into use for the purposes of his manufacturing trade.

Construction expenditure attributable to the various periods is as follows:

Year 2006: €100,000

Year 2007: €220,000

1 Jan. 2008 to 31 July 2008: €80,000

August 2008: €20,000

As expenditure has been incurred on an industrial building within and outside the qualifying period for the urban renewal scheme, relief will be available under that scheme as well as under the general 25 year write off regime for industrial buildings in respect of that element of expenditure attributable to August 2008.

Relief under the Urban Renewal Scheme

The projected amount of post December 2006 expenditure, as certified by the local authority, was €280,000. Therefore the combined expenditure for the period 1 January 2007 to 31 July 2008 (€300,000) must be restricted to €280,000 and the restriction (€20,000) must be made in relation to the period January to July 2008 in priority to the year 2007. Accordingly, expenditure treated as incurred in the period January to July 2008 (before the 50 per cent restriction is applied) is €60,000 (€80,000 less €20,000).

The amount of qualifying expenditure in each period after application of the 75 per cent and 50 per cent restrictions is as follows:

Year 2006: €100,000

Year 2007: €220,000 x 75% = €165,000

Jan to July 2008: €60,000 x 50% = €30,000

August 2008: Nil (outside of the qualifying period). Total expenditure for the purposes of the numerator "C" in the formula is therefore €295,000.

The net price paid by X for relief purposes under *Section 279 TCA* (as amended) is -

$$B \times \frac{C}{D+E}$$

Where

B = purchase price

C = expenditure in qualifying period as reduced by restrictions

D = actual expenditure incurred

E = site cost

$$\text{i.e. } €600,000 \times \frac{€295,000}{€420,000 + €100,000} = €340,385$$

X is deemed to have incurred construction expenditure on 1 October 2008 equal to the net price paid by him, that is, €340,385, and his entitlement to capital allowances will be based on that amount **at the rates available under the urban renewal scheme**.

***NOTE:** When calculating the formula for "the net price paid" in *Section 279* the numerator "C" in the formula should be the amount of construction expenditure (incurred in the qualifying period for the scheme) as reduced in accordance with **subsections (5) and (7) of Section 270**. The denominator "C" in the original formula - now "D" in the revised formula - should include the full amount of expenditure incurred on the construction of the building or structure i.e. before any restrictions and whether or not incurred in the qualifying period for the particular scheme.

Relief under General Industrial Buildings Regime

As €20,000 of the expenditure on the building is attributable to August 2008 (a period falling outside the qualifying period for the urban renewal scheme), that amount must be considered for relief under the general capital allowance regime for industrial buildings. Again, using the *Section 279* formula, the amount of relief available to the purchaser in respect of this element of the expenditure is determined as follows:

$$€600,000 \times \frac{€20,000}{€420,000 + €100,000} = €23,077$$

X is deemed to have incurred construction expenditure of €23,077 on 1 October 2008 under the general industrial buildings regime and capital allowances on this element of the relief are available at the rate of 4% per annum over 25 years.

Calculation of Base Cost of Fyffes shares and Blackrock International Land shares

Following the disposal by Fyffes of part of its undertaking to Blackrock International Land plc (Blackrock) in exchange for the issue of Blackrock shares to the shareholders in Fyffes, the base cost of Fyffes shares must be apportioned accordingly.

Apportionment Of Base Cost

For the purpose of computing a gain or loss accruing from the disposal of any part of the "new holding", within the meaning of *Section 584(1) TCA 1997*, the total cost of the "new holding" is apportioned on the basis of the market values of the Fyffes shares and the Blackrock shares after the demerger.

Pursuant to the disposal each Fyffes shareholder received one share in Blackrock for each Fyffes share held prior to the transaction. In accordance with the provisions of the Capital Gains Tax Acts, the market value of the Fyffes shares and the Blackrock shares, following the demerger, are as follows:

Fyffes: €1.47

Blackrock: €0.43

To illustrate the mechanism for determining the base cost of the shares in the event of a future disposal, assume Fyffes shares were acquired before the demerger for €2.

Revenue will accept that the base cost to be used on the disposal of Fyffes shares is as follows:

Fyffes:

$$\begin{array}{rcl} \text{€2 x} & \text{€1.47} & \\ & \text{€1.47 + €0.43} & = \text{€1.55 per share} \end{array}$$

Revenue will accept that the base cost to be used on the disposal of Blackrock shares is as follows:

Blackrock:

$$\begin{array}{rcl} \text{€2 x} & \text{€0.43} & \\ & \text{€1.47 + €0.43} & = \text{€0.45 per share} \end{array}$$

The percentage split of the base cost between Fyffes and Blackrock is therefore:

Fyffes:

$$\begin{array}{rcl} \text{€1.47} & & \\ \text{€1.47 + €0.43} & = & 77\% \end{array}$$

Blackrock:

$$\begin{array}{rcl} \text{€0.43} & & \\ \text{€1.47 + €0.43} & = & 23\% \end{array}$$

Any Fyffes or Blackrock shares acquired after the demerger are not affected.

Tonnage Tax

Tonnage Tax - Part 24A, Sections 697A to 697Q and Schedule 18B Taxes Consolidation Act 1997

The purpose of this article is to explain what tonnage tax is, why it was introduced in Ireland and the essential requirements necessary for shipping companies to qualify under the regime.



What is Tonnage Tax?

Tonnage tax is a scheme whereby, as an alternative to charging corporation tax on certain profits of a qualifying shipping company, a tax charge is levied each year, instead, on the tonnage of the ships operated by the company.

The scheme was introduced as an encouragement to the EU maritime business and allowed Irish-based companies to compete with EU competitors benefiting from tonnage tax regimes in their jurisdictions.

The scheme which was introduced under the **Taxes Consolidation Act 1997 Part 24A, Sections 697A to 697Q and Schedule 18B** came into operation with effect from 28 March 2003. The legislation was framed in such a way that it could apply to the shipping profits of companies electing into the regime where those profits arose on or after 1 January 2002.

The term "*Tonnage Tax*" while standard in the various countries that have introduced similar measures is something of a misnomer. Tonnage tax is not itself a tax, rather it is an alternative method by which shipping companies may calculate their shipping related profits for corporation tax purposes. **The shipping related profits, once calculated using the tonnage tax method, are subject to the 12.5 per cent rate of corporation tax.** The profits are calculated by reference to the tonnage of the ships used in a company's shipping trade and hence the title. Essentially, the "tonnage" profits replace for tax purposes the income and gains arising to a shipping company from certain very specific activities.

Advantages of tonnage tax

The purpose of tonnage tax is not specifically to provide a tax break for shipping. The intention behind tonnage tax is to provide a number of real advantages for all shipping companies which enter the regime. **These include:**

Certainty, since the level of tax is known and minimal. This reduces the need for a company to make provision in its accounts for deferred taxation, thereby increasing earnings per share.

Flexibility, since companies have more freedom to choose when to buy ships and how to finance them. These decisions will now largely be determined by commercial rather than tax considerations.

Clarity, a company's tax position is more readily understood. Consequently, a company may become more attractive to investors and potential business partners.

Compatibility and competitiveness with the fiscal regimes of other countries. This is particularly important from the point of view of maintaining and developing Ireland's indigenous shipping industry.

How companies qualify for tonnage tax

The tonnage tax scheme is elective - a "qualifying company" must make an election under *Section 697D TCA 1997* (it is important to note that all qualifying companies **in a group** must enter the scheme). A "**qualifying company**" means a company:

- (a) Which is **within the charge to corporation tax**

(b) Which operates **qualifying ships**, and

(c) Which carries on the **strategic and commercial management** of those ships in Ireland.

A "**qualifying ship**" is a self propelled seagoing vessel of an adequate size to engage in reasonable commercial operations and which complies with all the requirements for navigation at sea imposed by the competent authorities of any country or territory. It does not include a vessel of "an excluded kind". Some examples of vessels **excluded from the definition** include fishing and fish factory vessels, recreational vessels, oil tankers and dredgers [a full list is contained in *Section 697A(1) TCA 1997*].

Strategic and Commercial Management of qualifying ships in the State

The legislation does not define "strategic and commercial management". The reason for this was to avoid being too prescriptive as a wide variety of activities can be encompassed in the term "strategic and commercial".

A company must satisfy **both** aspects of the "strategic and commercial test" before it can be considered eligible for inclusion under the tonnage tax regime. A company must demonstrate that all elements of management activity relevant to the ships in question take place in Ireland.

Basically what is envisaged is that a company will, in the case of **strategic management, take decisions in Ireland** on significant capital expenditure and disposals, the award of major contracts, agreement on strategic alliances, etc. In assessing these matters the extent to which foreign based personnel work under the direction of, and report to, personnel based in Ireland would be important. Also important in assessing whether the strategic function is carried out in Ireland would be location of headquarters, including senior managers, location of decision making of board of directors and location of decision making of operational board.

In the case of commercial management, matters relating to route planning, taking bookings for passengers or cargo, managing the bunkers, provisioning and victualling requirements of ships, personnel management, training, technical management of ships (including the taking of decisions on the repair and maintenance of vessels) **should take place in Ireland**. Also relevant might be the maintenance of support facilities such as training centres, terminals, etc. in Ireland and the extent to which foreign offices/branches work under the direction of personnel based in Ireland. The fact that a ship is flagged, classed, insured or financed in Ireland may add further weight to the indicators set out above.

Elections

Accounting period from which a valid election for tonnage tax takes effect (Section 697D and Part 1 Schedule 18B TCA 1997)

A valid election for tonnage tax takes effect from the beginning of the accounting period in which it is made. The legislation gives Revenue the authority to allow, in exceptional circumstances (for example, the need to complete re-structuring to enable the legislation to actually apply to the business), an election to take effect from an earlier or later accounting period than the period in which the election is made. However, this discretion is subject to the overriding rule that no election can apply for any accounting period beginning before 1 January 2002 (this reflects the Minister's original Budget announcement that tonnage tax would apply with effect from 1 January 2002).

Renewal election - ten-year commitment to remain within the tonnage tax regime (Para 6 Schedule 18B TCA 1997)

A company may choose whether to stay in the normal corporation tax system or move their shipping activities into tonnage tax. If a company enters tonnage tax it must stay in it for a minimum of 10 years. The commitment to stay in for 10 years can be renewed by election (called a "renewal election") at any time in which case the period of the election is extended for a further period of 10 years from the date of this renewal election.

Tonnage Tax Activities

"**Tonnage tax activities**" in relation to a tonnage tax company (as defined under *Section 697A(1) TCA 1997*) mean activities carried on by the company in the course of a trade which consists of one or more than one of the activities described in the paragraphs which come under the definition of "relevant shipping income" in *Section 697A*.

Relevant shipping income (Section 697A(1) TCA 1997)

The most important of the activities coming under the definition of "relevant shipping income", which are covered by the tonnage tax regime, include:

- Income from activities which are related to the actual operation of a qualifying ship (for example, profits from the carriage of cargo or passengers at sea).
- Income from the provision by the company operating the qualifying ship of services such as the operation of cinemas, bars and restaurants, shops, etc. which are ancillary to the transport of cargo and passengers where the goods and services concerned are consumed on board the qualifying ship.
- Income from the provision of ship management services for qualifying ships.

Recent developments with regard to relevant shipping income

In the recent past the question has been raised as to whether certain activities can be included as relevant shipping income for the purposes of *Section 697A(1) TCA 1997*. Some of these activities have been in the areas of:

Forward Freight Agreements (FFAs)

A forward freight agreement is typically an "over-the-counter" agreement between two parties covering an agreed route, the date of settlement, the contract quantity and the contract rate. For example, Company A has a contract to charter out its bulk carrier for a defined period to carry a quantity of coal between two countries at a daily rate. The company, believing that the daily rate may rise, enters into a FFA with Company B to **hedge against a possible increase** in this daily rate during the charter period, for the same cargo, tonnage and destination.

Income from FFAs may be included as relevant shipping income for the purposes of *Section 697A(1) TCA 1997*. This is on the understanding that:

- The agreements are used for hedging purposes only (i.e. these agreements are entered into to hedge against rate fluctuations *in the company's tonnage tax trade*) and not for speculative purposes and that:
- The agreements relate at all times to contracts undertaken by the company using its own qualifying ships or chartered-in qualifying ships.

Contracts of Affreightment (COAs)

A COA is a contract between a shipper (exporter or importer) and a ship owner. For example, a *ship owner* undertakes to carry quantities of a specific cargo on a particular route or routes over a given period of time using ships of his or her choice within specified restrictions. COA business is almost exclusively in the major dry bulk cargoes of iron ore and coal, or the 'wet' trades, crude oil, etc.

Income from COAs may be included as relevant shipping income for the purposes of *Section 697A(1) TCA 1997*. This is on the understanding that the company uses its own or time chartered qualifying ships and that "vessels of an excluded kind" (as defined under this section) are excluded under tonnage tax arrangements.

Foreign currency gains

Where *Section 697J TCA 1997* (foreign currency gains) applies to any gain, the gain may be treated as relevant shipping income for the purposes of *Section 697A(1) TCA 1997*. However, income from interest rate swaps does not constitute relevant shipping income for the purposes of *Section 697A(1) TCA 1997*.

Calculation of "Profits" under Tonnage Tax (*Section 697C TCA 1997* sets out the rules for the calculation of the tonnage tax profits of a tonnage tax company)

- The tonnage tax "profits" of a qualifying company replace the company's accounting profits for the purposes of applying corporation tax to those profits. However, only the "relevant shipping profits" of the company are displaced for this purpose. The normal accounting profits of the company adjusted for taxation purposes from all other activities are subject to corporation tax in the normal way.
- The tonnage tax profit is calculated on the basis of a notional daily profit per ship based on a sliding tariff by reference to the net tonnage of the ship (see **Table 1**). This notional profit per ship is then multiplied by the number of days the ship was operated in the accounting period by the company. This gives the profit per ship for each accounting period. The profit per ship is aggregated to get the company's overall tonnage tax profits for the accounting period. The 12.5% corporation tax rate is then applied to this profit instead of being applied to the company's relevant shipping profits.
- To account for tonnage tax profits companies must complete a return (Form CT1 Supplement - Tonnage Tax Profits). This Return is part of the company's Corporation Tax return and is covered by the Declaration signed on behalf of the company on page 1 of the Form CT1. On completion of the Supplementary Return the total tonnage tax calculated should be copied to the tonnage tax profits box E7 (page 3 of the 2006 Form CT1).
- Both returns should be forwarded to the company's Revenue District for each relevant accounting period.

Table 1: Calculation of Tonnage Tax Profits

Band	Rate per 100 ton unit
For each unit of 100 tons up to 1,000 tons	€1.00
For each unit of 100 tons between 1,000 tons and 10,000 tons	€0.75
For each unit of 100 tons between 10,000 tons and 25,000 tons	€0.50
For each unit of 100 tons above 25,000 tons	€0.25

Treatment of Capital Allowances, Losses and Other Reliefs (*Sections 697M, 697N, 697O and Part 3, Schedule 18B TCA 1997*)

- Capital allowances, balancing charges and capital gains are **NOT** a part of the tonnage tax scheme once a company is established in tonnage tax. However, these matters do come into play in relation to certain transitional arrangements which may leave companies open to some balancing charges and some capital gains charges in relation to assets acquired before entry to tonnage tax.
- These charges, however, will not arise until a ship is sold and even then reliefs are available which will **defer** any balancing charge (if there is re-investment in a new ship) or **reduce** or eliminate any such charge by reference to either the time the company has been in tonnage tax or to unrelieved losses incurred before entry to tonnage tax.
- A company cannot use losses carried forward from any period before entry into tonnage tax to reduce tonnage tax profits. Such losses are therefore effectively extinguished. In a similar manner other corporation tax reliefs (for example, film relief or renewable energy) are not available. Also tax credits (including foreign tax credits) are not available to reduce the corporation tax payable by a company to the extent that the corporation tax is referable to tonnage tax profits.

Ring-fencing Measures

The tonnage tax legislation includes extensive ring-fencing measures which are designed to ensure that the tonnage tax regime operates as intended. Relief for losses incurred on tonnage tax activities is not available against other sources of income and income from non-tonnage tax activities may not be included under the regime. *Some additional measures include:*

- A requirement that goods and services provided to a tonnage tax company by an associated non-tonnage tax company be provided **on an arm's length basis and vice versa** (*Section 697LA TCA 1997*). This provision also applies where a tonnage tax company has a number of business units some of which are covered by the tonnage tax regime and others which are not.
- Anti-thin capitalisation measures are also included (a company is said to be "*thinly capitalised*" when its equity capital is small in comparison to its debt capital). In general, most companies are financed by a mixture of equity finance and loan capital. Companies in the tonnage tax regime **do not get a tax deduction for interest paid on borrowings**. Therefore, there is scope for the artificial allocation of debt within a company or group so that the debt that is in reality referable to the tonnage tax business is transferred to its non-tonnage tax activities where a tax deduction for interest paid would be of most value. The legislation deals with such a case by re-allocating a portion of the interest charge to the tonnage tax side of the business on a just and reasonable basis (*Section 697LB TCA 1997*).
- Anti-avoidance measures are also included to prevent the regime from being used for tax avoidance activities and transactions (*Section 697F TCA 1997*).

Schedule 18B TCA 1997

This Schedule contains provisions which are supplemental to the principal tonnage tax provisions contained in **Part 24A. The Schedule consists of five parts:**

- Part 1 deals with matters relating to election for tonnage tax,
- Part 2 is concerned with matters relating to qualifying ships,
- Part 3 concerns capital allowances, balancing charges, and related matters,
- Part 4 deals with issues relating to groups, mergers and related matters and,
- Part 5 is concerned with miscellaneous and supplemental matters.

Finance Act 2006 - changes to Tonnage Tax

Following a major review of various existing tax incentive schemes, undertaken in 2005, four legislative changes were made to the tonnage tax scheme in the Finance Act 2006:

1 New forms prescribed by the Revenue Commissioners will be used for the application process.

2 The Revenue Commissioners have been given the authority to seek *further information* from companies seeking entry to the regime in order to establish their *bona fides*.

3 The provision that excludes vessels *primarily used for sport & recreation* has been tightened up.

4 The *75% limit* on the number of ships that a shipping company may charter in is to be removed. *This is subject to a Commencement Order yet to be introduced by the Minister for Finance.*

All enquiries and applications for tonnage tax should be addressed to John Watkins (tel: 353 1 6475255) or Pat Jordan (tel: 353 1 7024102), Direct Taxes, Interpretation and International Division (Corporation Tax Unit) Second Floor, Stamping Building, Dublin Castle.

Property-based Incentive Schemes - 15% test

Transitional Arrangements for Property-based Incentive Schemes - test for work carried out by 31 December 2006

Extension of Qualifying Period

Finance Act 2006 extended the termination date by which qualifying construction¹ expenditure can be incurred under most of the property-based incentive schemes. It also extended the termination date by which construction expenditure incurred on registered hotels and registered holiday camps can continue to qualify for capital allowance write off over 7 years as opposed to the new 25 year write off for such projects. The termination date has been extended from 31 July 2006 to 31 December 2006 where existing conditions are met and further extended to 31 July 2008 where additional conditions are met. The full amount of the construction expenditure incurred during 2006 can qualify for capital allowances. However, relief is restricted to 75% of the expenditure incurred in 2007 and 50% of the expenditure incurred in the period 1 January 2008 to 31 July 2008.

¹Where the word 'construction' is used in this article, it also includes 'refurbishment' and, where appropriate, 'conversion'.

Existing Conditions

For the buildings and schemes listed below the extended deadline of 31 July 2008 is subject to a number of conditions that pre-date Finance Act 2006. For most of the schemes, a full and valid planning application must have been made by 31 December 2004. In the case of an urban renewal project, a 15% local authority certificate must have been issued by 30 September 2003. In the case of a multi-storey car park, a 15% local authority certificate must have been issued by 31 December 2003. In the case of a third level education building, an application must have been made to the Minister for Finance by 31 December 2004.

New 15% Condition

Finance Act 2006 introduced a new condition to be met by projects seeking to avail of the extension to 31 July 2008. This requires **work to the value** of at least 15% of the actual construction costs of a particular building/development to have been carried out on or before 31 December 2006. This article is concerned mainly with those schemes that do **not** require a local authority to certify that this condition has been met. The schemes in question are -

- Urban Renewal (residential buildings)
- Rural Renewal (residential buildings)
- Town Renewal (residential buildings)
- Student Accommodation
- Multi-Storey Car Parks
- Third Level Education Buildings
- Living over the Shop
- Park and Ride
- Sports Injury Clinics

While local authority certification is not required, the Tax Acts require the person claiming relief to be able to show that the 15% condition has been met. **Tax Briefing** 63 (page 6) stated that Revenue expected that builders and developers would arrange for a quantity surveyor or architect to prepare a statement showing clearly the actual work that was carried out on or before 31 December 2006, the construction costs attributable to this work, the actual construction costs to completion of the building and the percentage of the total figure represented by the work that was carried out on or before 31 December 2006. The statement should also contain the name and address of the individual or company that is carrying out the construction, the name and address of the development and the relevant scheme. This statement may be required in the event of an audit by Revenue where the person claiming the relief may have to show that the 15% condition was satisfied. Therefore, a builder or developer who sells a completed building should provide this statement to the purchaser who will be claiming the relief together with the usual statement of costs and certificates of compliance/reasonable cost/consistency as appropriate.

Work carried out - costs to be taken into account for the 15% condition

It should be noted that the 15% condition introduced by Finance Act 2006 differs from previous 15% conditions that applied to the urban renewal and multi-storey car park schemes. Firstly, the new 15% test relates to **the degree to which work is carried out as opposed to expenditure incurred**. Secondly, unlike the earlier tests, the new 15% condition takes no account of the cost of acquiring the site or of any costs associated with that acquisition. It is based solely on the value of construction work actually carried out. The value of work and costs associated with site preparation such as site clearance, laying foundations, power supply, drainage, sanitation and water supply can, however, be taken into account.

As indicated above, the new 15% test is to be established by reference to the value of actual work carried out and not just on the basis of expenditure incurred. No account can be taken of any advance payments made for work that has not yet been carried out. Visible and tangible construction work has to have been carried out and this work has to be manifested as an integral part of the building/development on or before 31 December 2006. Construction costs such as raw materials and labour used, equipment hire and architects fees can be taken into account in establishing the value of the work carried out where these are directly attributable to work actually carried out on the building. For example, an architect's fees can only be taken into account where they are directly attributable to work that has already been carried out. Ongoing work such as project management yet to be delivered as of 31 December 2006 is not to be taken into account. Work that is carried out 'off-site' or work that is involved in the assembly of a part of a building but that has not yet been integrated into the building is not to be taken into account. For example, while the expenditure on the work involved in assembling a bathroom pod or in assembling a roof-frame could ultimately be treated as qualifying construction costs, it is not to be taken into account for the purposes of establishing the value of the work that has been carried out until such time as the bathroom pod or roof-frame has actually been put in place and integrated into the building. The value of the work which is established as actually carried out on this basis on or before 31 December 2006 must then be compared to the sum of that value and the value of the work carried out after 31 December 2006 (i.e. the overall cost of the project) to establish if the 15% test has been met.

Local Authority Certification

The focus of this article has been on those schemes **not** requiring local authority certification in relation to the 15% condition. However, it should be noted that for certain schemes where the extended 31 July 2008 deadline required E.U. Commission approval, the qualifying conditions are more onerous. The schemes in question are -

- Registered Holiday Cottages
- Holiday Camps
- Hotels
- Urban Renewal (commercial and industrial buildings)
- Rural Renewal (commercial and industrial buildings)
- Town Renewal (commercial and industrial buildings)

For these schemes, Finance Act 2006 requires a binding contract in writing under which the expenditure on the construction of the building/development is to be incurred to have been in place on or before 31 July 2006. It also requires **local authority certification** that work to the value of at least 15% of the actual construction costs was carried out on or before 31 December 2006. An application for a certificate must be made on or before 31 January 2007. Where satisfied, local authorities must issue certificates on or before 30 March 2007. Guidelines in relation to local authority certification have been issued by the [Department of the Environment, Heritage and Local Government](#). **It should be noted that the criteria set out above for determining the value of work carried out apply also in the case of these schemes and that local authorities will have regard to these criteria in determining whether a 15% certificate is to be issued.**

Exceptions to 15% Condition

In the cases of nursing home residential units and the general countryside refurbishment scheme, the extension to 31 July 2008 applies without having to satisfy the 15% condition.

Building/Development

The Finance Act 2006 refers to individual buildings. However, where there are several buildings involved in a development as, for example, in the case of a housing estate or a student accommodation development, the 15% condition will be regarded as met for each building where work to the value of 15% of the actual construction costs of all buildings in the development has been carried out on or before 31 December 2006.

Meeting the 15% condition will not of course be an issue in the case of individual buildings in a development completed in 2006 as work to the value of 100% of their construction costs will have been carried out before 31 December 2006. The value of the work on these buildings will count towards achieving the 15% condition where the option is taken to treat a development as one entity for the purpose of that condition. However, it is possible that where projected costs for a development are exceeded on some buildings constructed after 31 December 2006 that the 15% condition is not met when the total development costs are taken into account.

It should be noted that the option to look at an overall development rather than at each individual building in that development only applies in relation to the 15% condition. It is not an option in relation to the 75% and 50% caps or restrictions on qualifying expenditure incurred during 2007 and 2008, respectively and apportionment of relief among all buildings in a development is not possible. For example, a person who purchases a house that was constructed during 2006 will, subject to excluding site cost etc, qualify for 100% relief while a person who purchases a house that was constructed between January and July 2008 will only qualify for relief on 50% of the expenditure. Where construction spans more than one year the relevant cap will apply to the portion of expenditure incurred in each year. [Tax Briefing 63](#) (Capital Allowances and Property-Based Incentive Schemes) has details of the 75% and 50% restrictions on the amount of expenditure qualifying for relief.

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.

Property-Based Incentive Schemes - Inducements for purchase of property

Property-based incentive schemes - inducements for purchase of property

Revenue is concerned at the manner in which some properties under the various property-based incentive schemes are being marketed. It appears that inducements are being offered by vendors of some properties to encourage purchases of those properties. Where payment is required for these inducements, the impression is being given that tax relief will be available to the purchaser in respect of this payment if it is included in the price paid for the property. The purpose of this article is to advise that tax relief is only available in respect of the cost of constructing a property. It is not available for the cost of inducements such as membership of sports and leisure clubs, hotel and other accommodation or the cost of the use of any other such facilities.

As a general rule, tax relief under the property incentive schemes is available in respect of the costs incurred on the construction, refurbishment or the conversion of a property. Where a completed property is purchased, tax relief, whether in the form of capital allowances, section 23 or owner-occupier relief, is determined by using a formula -

$$\text{tax relief} = \text{price paid for property} \times \frac{\text{construction costs}}{\text{construction costs} + \text{site costs}}$$

The 'price paid for the property' to be used in the formula should only include the construction costs, including site clearance and preparation, and the builder's and site owner's profit on the transaction. It should not include any amounts in respect of membership of clubs or other inducements. Also, it should not, for example, include any additional costs such as legal and other professional fees or stamp duty paid in connection with the purchase, house contents such as furniture, appliances and carpets*. Where the formula is not required to calculate the amount of tax relief as, for example, in a case where a site owner engages a builder to construct a property, the same position applies and tax relief is only available on the actual construction costs.

In any case where a composite price is paid to the vendor of a property, the part of the price relating solely to the property should be separately identified. This will be required in the event of Revenue auditing a claim for tax relief.

This article applies equally to industrial buildings such as hotels and holiday cottages and to commercial buildings as it does to section 23 and owner-occupied properties.

Further information about allowable construction costs and qualifying expenditure for tax relief purposes in the case of industrial and commercial buildings is available in [Tax Briefing Issue 60](#) and in the guidance notes on 'Section 23 relief' and 'Owner-Occupier relief'. These publications are available at www.revenue.ie.

*Where a property is rented out, tax relief in the form of plant and machinery allowances may be separately available for the cost of items such as furniture, appliances and carpets.

Registration of Tenancies and Property-based Incentive Schemes

There appears to be some confusion about when a registered holiday cottage can qualify for capital allowances. The purpose of this article is to clarify that the registration of a holiday cottage with Fáilte Ireland by the return filing date for a particular chargeable period does not, in itself, confer an entitlement to industrial buildings writing-down allowances for that chargeable period unless certain other conditions have been met by the end of the chargeable period.

In general, industrial buildings writing-down allowances cannot be claimed for a chargeable period until the building is completed and in use as an industrial building. In the case of a registered holiday cottage, the building must also be registered with Fáilte Ireland. Revenue will allow a claim for a chargeable period where the registration process has not been completed by the end of that chargeable period but has been completed by the return filing date for the chargeable period provided that the cottage has been completed and is in use as a registered holiday cottage by the end of the chargeable period. To be regarded as being in use as a registered holiday cottage, the holiday cottage must be fully fitted out and be either let or be actively marketed as tourist accommodation with bookings being taken by the end of the chargeable period. The holiday cottage must continue to be registered throughout the period for which capital allowances are claimed.

Readers are also referred to [Tax Briefing Issue 43](#) (page 38) to an article entitled "Resort Areas - Timing of claim for capital allowances". The article deals with the availability of initial allowances for registered/listed properties under the Seaside Resort Scheme.

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 for Registered Holiday Cottages

There appears to be some confusion about when a registered holiday cottage can qualify for capital allowances. The purpose of this article is to clarify that the registration of a holiday cottage with Fáilte Ireland by the return filing date for a particular chargeable period does not, in itself, confer an entitlement to industrial buildings writing-down allowances for that chargeable period unless certain other conditions have been met by the end of the chargeable period.

In general, industrial buildings writing-down allowances cannot be claimed for a chargeable period until the building is completed and in use as an industrial building. In the case of a registered holiday cottage, the building must also be registered with Fáilte Ireland. Revenue will allow a claim for a chargeable period where the registration process has not been completed by the end of that chargeable period but has been completed by the return filing date for the chargeable period provided that the cottage has been completed and is in use as a registered holiday cottage by the end of the chargeable period. To be regarded as being in use as a registered holiday cottage, the holiday cottage must be fully fitted out and be either let or be actively marketed as tourist accommodation with bookings being taken by the end of the chargeable period. The holiday cottage must continue to be registered throughout the period for which capital allowances are claimed.

Readers are also referred to [Tax Briefing Issue 43](#) (page 38) to an article entitled "Resort Areas - Timing of claim for capital allowances". The article deals with the availability of initial allowances for registered/listed properties under the Seaside Resort Scheme.

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.

Single Farm Payment - Finance Act 2006 Amendments

Tax Briefing, Issue 61, November 2005, contained a comprehensive analysis of the tax treatment of transactions relating to the Single Payment Scheme for farmers.

Sections 12, 70, 109 and 118 Finance Act 2006 amended certain aspects of the taxation treatment of the scheme, relating to income tax, capital gains tax, stamp duty, and capital acquisitions tax. As this legislation is effective from the year 2005, paragraphs 2.11, 3.7, 4.2, and 5.1 all need to be replaced. These paragraphs are replaced with the following text.

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.

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.

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*.

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.

The electronic version of [Issue 61](#) on the Revenue website has been amended to include this text with the old interpretations deleted.

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.

VAT Treatment of Staff Canteens - Role of Commercial Caterer

Introduction

This article aims to clarify the VAT position relating to the role of the commercial caterer arising from the European Court of Justice in the "Hotel Scandic case".

The information contained in [Tax Briefing](#), Issue 62, of December 2005 remains applicable.

European Court of Justice Decision

The ruling made by the ECJ in the Hotel Scandic case on the provision of staff canteen facilities is that the employer is liable to VAT, only on the amount received from the staff for the provision of the service. The ruling does not affect situations where an employer provides staff canteen facilities for which the employer receives no consideration from the employees. In those situations the employer is liable to VAT on the total cost of providing the canteen service for the employees.

A number of employers engage the services of external commercial caterers to provide the canteen services to staff. Frequently, the caterer collects the receipts from the staff and also receives a subsidy from the employer for the provision of the service.

Role of Commercial Caterer

Revenue accepts, in virtually all contracts involving a commercial caterer, that the caterer is operating as an agent of the employer in providing staff canteen facilities on behalf of the employer. In some exceptional cases, where the commercial caterer is providing the service for profit and does not receive any subsidy from the employer, it is likely that the caterer is acting on his or her own behalf and not as an agent of the employer.

Method of Returning the VAT on Staff Canteens

Arising from the ECJ decision in the Hotel Scandic case it is essential that VAT due on the monies collected by the commercial caterer from the staff of the employer is accounted for and returned by the employer, together with the VAT due in respect of the employer's other taxable supplies. In many cases, the monies received from the employees by the commercial caterer are not actually passed over to the employer, but rather are treated as part of the consideration due to the caterer for the catering service being provided to the employer. While the liability to account for and return the VAT due in respect of such monies lies with the employer, it is not essential that the monies received by the commercial caterer are given to the employer or lodged to an account in the name of the employer. It is sufficient that the commercial caterer advises the employer of the amount received from the staff and the VAT rates applicable to the supplies made. The VAT due on the receipts from employees in respect of the supply of staff canteen services must be accounted for and returned by the employer, as the concessional basis of return, i.e. whereby the caterer returned the VAT on the employer's behalf, has been withdrawn with effect from 1 May 2006.

Arising from meetings with representatives of the commercial catering companies, it has been agreed that in "fixed contract situations", i.e. where the commercial caterer works off a set charge for providing the service, that the commercial caterer will provide a breakdown to the employer of the sales that must be accounted for and returned by the employer at the appropriate VAT rates, together with the VAT due in respect of the employer's other supplies.

Supplier of Canteen Services to an Authorised Person in Accordance with Section 13A VAT Act 1972 as amended.

(Zero-rating of goods and services in accordance with Section 13A VAT Act 1972)

A supplier of services consisting of food and drink is not entitled to zero rate this supply to an authorised person.

Accordingly, where an authorised person is liable to account for and return VAT due in respect of the catering services supplied to his/her staff, the authorised person may claim credit for the VAT charged on the food and drink supplied in his or her VAT return.

Summary

The following summary may be useful with regard to the role of the commercial caterer in situations where staff are contributing to the cost of the provision of canteen facilities being provided by an employer:

- The commercial caterer is liable to return VAT on the provision of his or her service to the employer.
- The employer is entitled to full deductibility on foot of the invoice from the commercial caterer.
- The employer and the commercial caterer are entitled to use the receipts from employees as part of the payment due from the employer for the provision of the catering service.
- The commercial caterer should provide the employer with details of the receipts from the employees, in respect of which the employer is obliged to account for and return VAT.

In situations where staff do not pay a consideration for the provision of the staff canteen facilities, the employer is liable to VAT on the total cost of providing the canteen facilities.

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.

Opticians and VAT

Since 1 November 1989 Revenue has treated the supply of corrective spectacles and contact lenses by an optician as a single supply of goods. Opticians were required to account for VAT at the standard rate on the full consideration received for the supply.

Following a decision by the Appeal Commissioner, Revenue accepts that the supply by an optician of corrective spectacles and contact lenses constitutes two supplies, namely:



(a) A taxable supply of goods, and

(b) An exempt supply of professional services of an optical nature referred to as "dispensing services".

This decision gives rise to an entitlement to repayment of VAT to opticians where they had accounted for VAT at the standard rate on the dispensing service element of the price.

This article sets out the requirements that an optician needs to comply with in order to obtain repayments of VAT, and shows how to calculate the amounts of these repayments where:

- (a) No dispensing charge was identified to the customer or in the accounting records
- (b) A percentage-based dispensing charge was identified in the accounting records, and
- (c) A dispensing charge greater than 50 per cent was identified in the accounting records.

All claims to repayment of VAT must be supported by an explanation of the circumstances in which the claim has arisen together with comprehensive computations of the make up of each claim. It should be noted that any claims to repayment of VAT arising from the Appeal Commissioner's decision are restricted to claims received within the statutory time limits, which provide that repayment claims must be made within a specified period of years from the end of the taxable period to which the claim relates. The statutory time limits are as follows:

- In the case of claims relating to taxable periods ending before 1 May 1998 - 10 years where the claim is made before 1 May 1999 and 6 years where the claim is made in the period from 1 May 1999 to 31 December 2004. Claims made on or after 1 January 2005 in respect of such taxable periods are statute barred.
- In the case of claims relating to taxable periods ending on or after 1 May 1998 and before 1 May 2003 - 6 years where the claim is made before 1 January 2005 and 4 years where the claim is made on or after 1 January 2005.
- In the case of claims relating to taxable periods ending on or after 1 May 2003 - 4 years.

Revenue will treat a letter from the optician, which notified Revenue of an intention to make a claim in respect of any specified period(s), as being the receipt of a claim for that period (or claims for those periods) and any subsequent period up to and including the VAT period ending 31 August 2006, subject to full details of the claim(s) now being provided.

No Dispensing Charge was Identified

Where opticians did not charge separately for their dispensing services or did not identify the amount charged for dispensing services at point of sale or in their accounting records, Revenue is prepared to accept repayment claims calculated by the use of the methodology for identifying the tax overpaid on the dispensing services set out hereunder:

Step 1

Identify the amount of output VAT charged in the relevant period. This is the T1 figure on the VAT returns.

Step 2

Reduce the T1 figure on the VAT 3 submitted for the period by the aggregate of the following:

(a) VAT accounted for on intra-Community acquisitions, received Fourth Schedule services, VAT-free imported parcels and other VAT self-accounted for in accordance with VAT law

(b) VAT accounted for on Department of Social and Family Affairs (DSFA) and the General Medical Services Payments Board (GMSPB) receipts

(c) VAT accounted for on supplies of goods, other than prescription spectacles and contact lenses, e.g. accessories such as cases and chains for spectacles, cleansing solutions, non-prescription glasses (ready readers), sunglasses, etc.

(d) VAT accounted for on repairs to spectacles

(e) VAT on repeat/replacement contact lenses where no "dispensing service" was provided.

Step 3

Opticians may treat 50% of the output VAT (T1) figure, reduced in accordance with Step 2 above, as representing tax incorrectly paid on the exempt dispensing service.

Revenue will treat this 50% figure as taking full account of any restriction of input credit or any additional income tax or corporation tax liabilities that might otherwise arise as a result of the repayment of VAT.

Example: Period January to December 2002

Output VAT (T1)	€50,000
Less	
	€5,000
VAT on ICA etc.	€10,500
VAT on DSFA and GMSPB receipts	€1,500
VAT on supplies of other goods	€1,000
VAT on repairs	€500
VAT on repeat/replacement contact lenses	
Total	€18,500
Difference	€31,500
VAT overpaid - 50% of difference	€15,750

Opticians who have already submitted claims to repayment for prior periods using a different methodology should now revise their claims.

A Percentage-based Dispensing Charge was Identified

Following the decision by the Appeal Commissioner some opticians have treated a percentage (usually 50%) of the receipts from the sale of corrective spectacles and contact lenses as being appropriate to the exempt "dispensing service" without disclosing the amount charged for the "dispensing services" to the customer at point of sale. Where this has occurred, Revenue is prepared to agree the VAT liability of opticians including claims to repayment which were or are computed on the following basis:

- (a) Eye testing fees are exempt from VAT. Such fees should be separately identified.
- (b) Amounts charged for ancillary items such as cases and chains for spectacles, coloured lenses, cleansing solutions, etc, and for supplies of non-prescription sunglasses, should be accounted for at the appropriate VAT rate and separately identified. Similarly, amounts charged for repeat/replacement contact lenses, and for repairs to spectacles, where no "dispensing service" is provided should be accounted for at the appropriate VAT rate and separately identified.
- (c) Where the purchase of spectacles or contact lenses was or is entirely funded by payments from the DSFA, or covered for medical-card holders by the GMSPB, only the dispensing fee agreed between these bodies and the opticians' professional bodies should be treated as exempt from VAT. The balance of the payment made is liable at 21 per cent (however, see (e) below).
- (d) The aggregate of income within (a) to (c) above should be deducted from the gross income from sales in the VAT period. The balance may then be split on a 50/50 basis as representing the exempt dispensing service and the taxable supply of goods, and VAT should be accounted for accordingly.
- (e) Where an individual customer supplements the DSFA or GMSPB allowance/benefit, as the case may be, the 50% split referred to in (d) above may be applied only in relation to the amount paid by that customer that is in excess of the DSFA or GMSPB allowance/benefit, as the case may be. The portion of the price represented by the DSFA or GMSPB allowance/benefit must be accounted for as set out in (c) above.
- (f) Opticians may recover VAT incurred on the purchase by them of goods for resale. However, to take account of the exemption of the amounts treated as "dispensing fees", there is no entitlement to recover VAT incurred directly in connection with dispensing services. In addition, there must be a commensurate reduction in the amount of credits due to opticians in respect of 'dual-use inputs', i.e. VAT incurred in the provision of both taxable and exempt supplies.

Opticians who have already submitted VAT returns including claims to repayment for prior periods using a different methodology should now revise their returns.

A Dispensing Charge Greater than 50 per cent has been Identified.

Some optician may have chosen to calculate the exempt amount in respect of "dispensing services" other than by using the methods set out above. The optician will in this case be required to prove, by reference to accounts kept, pricing of spectacles and contact lenses, receipts issued and similar documentation, the amount charged in respect of any dispensing fee for each sale.

Any optician who does not choose to use the methods set out above may not rely on any of the calculations contained therein as the basis for claiming a higher percentage for the exempt part of any apportionment.

Position with Effect from the Commencement of *Section 97 Finance Act 2006* (replacement for 'Package Rule').

Section 97 Finance Act 2006 which amends *Section 11(3) VAT Act* came into operation on 1 November 2006.

Under the new legislation the supply of spectacles and contact lenses together with dispensing services will come within the definition of a "composite supply", in which the principal supply will be the supply of spectacles or

contact lenses and the ancillary supply will be the dispensing service. In accordance with *Section 11(3) VAT Act*, the rate of VAT on the full consideration for that composite supply will be the standard rate.

Interest

Interest may be payable by Revenue on the amounts repayable in accordance with *Section 21A VAT Act 1972* (as amended).

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.

Foreign Executive Rates (with effect from 1 January 2006)

While it is open to a taxpayer to claim double taxation relief in accordance with *Schedule 24 TCA 1997* by reference to the actual foreign effective rate, the following approximate rates may be used in the case of portfolio investors:

Belgium	44%
*Canada	No longer applicable
France	43%
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.

* A new Convention with Canada came into effect from 1 January 2006. This new Convention does not provide for credit for underlying tax where portfolio investors are concerned.

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.

Important Information for Principals and Subcontractors RCT

Important information for Principals and Subcontractors in the Construction, Meat Processing and Forestry Sectors. C2 Applicants

While every effort is made to process C2 applications as quickly as possible, time must be allowed for the actual production and delivery of the C2 card with digitised photograph and signature.

Where applications are made after **30th November**, it will not be possible to guarantee delivery of the C2 before Christmas. Subcontractors applying for a C2 should ensure that their properly completed applications, with relevant supporting documentation, are submitted to their local office as early as possible.

Forms RCT 5 (C2 application form) are available for download from the Construction Industry Project page on www.revenue.ie. However applicants must also submit a photocard (PC5A) which is only available from your local Revenue office.

Payment Card Applications (Forms RCT 47)

2006

Where a payments card (RCT 47) is required for the current year, the principal and subcontractor should apply as soon as possible on the Form RCT 46. Where the Form RCT 46 is received after 11th December, it will not be possible to guarantee delivery of the payments card before Christmas. Payments made without the payments card must be subjected to RCT at 35%.

2007

Principals using Form RCT 46A to order payments cards for next year should submit these as soon as possible to ensure timely delivery of the cards. The Form RCT 46A should only be used where an ongoing contract is likely to extend into next year.

Forms RCT 46 and RCT 46A are available for download from the Construction Industry Project page on www.revenue.ie

Forms RCT 35 2006 - Due Date 15th February 2007

Forms RCT 35 will shortly be issuing for 2006. The filing date for these returns is the 15th February 2007. Changes have been made to the filing arrangements for next year. Principals and their advisors should note that this form should be returned to PO Box 354, Collector-General's Division, Sarsfield House, Limerick. Instructions will be included on the Forms.

Returns for earlier years should continue to be sent to the local Revenue office.

Points to note in completing the Form RCT35:

- The declaration on the front of the form must be signed by the principal contractor
- The declaration must include the gross payments made and tax deducted
- Where there is a declaration, there must be a listing
- Where there is a listing, there must be a declaration
- The entries on the form must be legible
- Full information must be completed for each subcontractor. In particular, the full name and address of the contractor must be shown. The tax number or PPS number must be quoted where available. The date of birth should be quoted in the case of individuals. The RCT 47 card number should always be quoted where one was received.

Forms that are not completed correctly will be returned for correction which may result in your missing the filing deadline. Furthermore, forms that are not fully or are inaccurately completed may give rise to unnecessary correspondence or audits.

Forms RCT 35 can be filed using the Revenue On-Line Service (ROS). This is the most efficient way of filing returns and making payments. ROS also allows you to file your monthly Forms RCT 30 and pay any tax that is due. ROS offers access to your tax account on a 24/7 basis. Full details are available on www.revenue.ie or by email from rosmanager@revenue.ie.

Many contractors use ROS for their VAT and PAYE returns, but still file paper RCT returns. They should be encouraged to use ROS if at all possible. Revenue will shortly be launching an awareness campaign for these contractors.

Stamp Duty Questionnaire

In October 2006, questionnaires were issued to a small random sample of property developers. The purpose of the questionnaire was to gather statistical data regarding the application of the stamp duty code to land development. Revenue are now analysing the responses in preparing a report for the Minister for Finance.

We wish to thank those developers, their agents and advisors who responded to the questionnaire for their assistance on this matter at short notice.

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.

Some recent VAT publications

VAT Information Leaflet No. 3/06

VAT Treatment of Goods and Services Sold Together

Section 97 (1)(b) of the Finance Act, 2006 amended Section 11(3) of the VAT Act to provide for new rules on how the supply of a package comprising two or more elements, each potentially attracting VAT at different rates, is treated for VAT purposes. This provision comes into operation today, 1 November 2006.

Revenue's VAT Information Leaflet: "Goods and Services Sold Together" sets out the key features of the new legislation and how it applies to the business sectors affected.

This leaflet is available on the Revenue website at:

[VAT Information Leaflet](#)

VAT Information Leaflet No. 4/06

VAT Treatment of Dances

The promotion of dances is a taxable activity liable to VAT at the standard rate, currently 21 per cent. Dances are treated as an ordinary part of the activities carried on by a taxable person in the course or furtherance of business. There are special arrangements for dances held on licensed premises.

VAT Information Leaflet No. 4/06 updates and replaces all previous Statements of Practice/Information Leaflets of the same title.

It is available on the Revenue website at:

[VAT Information Leaflet 4/06](#)

VAT Information Leaflet No. 5/06

VAT Treatment of Gifts, Promotional Items etc.

VAT Information Leaflet No. 5/06 sets out the VAT treatment of gifts, self-supplies, industrial samples, replacement goods, promotional schemes, gift vouchers and tokens etc. It replaces VAT Information Leaflet No.14/01.

The new leaflet is available on the Revenue website at:

[VAT Information Leaflet 5/06](#)

Value-Added Tax Regulations 2006 (Statutory Instrument 548 of 2006)

The Revenue Commissioners have made Regulations under the VAT Act 1972 concerning the operation of VAT.

These Regulations are a modernisation of all the Revenue Commissioners' VAT Regulations consolidated into one S.I. They also contain one new Regulation concerning the circumstances and conditions under which a taxable person may disregard an individual supply in a multiple supply and the manner in which the consideration for such a multiple supply must be treated as regards the rate or rates of taxation to apply.

These Regulations come into effect on 1 November 2006.

A copy of this Regulation is available on the Revenue website at:

[Value-Added Tax Regulations 2006](#)

Capital Acquisitions Tax - Regionalisation of CAT Audits

With effect from 4 September 2006, audits of gift and inheritance tax returns in respect of benefits taken from disponers who live, or in the case of deceased disponers who lived prior to death, outside Dublin City or County are no longer dealt with in Dublin. Instead such audits are conducted within the particular Region in which the disponent lives or lived prior to death. The Revenue offices now dealing with these cases are the following:

Disponent resides/resided in (Counties)	Regions	Address	Telephone No.
Cavan, Monaghan	BMW	Government Offices, Millennium Centre, Dundalk, Co. Louth.	042 - 9353700
Donegal	BMW	Government Offices, High Road, Letterkenny, Co. Donegal.	074 - 9169400
Galway City, County Roscommon	BMW	Hibernian House, Eyre Square, Galway.	091 - 536300
Galway County	BMW	Custom House, Flood Street, Galway.	091 - 536300
Leitrim, Longford, Sligo	BMW	Government Offices, Cranmore Road, Sligo.	071 - 9148600
Louth	BMW	Government Offices, Millennium Centre, Dundalk, Co. Louth.	042 - 9353700
Mayo	BMW	Michael Davitt House, Castlebar, Co. Mayo.	094 - 9037000
Offaly, Westmeath	BMW	Government Offices, Pearse Street, Athlone, Co. Westmeath.	090 - 6421800
Carlow, Kildare, Kilkenny, Laois, Meath, Tipperary, Waterford, Wexford, Wicklow	E&SE	Kildare District, St John's House, High Road, Tallaght, Dublin 24.	01 - 4149791
Clare, Limerick	SW	River House, Charlotte's Quay, Limerick.	061- 212700
Cork	SW	Government Offices, Sullivan's Quay, Cork.	021- 4325000
Kerry	SW	Government Offices, Spa Road, Tralee, Co. Kerry.	061 - 7161000

Audits of gift and inheritance tax returns in respect of benefits taken from disponers who live or lived prior to death in Dublin City or County continues to be carried out by Dublin Capital Audit & Accounts District, 85/93 Lower Mount Street, Dublin 2 (tel. no. 1890 236 336).

All matters relating to gifts and inheritances for cases dealt with in Large Cases Division continues to be dealt with by Large Cases Division, Setanta Centre, Nassau Street, Dublin 2 (tel. no. 01 - 6470787).

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.

Employed Person Taking Care of Incapacitated Individual

Section 467 TCA 1997 provides for a tax deduction at the individual's highest rate of tax in respect of the costs (maximum of €50,000 per annum) incurred by an individual in employing another person (including a person whose services are provided by or through an agency) to take care of him/herself, a spouse or a relative who is totally incapacitated by reason of physical or mental infirmity.

Revenue accepts that services provided 'by or through an agency' includes services provided by or through -

- the Alzheimer's Society of Ireland; and
- Home Instead Senior Care.

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.

Revenue News

Updated Leaflets

The following leaflets and lists were recently updated on the Revenue website:

Leaflet IT 41: What to do about Tax when someone dies

Leaflet IT 58: Revenue Job Assist - Information for Employees

Leaflet IT 59: Revenue Job Assist - Information for Employers

Leaflet IT 6: Health / Medical Expenses Relief

Leaflet IT 18: Incapacitated Child Allowances

Leaflet IT 27: Tax Relief for Service Charges

Leaflet IT 45: Tax Credits and Reliefs for Over 65s

Leaflet IT 46: Dependent Relative Tax Credit

Leaflet IT 47: Employed Person Taking Care of an Incapacitated Individual

Leaflet IT 66: Home Carer's Tax Credit

Revenue eBrief:

Informing you of important Revenue news and developments as they take place. This e-mail bulletin is issued periodically to registered subscribers. If you would like to receive Revenue eBrief forward your email address to EBrief@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.

Mandatory Licences for Employees in Private Security

Where an employee incurs the cost of a licence necessarily required under the Private Security Services Act 2004 to enable him/her perform the duties of his/her employment, then a tax deduction at the employee's marginal rate of tax may be granted in respect of such cost.

In addition, where the cost of the licence is incurred by an employer on behalf of an employee or the employer reimburses the employee for such cost, Revenue are prepared to accept that no charge to income tax arises in respect of the employee.

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.

About Tax Briefing

Tax Briefing is produced by:

Strategic Planning Division,
Communications Policy & Evaluation Branch,
Revenue Commissioners,
Dublin Castle,
Dublin 2

Editor: **Fiona O'Shea**
Telephone: **01-647 5000, Ext 24146**

Assistant Editor: **Bernard King**
Telephone: **01-647 4000, Ext 45515**

Fax: **01-644 5580**

E-mail: taxbrief@revenue.ie

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



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.