

Revenue Commissioners

Tax Briefing No 66

2007

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Relevant Contracts Tax

Clarification of Scope of Section 531(2) Taxes Consolidation Act, 1997

Background

Under *Section 531(1)(b)(i) Taxes Consolidation Act [TCA] 1997*, a person carrying on a business which includes the erection of buildings is required to operate Relevant Contracts Tax [RCT] on making payments to subcontractors. On foot of *Section 31 of the Finance Act 2007*, and in the case of relevant contracts entered into on or after 1 May 2007, this requirement also applies to a person carrying on a business which includes the development of land as defined in *Section 639(1) TCA 1997*. Apart from construction-type work, references in this article to land development include the carrying out of any engineering works or other works on land to adapt it for materially altered use and would generally relate to demolition and site-preparation type work.

The position therefore is that a person carrying on a business which includes the erection of buildings or the development of land is required to operate RCT on making payments to subcontractors. Under the legislation a person can come within the scope of the RCT system even if he or she does not take an active part in actually erecting buildings or in developing the land. All that is required for RCT to apply and for a person to be a principal contractor for RCT purposes under *Section 531(1)(b)(i)* is that -

- the person must be carrying on a business, and
- the business must include the erection of buildings or the development of land.

Property developers carry on a business of developing land. Thus, where a property developer engages a building contractor to erect a building or a contractor is engaged to clear land or a site for development, he or she is a principal contractor by virtue of *Section 531(1)(b)(i) TCA 1997* - even though he or she does not take an active part in the actual work involved. This general position is, however, modified by *Section 531(2) TCA 1997*. The latter provision provides that a person will not be regarded as a principal contractor for RCT purposes *by reason only* of the fact that, in the course of his or her business, the person erects buildings for the person's own, or his or her employees', use or occupation or, (in relation to relevant contracts entered into on or after 1 May 2007) *by reason only* of the fact that the person develops land in relation to such buildings.

Clarification

The position outlined above was set out generally, in its pre-Finance Act 2007 form, in an article in the 'Queries' Section of [Issue 26](#) of **Tax Briefing** (April 1997). Arising from a number of enquires received on this matter recently, some further clarification is now provided.

It should be noted that the modifying effect of *Section 531(2) TCA* applies only in the limited circumstances where a person such as a property developer would fall to be treated as a principal contractor *by reason only* of the fact that he or she erects a

building or develops land in relation to that building in the course of his or her business, where the building is for his or her own use or occupation, or for the use or occupation of his or her employees. It does not apply where the developer erects a building for sale or develops land in relation to such a building (though it may apply in circumstances where the building is developed with the sole intention of letting it [see below]). Neither does it apply in cases where a property developer, though erecting a building for the use of his or her employees or developing land for such a building is, for instance, a principal contractor for other reasons as, for example, would be the case where the developer -

- is also a building contractor or a land developer and is, therefore, carrying on a business which includes the erection of buildings or the development of land and thus a principal contractor anyway under *Section 531(1)(b)(i)*, or
- is connected with a building company or a land development company and therefore a principal contractor under *Section 531(1)(c)* by virtue of this connection.

In summary, *Section 531(2)* applies to exclude from RCT a property developer who would otherwise fall within its scope *by reason only* of his or her involvement in the course of business in the erection of a building or the development of land in relation to such a building where the building is for use or occupation by the person or his or her employees. If the person is a principal for RCT purposes for any other reason, then *Section 531(2)* does not apply and RCT must be operated.

Developing Property for Letting

Revenue also stated in [Issue 26](#) of *Tax Briefing* that it generally treats a developer as carrying on a business which includes the erection of buildings (and thus a principal contractor) where the developer's intention is to develop the property for either sale or letting. However, it went on to say that it would regard the modification provided for in *Section 531(2) TCA 1997* as applying to such a person who arranges to have a building erected with the sole intention of letting the building. Accordingly, such a developer or investor was not to be regarded as a principal contractor for the purposes of RCT. With effect from 1 May 2007 this modification will also apply to a developer or investor who develops land with the sole intention of letting any buildings subsequently erected on that land.

It has come to Revenue's attention that some property developers are developing property to let under very long leases (99 and 999 year leases). The practice set out in [Issue 26](#) of *Tax Briefing*, and outlined above, was never intended to apply in such cases. Revenue regards such leases as tantamount to a sale. Accordingly, it should be noted that the practice outlined has application only in the case of a person who arranges to have a building erected or develops land in relation to such a building with the sole intention of letting the building under a short lease. For this purpose, a short lease will be taken to be one that does not exceed 35 years. Only in such cases will a developer or an investor be treated as not being a principal for RCT purposes. This change of practice applies in respect of relevant contracts entered into on or after 16 July 2007.

Finally, it should again be noted that the practice just outlined in relation to buildings for short lease does not apply where the developer or investor would be a principal

for RCT purposes for other reasons. It does not apply, therefore, where the developer or investor is also a building contractor, or develops land, or is connected with a construction company or a company engaged in land development. It only applies where the developer or investor is a principal *by reason only* of developing a property in the course of his or her business with the sole intention of letting that building under a short lease.

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Key Dates 2007

July 2007

14 PAYE/PRSI

P30 monthly return and payment for June 2007

P30 quarterly return and payment for April-June 2007

14 DWT

Return and payment of DWT for June 2007

14 PSWT

F30 monthly return and payment for June 2007

14 RCT

RCT 30 monthly return and payment for June 2007

19 VAT

VAT 3 return plus any payment for period May/June 2007

1-21 Corporation Tax

PT for APs ending between 1-31 August 2007

Returns for APs ending between 1-31 October 2006

Pay balance due on APs ending between 1-31 October 2006

1-31 Corporation Tax

Returns of Third Party Information for APs ending between 1-31 October 2006

August 2007

14 PAYE/PRSI

P30 monthly return and payment for July 2007

14 DWT

Return and payment of DWT for July 2007

14 PSWT

F30 monthly return and payment for July 2007

14 RCT

RCT 30 monthly return and payment for July 2007

1-21 Corporation Tax

PT for APs ending between 1-30 September 2007

Returns for APs ending between 1-30 November 2006

Pay Balance due on APs ending between 1-30 November 2006

1-31 Corporation Tax
Returns of Third Party Information for APs ending between 1-30 November 2006

September 2007

14 PAYE/PRSI

P30 monthly return and payment for August 2007

14 DWT

Return and payment of DWT for August 2007

14 PSWT

F30 monthly return and payment for August 2007

14 RCT

RCT 30 monthly return and payment for August 2007

19 VAT

VAT 3 return and payment for period July/August 2007

1-21 Corporation Tax

PT for APs ending between 1-31 October 2007

Returns for APs ending between 1-31 December 2006

Pay Balance due on APs ending between 1-31 December 2006

1-30 Corporation Tax

Returns of Third Party Information for APs ending between 1-31 December 2006

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New guidance notes published

The following publications can be found on the website www.revenue.ie:

- New guidance note on **Countrywide Refurbished Scheme** - under [Leaflets & Guides/Income Tax for Individuals/Income Tax](#) and also under [Publications/Technical Guidelines](#)
- Consolidated guidance note of previously published material on **Student Accommodation Scheme** under [Publications/Technical Guidelines](#).
- Consolidated guidance note of previously published Revenue material on the **transitional arrangements for the phasing out of most of the property-based incentive schemes** under [Publications/Technical Guidelines](#)
- In addition revised and updated guidance on **Section 23 relief** and **Owner-Occupier relief** will shortly be published under [Leaflets & Guides/Income Tax for Individuals/Income Tax](#) and also under [Publications/Technical Guidelines](#)

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Interest Relief in Respect of Rental Property

The deductions which can be made in computing Case V rental income are set out in *Section 97(2) TCA, 1997*. They include at paragraph (e) of that provision '*interest on borrowed money employed in the purchase, improvement or repair of the premises*'. Revenue has been asked about the deductibility of interest under *Section 97(2)* in circumstances where the borrowed money is used to purchase shares in a company which owns a rental premises or which purchases such a premises. This article sets out the Revenue view

As just indicated, interest is deductible under *Section 97(2)* where the money borrowed is used, inter alia, to *purchase* a rental premises. However, the borrowed money must be used or employed directly in the purchase of that premises. Where a premises is acquired indirectly through a company using borrowed money, the money borrowed will have been used to purchase an interest in the company and will not have been employed in the purchase of the premises. The position is not altered by the fact that -

- the investor's borrowed money is subsequently used by the company to purchase the premises, or
- the investor may be able to receive rental income directly from the tenants of the premises, or
- the investor may be able to sell the premises by selling his or her underlying shares in the company.

The position just outlined applies equally where the borrowed money is used to purchase an interest in any other type of entity such as a property-owning trust.

The same treatment also applies for money borrowed for use in the *improvement or repair* of a premises. Relief is only available where such money is employed directly in the improvement or repair of the premises.

The provisions of *Section 97(2)* also apply to the purchase of foreign premises. Although rental income from foreign property is assessed as Case III rather than Case V, *Section 71(4) TCA, 1997* applies *Section 97(2)(e) TCA, 1997* to foreign rental income and provides the same deduction for interest on borrowed money as that allowed in computing Irish Case V rental income. Therefore, the position outlined in this article in relation to the use of borrowed money has equal application in the case of foreign rental properties.

The 'Net Price Paid' Formula and Separate Site Sales and Building Agreements

For the purposes of calculating owner-occupier and *Section 23* relief, the Revenue practice has been to regard a sale of a house that is effected by means of a contract for the sale of a site and a separate building agreement as the sale of a completed house where the contract and agreement are connected in some way or are dependent on each other.

This means that the relief is calculated by means of the same type of formula as that contained in *Section 279 TCA 1997* and not by simply using the expenditure incurred under the building agreement. In relation to industrial and commercial buildings, Revenue has also held the view that where a site sale contract and a building agreement are interdependent in any way, the 'net price paid' formula in *Section 279* should be used to calculate the relief.

In the circumstances referred to above, selling or purchasing a building by means of a site sale contract and separate building agreement is simply a means of conveying the completed building; and the result in terms of calculating capital allowances or *Section 23* relief, should be the same as that which would apply if the sale or purchase of the completed building were carried out by means of a single contract. In many cases, investors enter into building agreements at a stage when the building is already underway or actually completed. Construction expenditure has already been incurred and the relevant interest is being transferred to the investor. This is the situation which is provided for in *Section 279 TCA 1997*.

Nursing Home Residential Units

Background

The Finance Act 2006 extended the qualifying period for the construction of nursing home residential units from 24 March 2007 to 31 July 2008 but did not impose any particular conditions for availing of the extended termination date, as was the position for other schemes. However, it restricted the amount of the qualifying expenditure for capital allowance purposes to 75% of that incurred in the period 25 March 2007 to 31 December 2007 and to 50% of that incurred in the period 1 January 2008 to 31 July 2008. The same Act also extended the tax life of residential units from 7 to 15 years and the holding period from 10 to 15 years. *The Finance Act 2007 (Section 28)* has made further changes, arising from a review of the scheme carried out by Indecon Consultants for the Minister for Finance. The purpose of this article is to draw attention to these latest changes.



Finance Act 2007 Changes

The Finance Act 2007 has further extended the qualifying period for the scheme from 31 July 2008 to 30 April 2010. It should be noted that the new 2010 termination date and the other changes outlined below only apply where expenditure is incurred on or after 1 May 2007 *under a contract or agreement entered into on or after that date for the construction, refurbishment or development of residential units*. Where expenditure is incurred on or after 1 May 2007 under contracts entered into before that date, the new arrangements and requirements do not apply; and, in such cases, the termination date remains at 31 July 2008 with qualifying expenditure being subject to the 75% and 50% expenditure restrictions mentioned above.

The contract or agreement which is relevant for the purposes of the Finance Act 2007 changes will be the contract or agreement which provides for the actual construction, refurbishment or development work to be carried out on a particular project involving residential units. Such a contract or agreement would typically be between a site owner and a development company or a builder as distinct from any building agreement which may be subsequently entered into with investors in the project. Builders or developers should provide written evidence showing whether a contract or agreement was entered into before or on or after 1 May 2007, to the purchasers of residential units, as this may be required in the event of a Revenue audit.

Qualifying Expenditure - Further Restrictions

Expenditure on nursing home residential units governed by contracts or agreements entered into on or after 1 May 2007, though benefiting from the later 2010 deadline, is subject to further restriction. In such cases, expenditure which is to be treated as incurred for capital allowances purposes is reduced to 50% of that actually incurred in the case of individuals and to 75% in the case of companies. For the purposes of the 'net price paid' formula in *Section 279 TCA, 1997* the numerator in the formula is the figure represented by 50% or 75%, as appropriate, of the expenditure incurred. The denominator in the formula is the total expenditure which was actually incurred before the 50% or 75% restriction is applied. Where the formula does not have to be used as, for example, where an investor already owns a site and independently

engages a builder to carry out the construction, the qualifying expenditure will be the amount in the building agreement reduced to 50% or 75% as appropriate.

Holding Period and Tax Life

The holding period is the period for which the units must be held by investors to avoid a balancing event and a possible clawback of capital allowances already claimed. This period has now been increased from 15 years to 20 years. The tax life of a building is the period during which capital allowances can be passed to a subsequent purchaser of the building. The tax life of the units has also been increased from 15 years to 20 years. Both periods start from the time that the units are first used or first used following refurbishment. These new 20 year requirements apply in the case of residential units constructed, refurbished or developed on foot of contracts or agreements entered on or after 1 May 2007.

Certification and Reporting Requirements

New certification and reporting requirements have also been put in place for residential units governed by construction, refurbishment or development contracts or agreements entered on or after 1 May 2007. Before an investor can start to claim capital allowances, the residential units must be certified by the Health Service Executive (HSE) as meeting the relevant conditions contained in the Tax Acts. The HSE cannot certify the units until they have been let for the first time. Annual certification by the HSE is not required.

As part of the certification process, investors must provide information to the HSE in relation to the number and nature of investors, the amount being invested by each investor, the amount of capital expenditure being incurred and the nature of the structures that are being used to facilitate the investment. This information is to be passed on to the Minister for Health and Children and the Minister for Finance. (This information is also required in the case of investment in private hospitals and mental health centres)

Investors must also provide an annual written report to the HSE during the 20 year holding period confirming that the conditions contained in the Tax Acts are being met. The report must also include details of the level of occupation of the unit(s) for the previous year and the age and, as applicable, the nature of the infirmity of the occupant(s).

Occupants of Units

The selection of the occupants of the units must be made by the nursing home involved and these occupants may not be connected with the lessor of the unit. Therefore, it is not possible, for example, for children to purchase units and lease them to their elderly parents. This issue was already covered in [Issue 59](#) of **Tax Briefing** (April 2005). However, the spouse of an aged or infirm person may now also occupy a unit even though that spouse may not meet the medical certification requirements in his or her own right.

HSE Rent Subsidy Cases

An existing condition requires that at least 20% of the units are made available for renting to persons who are eligible for a rent subsidy from the HSE at a discounted rent. This condition is still required for investors who are individuals but does not have to be met where a company holds the relevant interest in all of the units in a particular development.

Residential Units - Other Issue

Revenue has been asked whether a two-storey house comes within the definition of 'qualifying residential unit' in *Section 268(3A) TCA 1997*. The Revenue view is that such a house does not come within the definition. The relevant part of the definition relates to 'a house that is comprised in a building of one or more storeys in relation to which building a fire safety certificate under *Part III of the Building Control Regulations 1997*... is required'. As a two-storey house is not a house comprised in a building of one or more storeys, and as a fire safety certificate is not required in respect of a two-storey house, it cannot meet the definition of a 'qualifying residential unit'

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Claiming a Tax Credit for Research & Development

Background

Section 33 of the Finance Act, 2004 introduced a 20% tax credit for companies for expenditure on research and development (R&D) activities. The credit is available on incremental qualifying expenditure over the amount spent in a base year. It has come to Revenue's attention that some uncertainty exists regarding the procedures for claiming such a credit - in particular, the level of documentation required to be submitted with a claim. The procedures were put in place with a view to making the claiming of an R&D tax credit a straightforward process. The purpose of this article is to clarify those procedures.

Definition

The relevant legislation contains a specific definition of research and development, in line with international practice, which is designed to focus the relief on activities involving a high level of innovation across a broad range of industries.

'Research and development activities' is defined as '*systematic, investigative or experimental activities in a field of science or technology, being basic research, applied research or experimental development*'. A key provision is that activities will not constitute research and development activities for the purposes of the relief unless they:

- seek to achieve scientific or technological advancement and
- involve the resolution of scientific or technological uncertainty.

Claimant companies are themselves best placed to evaluate whether their activities come within the definition. However, if a company has concerns about a particular aspect of their claim, Revenue is prepared to give an advance opinion as to whether the activities of a specific project constitute research and development activities.

Claiming The Credit

Where a company is satisfied that it can comply with the requirements, a claim to relief may be made by completing *Section 12* (headed *Research And Development Tax Credit*) of the form CT1. It is important to note that no supporting documentation is required to be submitted with the return. In this respect, claiming a research and development tax credit is no different from claiming any other corporation tax relief or tax credit.

Examination by Revenue

Revenue may examine any aspect of a return, including a claim to a research and development tax credit, within four years of the end of the accounting period in which the company has made the return. Revenue may, if necessary, refer the project to an expert in the field of science and technology for an opinion as to whether the activities constitute research and development activities, as defined.

It is the claimant company's responsibility to maintain records which provide sufficient evidence that a project entails research and development activities. The types of records which are required include:

- project title and description
- purpose of the project undertaken (i.e. the hypothesis advanced)
- technologically feasible plan and/or methodology adopted
- status and/or progress reports
- problems encountered in the course of the project that identified areas of technological uncertainty and experimental development
- personnel involved in the project
- notebooks, lab reports, patents, and patent applications

In order to reduce the administrative burden on claimant companies, no particular format is specified. Given the high cost of research and development activities and the requirement for ongoing monitoring inherent in such projects, the records required for Revenue purposes should generally be available within a company for its own internal purposes.

Where expenditure is not wholly incurred for research and development purposes, Revenue will accept reasonable apportionment.

Further Information

Please see Revenue Guidelines for Research and Development Tax Credit <http://www.revenue.ie/en/tax/ct/leaflets/research-dev.pdf> or contact

*Jim Byrne,
Direct Taxes Interpretation and International Division,
Stamping Building,
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e-mail: jimbyrne@revenue.ie

VAT and Employment Agencies

The Social Partnership Agreement, 'Towards 2016', contains a commitment to improve the regulation of employment agencies and agency workers. New legislation is to be published, which will require all employment agencies established and/or operating in the State to be licensed. The purpose of this article is to confirm the VAT treatment that applies in relation to staff sourced, placed or made available by employment agencies.

1. VAT treatment of consideration for the supply of staff by employment agencies - general

The status of agency staff who are sourced, placed or made available by employment agencies is a matter of fact determined on the basis of contracts and/or the actual working and other arrangements that may exist from time to time between the staff, the agency and the company, firm, body or other entity in which the staff work, referred to below for convenience as the 'organisation'.

In accordance with *Section 10 (1) of the Value-Added Tax Act 1972*, as amended, VAT is chargeable on the full consideration which the agency becomes entitled to receive in respect of or in relation to the supply of agency staff to the organisation, including all taxes, commissions, costs and charges whatsoever but not including VAT chargeable in respect of the supply. The relevant rate of VAT is the standard rate in force at the time of the supply (currently 21 per cent).

If an agency is acting as *principal* in the supply of staff to organisations, the 'full consideration' which the agency becomes entitled to receive in respect of or in relation to the supply includes such monies as commissions, fees, wages, employers' PRSI, holiday pay, sick pay, and other monies due under the *Organisation of Working Time Act 1997*.

On the other hand, if an agency is acting as agent in the supply of staff to organisations, the 'full consideration' would normally exclude such monies as wages, employers' PRSI, holiday pay, sick pay, and other monies due under the *Organisation of Working Time Act 1997*.

The VAT treatment does not affect the position in relation to the operation of PAYE/PRSI. The following paragraphs outline the VAT treatment which applies in the different situations that may arise.

2. Employment agency providing placement service only (and staff employed by and paid by the organisation)

In the following circumstances:

- (a) Where staff are placed by the employment agency and are employees of the organisation in respect of this placement, and
- (b) The contract between the staff and the agency provides that the employment agency is placing the staff and that the staff are employees of the organisation, and
- (c) The employment agency receives written confirmation from the organisation,

which confirms that the organisation is the employer of the staff in respect of this placement,

VAT must be charged on the full consideration that the agency becomes entitled to receive in respect of or in relation to its placement of agency staff in the organisation.

This VAT treatment does not affect the existing position in relation to the operation of PAYE/PRSI. The organisation must operate PAYE/PRSI in respect of the 'agency staff' (unless the position outlined in section 3 below applies).

3. Employment agency providing placement service plus 'payroll bureau service'

Where the position outlined in 2 above applies and the employment agency also provides a 'payroll bureau service' on behalf of and for the account of the organisation, and the following circumstances exist:

- (a) A separate bank account is maintained by the agency into which the direct reimbursement of wages, employers' PRSI, holiday pay, sick pay, and other monies due under the *Organisation of Working Time Act 1997* are lodged, and
- (b) The funds in this account belong to the organisation at all times and are held in trust by the agency until they are paid out to the staff or returned to the organisation. In this regard, statutory and voluntary deductions from pay and employers' PRSI will be regarded as paid to or in respect of the staff when passed on to the appropriate body, e.g. Revenue, banks, health insurance providers, trade unions, etc,

VAT must be charged on the full consideration that the agency becomes entitled to receive in respect of or in relation to its placement of 'agency staff' in the organisation and its 'payroll bureau service'. However, VAT would not be chargeable on the direct reimbursement of wages, employers' PRSI, holiday pay, sick pay, and other monies due under the *Organisation of Working Time Act 1997*.

This VAT treatment does not affect the existing position in relation to the operation of PAYE/PRSI. The agency must operate PAYE/PRSI in respect of the 'agency staff'.

4. Other situations

Where the requirements at 2 above and, where appropriate, 3 above are not satisfied in full, then:

- (a) The employment agency is regarded, for VAT purposes, as principal in the provision of staff.
- (b) The staff are regarded as employees of the employment agency.

In these circumstances, VAT must be charged on the 'full consideration' (regardless of how described) which the agency becomes entitled to receive in respect of or in relation to the supply of services, including all monies, as set out above, in its capacity as principal.

This VAT treatment does not affect the existing position in relation to the operation of PAYE/PRSI. The agency must operate PAYE/PRSI in respect of the 'agency staff'.

Simplifying Tax Relief

The Minister for Finance, in his 2007 budget speech, announced that the Revenue Commissioners would take measures to simplify the way in which certain tax allowances and tax credits were being granted. These initiatives may be categorised under three broad headings:

- IT- Related initiatives
- DIRT Exemption at source
- Third Party Information

1. IT-Related Initiatives

1.1 Automatic Age-related credits

With the development of the new PAYE IT system, Revenue is now in a position to automatically grant age-related tax credits. These include the increased rent allowance for those reaching the age of 55, and also the increased exemption limit - as well as the annual age tax credit - for those reaching the age of 65. This development will be released before the end of 2007.

1.2 BIK Medical Insurance credit

Tax relief on medical insurance is granted at source on all premiums. Where an employer pays medical insurance as a *benefit-in-kind [BIK]*, the employer pays the lower premium and repays the tax credit to Revenue through the Corporation Tax return/payment. The employee, whose medical insurance has been paid by the employer, must then claim the tax credit individually. To encourage employees who are taxed on the BIK to claim the appropriate tax credit, the P35 form for 2007 will include a new field to allow employers to notify Revenue of the amount of medical insurance paid as a BIK. Revenue will process this information and grant the appropriate tax credit to the individual employee in 2008.

2. Accounts exempt from DIRT

This exemption at source scheme is now live and grants exemption from DIRT for taxpayers or their spouse, who are *65 years of age or over* and whose total income is below the annual exemption limit. The scheme also applies to those or their spouse who are *permanently incapacitated* and whose total income is below the relevant annual exemption limit.

- Broad guidelines on the operation of the scheme have been agreed with the financial institutions.
- Application forms and information leaflets for those over 65 are now available from all Revenue offices, financial institutions and Post Office Savings Bank. The completed application forms should be returned to the financial institutions.
- Application forms and information leaflets for permanently incapacitated have been distributed through the disability organisations, as well as being available from any Revenue office.
- Application forms for permanently incapacitated should be returned to the tax office, who will notify the appropriate financial institution to allow exemption on the nominated account.

3. Third Party Information

Revenue will work with certain organisations and agencies to collect details of expenditure which qualifies for tax relief, and will process this data for tax refund purposes as though it had been submitted by the taxpayer. Qualifying expenditure includes the following:

3.1 Trade Union Subscriptions

Revenue is working with the Trade Union movement to collect the PPS numbers from employers who operate deduction at source for Trade Union subscriptions. This is expected to commence later this year, when the data will be processed by Revenue and the tax credit granted.

3.2 Drugs Payment Scheme

The Health Service Executive holds expenditure data at individual level on prescribed drugs under the Drugs Payment Scheme. This data will be processed by Revenue and, where appropriate, a tax refund will issue. This element is expected to commence towards the end of 2007.

3.3 Tuition Fees

Revenue are working with third level colleges to collect data on those paying tuition fees in respect of qualifying courses. This is expected to commence in 2008.

3.4 Non Reimbursed Medical Costs from Medical Insurance Companies

Revenue will work with medical insurance companies who can supply data on qualifying expenditure for in-patient and out-patient costs not covered by medical insurance and, where appropriate, a refund will issue. This element is expected to be available in 2008.

3.5 Nursing Homes

Discussions have commenced with a view to details being supplied by nursing homes concerning the net charges paid to them, along with details of those making the payments. It is hoped that the new system will become operational in 2008.

Further details and any enquiries to:

*Pat Molan,
Collector General's Division,
Sarsfield House,
Limerick.*

e-mail: pmolan@revenue.ie

Salmon Hardship Scheme

Following significant changes to the management of the wild salmon fishery for 2007, the Minister for Communications, Marine and Natural Resources has announced details of the Salmon Hardship Scheme. This scheme, by making direct payments from a fund to those affected, is intended to provide a measure of relief for any hardship that may result for commercial salmon fishermen at sea.

Individual payments from the hardship fund will have two identifiable parts. One part will be taxable; the other will not.

The *taxable component* will be that part of the payment which relates to catch. This part will be taxable on recipients as income in the year of receipt. Commercial fishermen should include this part of any payment received as a receipt in their financial accounts. The part of the payment which relates to the 2006 licence fee *will not be liable to tax*.

Accordingly, before making payments from the hardship fund, it is expected that BIM will identify the amount which relates to the 2006 licence fee, so that recipients can exclude that amount from their income tax returns.

Eligible applicants may opt under the scheme to receive their payment either in one sum or in three equal amounts over the years 2007-2009.

Payments from the fund have no CGT or VAT implications.

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Capital Gains Tax

Section 626B TCA 1997 - The Holding Company Regime. Meaning of 'wholly or mainly'

Section 626B TCA 1997 provides an exemption from tax for certain capital gains arising on the disposal by a company of holdings in trading subsidiaries (investee companies). This exemption was introduced by *Section 42 Finance Act 2004* and applies to disposals on or after 2 February 2004.

A condition of the relief is that, at the time of disposal of the shares, the business of the investee company or, in the case of a group, the business of the group taken together must consist wholly or mainly of the carrying on of a trade or trades.

For the purposes of *Section 626B*, 'wholly or mainly' means greater than 50%. The primary tests are the proportion of net trading profits and the proportion of net trading assets, though other factors may be taken into account. These lesser considerations would include trading turnover as a proportion of gross receipts and the proportion of employees' time devoted to trading and non-trading activities.

In considering the test in the context of *Section 626B(2)(c)(ii)*, intra-group transactions are excluded

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Mid-Shannon Scheme

Finance Act 2007 (Section 29) introduced a new tax-based incentive scheme for tourism facilities in the mid-Shannon area. The scheme is aimed at encouraging the development of new tourism infrastructure and the refurbishment of existing tourism infrastructure in the area.

Projects must be approved and certified by a special board to be established for the purposes of the scheme. Approval and certification will be carried out in accordance with guidelines which have yet to be drawn up. Also, the type and nature of the tourism infrastructure to qualify under the scheme will be set out in these guidelines. The appointment of the board and the drawing up of the guidelines are the responsibility of the Minister for Arts, Sport and Tourism in consultation with the Minister for Finance.

The necessary Ministerial order for the commencement of the scheme will not be made until the guidelines have been drawn up and issued and the certification board has been established. E.U. Commission approval is also required under its state aid rules. Revenue will publish further information when the scheme is approved and the guidelines have been drawn up and issued.

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Revised Non-Resident Form

Exemption from Dividend Withholding Tax for certain non-resident entities in respect of relevant distributions

The Composite Non-Resident Form (CNRFV2) has been revised by Revenue, with a view to making it more user-friendly, following representations made to the TALC Simplification Committee. This has resulted in the introduction of three separate forms covering the non-resident entities that qualify for exemption from DWT.

The forms are as follows:

- NON-RESIDENT FORM V2A - Exemption from DWT for a *Qualifying Non-Resident Individual in respect of relevant distributions.*
- NON-RESIDENT FORM V2B - Exemption from DWT for a *Qualifying Non-Resident Company in respect of relevant distributions.*
- NON-RESIDENT FORM V2C - Exemption from DWT for a *Qualifying Non-Resident Person (not being an individual or a company) in respect of relevant distributions.*

The new forms are now available on the Revenue website at the following location:

http://www.revenue.ie/publications/curntfms/curfrms_j.htm

If the old version of the form has already been used to renew exemptions in 2007, this form will be accepted as valid. However, for future renewals of exemptions, the revised form should be used.

Enquiries should be addressed to:

DWT Unit,

Revenue Commissioners,

Government Offices,

Nenagh,

Co Tipperary.

Average Market Mid-Closing Exchange Rates v. Euro

- As Supplied By The Central Bank

	2003	2004	2005	2006
US Dollar	1.1312	1.2439	1.2441	1.2556
Sterling	0.6919	0.6786	0.6838	0.6817
Danish krone	7.4307	7.4399	7.4518	7.4591
Japanese yen	130.97	134.44	136.85	146.02
Swiss franc	1.5212	1.5438	1.5483	1.5729
Swedish krona	9.1242	9.1243	9.2822	9.2544
Norwegian krone	8.0033	8.3697	8.0092	8.0472
Canadian dollar	1.5817	1.6167	1.5087	1.4237
Australian dollar	1.7379	1.6905	1.6320	1.6668

LLOYDS CONVERSION RATE

For accounts closed in the calendar year 2006, the conversion rate of Sterling to Euro should be calculated by reference to the sterling mid-closing rate supplied by the Central Bank.

2006 Stg 1 = Euro 1.4892.

Calculation of Base Cost of Fyffes shares and Total Produce shares

Introduction

Following the disposal by Fyffes plc ('Fyffes') of its General Produce division to Total Produce plc ('Total'), in exchange for the issue of Total shares to the shareholders of 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 respective market values of the Fyffes shares and Total shares after the demerger.

Pursuant to the demerger of the produce division, each Fyffes shareholder received 1 share in Total 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 Total shares following the demerger are as follows:

Fyffes: £0.96

Total: £0.79

To illustrate the mechanism for determining the base cost of the shares in the event of a future disposal, assume Fyffes shares were originally acquired for £2 each prior to the demerger of the property undertaking to Blackrock International Land plc ('Blackrock'). Each Fyffes share so acquired was deemed to have a base cost of £1.55 (for further information on this point, please see **Tax Briefing, Issue 65**).

Revenue will accept that the base cost of Fyffes shares acquired before the Blackrock demerger for £2 and disposed of after the Total demerger is as follows:

Fyffes: £1.55 x

$$\frac{£0.96}{£0.96 + £0.79}$$

= £0.85 per share

Revenue will accept that the base cost of Total shares is as follows:

Total: £1.55 x

$$\frac{£0.79}{£0.96 + £0.79}$$

= £0.70 per share

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

Fyffes:

$$\frac{i_{\text{c}} \frac{1}{2} 0.96}{i_{\text{c}} \frac{1}{2} 0.96 + i_{\text{c}} \frac{1}{2} 0.79}$$

$$= 55\%$$

Total:

$$\frac{i_{\text{c}} \frac{1}{2} 0.79}{i_{\text{c}} \frac{1}{2} 0.96 + i_{\text{c}} \frac{1}{2} 0.79}$$

$$= 45\%$$

The cost of Fyffes shares acquired after the Blackrock demerger should be apportioned on this basis.

Summary:

On the basis that a share in Fyffes was originally acquired for â‚¬2 prior to the Blackrock and Total demergers and disposed of after the Total demerger, Revenue will accept that the base cost is â‚¬0.85.

The base cost of a Fyffes share acquired in the period between the demergers and disposed of after the Total demerger is 55% of the cost of the share.

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

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Finance Act 2007

The 2007 Finance Act was enacted on 2 April 2007. The following pages highlight some of the changes introduced in the Act.

Income Tax

Section 10 extends indefinitely the special exemption from taxation that applies to unemployment benefit payable to systematic short-time workers.

Section 12 exempts from tax, travel and subsistence expenses paid to certain members of non-commercial bodies, in both the public and private sectors, in respect of the attendance at meetings of such bodies. The work of these members must generally be carried out at periodic meetings of the bodies. To qualify for the exemption the member must be a non-executive member of the body and not be in receipt of emoluments (excluding the expenses) from the body in excess of $\text{€}24,000$ per annum in the case of the Chairperson and $\text{€}14,000$ in the case of other members. The exemption covers expenses up to the civil service rates. Where the expenses paid exceed those rates the excess will continue to be taxable.

Section 14 amends *Section 216A of the Taxes Consolidation Act 1997* which exempts from income tax, income received from the letting of rooms in one's private residence provided the income does not exceed $\text{€}7,620$. The amendment provides that the exemption does not apply where a child pays the rent to a parent.

Section 16 amends *Section 664 of the Taxes Consolidation Act 1997* which is concerned with the scheme of tax exemption for income from long-term leasing of farmland. Currently, for leases of at least 5 years duration, the annual exemption limit is $\text{€}12,000$. For leases of at least 7 years duration the annual exemption limit is $\text{€}15,000$. The section introduces an additional threshold of relief of $\text{€}20,000$ per annum for qualifying leases exceeding 10 years duration. These new arrangements will commence by order of the Minister for Finance following clearance by the European Commission.

Section 17 amends Part 30 of the *Taxes Consolidation Act 1997*, which deals with the tax treatment of various pension products and approved retirement funds (ARFs), in a number of respects.

- Firstly, it inserts a new *Section 772A* into *Chapter 1* of Part 30, the purpose of which is to simplify, for reasons of administrative efficiency, Revenue's approval process in relation to certain pension schemes in line with the current approval process for retirement annuity contracts and PRSAs. The new section allows Revenue, in certain circumstances and subject to conditions, to approve a "generic" retirement benefits product and provides for retirement benefit schemes established under such a product to be treated as approved schemes for tax purposes without the requirement, as at present, for each individual scheme to be approved by Revenue. The type of retirement benefits product envisaged is one under which single member retirement benefits schemes are marketed by Life Offices and established using standard documentation secured by way of an insurance contract. A

condition of approval is that the combined employer and employee contributions to such schemes in any year may not exceed the maximum age-related tax-relievable contributions that may be made by an *employee* to a retirement benefits scheme at present.

- Secondly, the section extends the period by which a qualifying fund manager must account for any tax due on a notional distribution from an ARF (introduced in Finance Act 2006). The notional distribution, which is calculated as a percentage of the value of the assets in the ARF as of 31 December each year, will now be regarded as a distribution made not later than February in the year following the year in which the ARF assets are valued. This means that any tax due must be remitted to Revenue not later than mid-March of that following year instead of mid-February.
- Thirdly, the section clarifies in relation to *Chapter 2C of Part 30* and the associated *Schedule 23B* (which deal with the limits on tax relieved pension funds) that, when calculating the amount crystallized by a benefit crystallisation event in relation to an individual under a pension scheme which is subject to a pension adjustment order (PAO), the benefit payable under the PAO is to be included in the calculation as if the PAO had not been made. In other words, any benefit arising under the PAO is deemed to be a benefit arising to the individual for the purposes of determining whether the individual's standard fund threshold or personal fund threshold has been exceeded. This applies regardless of whether the benefit under the PAO is paid as a designated benefit from the member spouse's scheme or in some other form following payment of a transfer amount in accordance with the Family Law Acts.
- Finally, the section reduces with effect from 1 January 2007, the rate of tax applying to a chargeable excess (which arises when the capital value of pension benefits exceeds the standard fund threshold or personal fund threshold) from 42 per cent to 41 per cent in line with the reduction in the higher rate of income tax announced in the Budget.

Section 18 amends the provisions introduced in Finance Act 2006 to limit the use of certain tax reliefs, including certain exemptions, by some high-income individuals. The measure addressed the issue of a small number of individuals with high incomes who, mainly by means of the cumulative use of various tax incentive reliefs, reduced their income tax liability to very low levels or to zero. From 2007, under the measure introduced in 2006 as amended by this section, such individuals will have an effective rate of income tax for each year of not less than about 20 per cent on the income sheltered by such schemes.

A number of issues were left over from Finance Act 2006 that are addressed in this section. In addition, there are a number of other amendments to last year's legislation to facilitate the principal changes proposed in this section, to ensure the restriction operates as intended, to correct various references and to modify some of the terminology used in various provisions of the overall measure.

The principal changes to last year's provisions are:

- Adjustments to the provisions governing the taxation of married couples to ensure that the restriction applies only to an individual with sufficient income

in his or her own right and to ensure that a spouse whose income is below the threshold is not inadvertently subject to the restriction because of the income aggregation rules that apply to certain married couples. The adaptations also ensure that married couples who opt for joint assessment will retain their entitlement to married tax bands and tax credits and, in the case of a married couple who opt for separate assessment, the ability to transfer unused tax rate bands and reliefs to his or her spouse.

- To ensure that tax return and tax payments rules apply to everyone subject to the restriction, a full tax return will be required from such individuals for each tax year in which the restriction applies and, in addition, the tax payment rules applicable for self-assessment purposes, including the preliminary tax payment rules, will apply.
- In order to monitor and assess the impact of the restriction in terms of the numbers affected, the additional tax paid and the nature of the reliefs restricted, those affected by the restriction will be required to provide a statement to Revenue setting out the calculation of the restriction and identifying precisely the reliefs restricted. Revenue will be able to seek further information on the calculations and the reliefs used in any particular case. The ability to seek information will extend to seeking information from those with high incomes, claiming substantial tax reliefs, who might be expected to be subject to the restriction but who, for whatever reason, have not submitted the statement.
- Rules are introduced to govern the apportionment of relief carried forward from the tax year 2006 to the tax year 2007, where the relief carried forward consists of a mix of reliefs, some of which could be regarded as attributable to restricted reliefs and some of which could be regarded as attributable to unrestricted reliefs. The apportionment will operate by applying to the amount of tax relief carried forward from 2006 to 2007 in respect of various categories of tax reliefs a fraction where, broadly, the numerator is the total of the individual's restricted reliefs of that category over the previous four years and the denominator is the individual's overall use of tax reliefs of that category over the same period. It will be open to the taxpayer to apply to Revenue for the apportionment to operate on such longer or shorter period that, in the opinion of the taxpayer, gives a fairer apportionment. If Revenue do not accept the period put forward by the taxpayer, or if some other apportionment period cannot be agreed, the taxpayer will be entitled to appeal to the Appeal Commissioners for apportionment on the basis of the period set out in his or her application.

Income Tax, Corporation Tax and Capital Gains Tax

Section 34 amends the *Taxes Consolidation Act 1997* in relation to interest payments by relevant deposit takers, with effect from the passing of the *Finance Act 2007*.

- A new *subsection (1A)* of *Section 256* provides that deposit interest can be paid by the deposit taker without deduction of deposit interest retention tax (DIRT) where, at any time in a year of assessment, the individual beneficially entitled to the interest or his or her spouse is 65 years of age or over and their total income does not exceed the relevant income tax exemption limit. The individual concerned is required to make a declaration to that effect to the

relevant deposit taker. Up to now, such interest was subjected to DIRT and the individuals affected were entitled to reclaim the tax from the Revenue Commissioners.

- A new *subsection (1B) of Section 256* provides that deposit interest can now be paid by a deposit taker gross of DIRT to certain other persons provided the deposit taker obtains a notification to that effect from the Revenue Commissioners. This applies where the individual beneficially entitled to the interest or his or her spouse is permanently incapacitated or where the persons entitled to the interest are trustees of a special trust for permanently incapacitated individuals who are exempt from tax under *Section 189A(2)*.
- A further change is being made to allow an intermediary, appointed by the National Treasury Management Agency for the purposes of taking specified deposits, to operate DIRT on the payment of interest on those deposits.

Section 36 amends the provisions on double taxation relief, as follows:

Foreign branch profits: The section provides unilateral credit relief for foreign tax suffered by the company that has a branch or agency in a country with which Ireland does not have a tax treaty. This allows such a company to reduce its Irish corporation tax liability by the foreign tax suffered on the profits of the branch or agency. In the absence of such relief, the company would only be entitled to a deduction for the foreign tax in computing its taxable income. The section also allows *pooling* in the case of foreign branch profits. Where the foreign tax on branch profits in one country exceeds the Irish tax on those profits, the credit is limited under existing law to the amount of the Irish tax on those profits and no credit can be given for the balance of the foreign tax. Pooling allows such surplus foreign tax to be credited against tax on branch profits in other countries in the year concerned.

Capital Gains Tax: The section provides unilateral credit relief for tax suffered on capital gains in certain countries. The countries concerned are: Belgium, Cyprus, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Pakistan and Zambia. In these cases Ireland has a tax treaty that pre-dates the introduction of capital gains tax in the State. The section provides that, where a person, whether an individual or company, who is chargeable to tax in the State in respect of a capital gain, suffers tax on the gain in the other country concerned, the foreign tax will be credited against Irish capital gains tax on the gain. The purpose of the provision is to grant relief from Irish tax in these specific situations, thereby relieving double taxation.

Section 39 amends the taxation rules in relation to offshore funds that are created under the law of EU and EEA Member States and certain OECD countries. These funds are covered by the "gross roll up" taxation regime introduced in the Finance Act 2001. This regime was brought in to match a similar regime for collective funds in the State that was put in place in 2000. Under gross roll up, funds may accumulate without the imposition of tax. However, an exit tax applies when payments are received from the fund or when there is the disposal of an interest in the fund.

This section modifies the definition of offshore fund in EU and EEA Member States and certain OECD countries, in order to achieve a more coherent and logical match between such funds and domestic funds which also operate under a "gross roll up" regime. The changes are twofold.

- Firstly, the type of offshore fund that will qualify for inclusion in the "gross roll up" regime is being clearly spelt out. Under the new rules, only offshore funds that are similar in all material respects to domestic "gross roll up" funds will benefit from the favourable tax regime. In practice, this means that four categories of offshore fund will come within the scope of "gross roll up" in future: These are UCITS, unit trust schemes, investment companies and investment limited partnerships, but only where the funds in question are comparable to funds operating in Ireland.
- Secondly, offshore funds in the EU, the EEA or in certain OECD countries that fall outside the scope of the gross roll up regime by virtue of the new rules will not qualify for offshore fund treatment of any sort. Instead, income and gains will be taxed under general taxation principles. This is similar to the treatment of income and gains in the case of Irish entities that do not come within the scope of the domestic "gross roll up" regime.

The new rules apply with effect from 20 February 2007. However, where a person had a material interest in an offshore fund on 20 February, which is now excluded from the gross roll up regime, the existing rules will continue in relation to that material interest, unless the fund is in the nature of a "personal portfolio investment undertaking". Any new shares, etc. acquired after 20 February 2007 will be subject to the new rules.

Section 40 is an anti-avoidance provision, providing special rules for the taxation of personal portfolio investment undertakings in relation to payments made to unit holders. At present, income or gains are allowed to be rolled up within a fund without suffering tax. When payments are made to a unit holder out of the fund, the payment is generally subject to an exit tax of 23 per cent. It has come to attention that some investors are putting personal asset investments into investment undertakings so as to ultimately have a final tax liability of 23 per cent instead of the investor's marginal tax rate. The approach in the section is similar to that introduced for personal portfolio life policies in the Finance Act 2002.

A personal portfolio investment undertaking (PPIU) is defined in a new *Section 739BA*. It relates to a situation where the selection of the property of the undertaking or offshore fund in the EU, the EEA or OECD countries with which Ireland has a double taxation agreement, was or can be influenced by the unit holder or certain connected persons.

Under the new rules:

- Where a chargeable event happens in relation to an investment undertaking which is a PPIU on or after 20 February 2007, the gain will be taxed at the standard rate plus 23 per cent.
- Also, where a payment is made in respect of an offshore fund in EU and EEA Member States and certain OECD countries and that fund is a PPIU, the payment will be taxed at the standard rate plus 23 per cent where the income is correctly included in the individual's tax return, and at the marginal rate plus 23 per cent in other cases.

Section 44 amends the anti-avoidance provisions in relation to the transfer of assets abroad. The legislation was first introduced in 1974 to counteract tax avoidance schemes involving the transfer of assets (and thereby income) by resident individuals to non-resident companies, trustees, etc. in a way which left the resident individual in a position to benefit directly or indirectly from the income or capital in a taxfree way.

The main change relates to an exemption from the charge that is available if the individual concerned can satisfy the Revenue Commissioners that the purpose of the assets transfer was not to avoid tax or that the transactions concerned were *bona fide* commercial transactions and were not designed for tax avoidance reasons. The rules used to ascertain whether or not the purpose of the transfer of assets was to avoid tax are being strengthened. The changes will ensure that all relevant factors, relating both to the subjective intentions of the individual and the authenticity of the transaction itself, are to be taken into account in determining whether or not a transaction has an avoidance purpose. The amendment also closes a possible loophole by confirming that all operations associated with the initial transfer of assets are taken into account in determining whether or not liability arises under the provisions. Transitional arrangements are also included to ensure that assets transfers related to the existing rules and/or to the new rules are treated appropriately.

Corporation Tax

Section 45 makes 2 changes to *Section 234 of the Taxes Consolidation Act 1997*, which provides that certain income derived from patent royalties is exempt from tax.

- Firstly, the definition of "qualifying patent" is being broadened so as to provide that the work leading to the invention which is the subject of the patent can now be carried out within a state of the European Economic Area rather than just in the State. This change applies as respects income from a patent in relation to which such work leading to the invention, which is the subject of the patent, is carried out on or after 1 January 2008.
- Secondly, an annual limit of $\text{€}1\frac{1}{2}$ million on the aggregate amount of patent income to be exempt for tax purposes is also being imposed. This annual limit will relate to income arising in a period of 12 months commencing on 1 January 2008 and each subsequent 12 month period. The limit is being applied to the aggregate amounts of patent income arising to a company and any person or persons who are connected with that company. Where the aggregate amount of patent income exceeds the limit, the company and the connected persons can specify how the $\text{€}1\frac{1}{2}$ million is to be apportioned between the company and those connected persons.

Section 47 makes three changes to *Section 958 of the Taxes Consolidation Act 1997* in order to ease the preliminary tax compliance burden for companies. The broad rule is that preliminary tax (a minimum of 90 per cent of a company's final tax liability) is paid one month before the end of the accounting period, with the balance of tax to be paid 9 months after the end of the accounting period. With some exceptions, if the preliminary tax payment falls below 90 per cent of a company's final tax liability, the balance of tax payable will carry interest back to the original due date. Small companies (as defined in terms of tax liability) have the option of paying preliminary

tax on the basis of 100 per cent of their previous year's liability instead of 90 per cent of the current year's liability.

- The small company liability threshold is raised from $\text{€}150,000$ to $\text{€}150,000$, which means that companies with a tax liability of up to $\text{€}150,000$ in their previous year will be able to avail of the small company option above.
- Start-up companies with a tax liability of up to $\text{€}150,000$ in their first year are relieved of the obligation to pay preliminary tax in that first year.
- The third change is aimed at minimising in certain cases the interest charges that would otherwise arise for large companies (i.e. companies with a tax liability above $\text{€}150,000$) if their preliminary tax payments fall short of 90 per cent. The measure provides for the notional allocation of preliminary tax payments between members of the same group of companies for the purpose of assessing the adequacy of preliminary tax payments made by the group for interest charge purposes.

Section 48 amends the provisions in relation to group relief for companies, in the main to comply with a ruling of the European Court of Justice on foreign losses. The ruling was that the UK model of group relief (which the Irish model broadly matched) contravened EU law where a parent company resident in the UK was precluded from getting relief for the losses of a subsidiary company resident elsewhere in the EU, in circumstances where the subsidiary's losses could not otherwise be relieved.

This section gives relief to Irish companies in respect of trading losses incurred by their non-Irish subsidiary companies that are resident in EU Member States and EEA states with which Ireland has a double tax treaty. The losses will be available for relief "vertically upwards" from the non-resident subsidiary to the Irish-resident parent but will only be available when certain conditions - for example, in relation to the way the loss is computed and the type of loss involved - are met. Losses that are available for offset against profits in another territory, or that can be used at any time by setting them against any company's profits in the country where the loss is incurred, are not covered by the new rule.

Where the new rule is applicable, it will allow an Irish-resident parent company to offset against its taxable income the losses of an EU/EEA resident subsidiary. The legislation includes an anti-avoidance provision to disallow losses where arrangements are entered into primarily to secure an amount that would qualify for the new group relief.

Capital Gains Tax

Section 52 amends *Sections 598 and 599* in *Chapter 6 of Part 19 of the Taxes Consolidation Act 1997*. Those sections provide relief to an individual aged 55 or over who is disposing of a business or farm. *Section 598* applies to a disposal where the consideration does not exceed $\text{€}500,000$. *Section 599* applies to a disposal to a child (including certain nephews and nieces and foster children), in which case no limit applies.

- Firstly, it extends the relief, in certain circumstances, to disposals of land that has been let prior to its disposal. The land in question must have been let for

a period of not longer than 15 years ending with the date of the disposal, it must have been owned and used for farming by the individual making the disposal for a period of not less than 10 years prior to the initial letting of the land and it must be disposed of to a child within the meaning of *Section 599 of the Taxes Consolidation Act 1997*.

- Secondly, it gives effect to the Budget proposal to increase the threshold in *Section 598* from $\text{€} \frac{1}{2} 500,000$ to $\text{€} \frac{1}{2} 750,000$.
- Thirdly, it ensures that a child of a deceased child will qualify as a child for the purposes of relief under *Section 599*.
- Fourthly, it ensures that where a parent is disposing of land used for the purposes of farming to his or her child and the consideration for its disposal consists of other land, the parent acquiring this other land will be treated as having acquired the land at the date and for the consideration that the child originally acquired it and he or she will be deemed to have farmed that land for the same period that the child farmed it. The amendment will apply to disposals made on or after the date of the passing of the Act, except in relation to the increase in the threshold from $\text{€} \frac{1}{2} 500,000$ to $\text{€} \frac{1}{2} 750,000$, which amendment will apply to disposals made on or after 1 January 2007.

Section 56 amends *Section 980 of the Taxes Consolidation Act 1997*, which provides for a deduction of an amount equal to 15 per cent of the consideration paid by a purchaser to a vendor for an asset, where a clearance certificate has not been provided by the vendor and where the value of the asset being disposed of exceeds $\text{€} \frac{1}{2} 500,000$. The amendment provides that the purchaser must deliver an account of the consideration paid by him or her to the vendor, and the amount deducted from the consideration, within 30 days after the date of the payment of the consideration and remit the amount deducted by him or her to the Collector-General. If the purchaser does not do this, the Revenue Commissioners can assess him or her for the amount due, including any interest due because of late payment. The amount deducted from the consideration will, in due course, be allowed as credit in computing the capital gains tax liability of the vendor. The amendment will apply to disposals made on or after the passing of the Act.

Value-Added-Tax

Section 77 makes three amendments to *Section 5* of the VAT Act which deals with the supply of services.

- *Paragraph (a) of subsection (1) deletes subsection (6)(e)(iv)* which deals with the place of supply rule in the case of Fourth Schedule services received from abroad by a department of State, a local authority or a body established by statute in the State. The amendment ensures that such entities will not be liable for Irish VAT in respect of the receipt of foreign services such as consultancy services, legal services, etc, except where they act as taxable persons. The services should be taxed in the country from where they are supplied.
- *Paragraph (b)(i) of subsection (1) amends paragraphs (f) and (g) of Subsection (6) and involves substituting the word 'intermediary' for the word 'agent'.* The amendment is linked to the amendment in paragraph (b)(ii).
- *Paragraph (b)(ii) of subsection (1) provides for the insertion of a new paragraph (gg) in subsection (6).* This transposes *Article 44 of Council*

Directive No. 2006/112/EC in relation to the supply of services of certain intermediaries and provides that the intermediary's services concerned are taxed in the place where the underlying transaction is taxed.

The amendments in paragraph (b) have effect from 1 January 2008.

Subsection 2 provides that the amendment in paragraph (a) is subject to a commencement Order to be made by the Minister for Finance.

Section 79 amends *Section 8* of the VAT Act which deals with taxable persons.

Paragraph (a) increases the VAT registration thresholds for small businesses with effect from 1 March 2007 in line with the Budget announcement of 6 December 2006. The revised thresholds are $\text{€} \frac{1}{2} 35,000$ in the case of services and $\text{€} \frac{1}{2} 70,000$ in the case of goods.

Paragraph (b) amends subsection 8 which deals with the VAT grouping rules. The amendment is a clarification of the rules and provides for a VAT group to be considered as a "single taxable person", which aligns the text more closely with *Council Directive 2006/112/EC*. It does not impose any new obligations on the taxpayer.

Section 80 amends *Section 10* of the VAT Act which deals with the amount on which tax is chargeable. This provides that an officer of the Revenue may determine that the value on which tax is charged in relation to certain transactions between connected persons is the open market value. This is an anti-avoidance measure. It is a transposition of *Article 80 of Council Directive No. 2006/112/EC*.

Stamp Duties

Section 103 inserts a new *Section 81AA* and *Schedule 2B* into the *Stamp Duties Consolidation Act 1999* to exempt transfers of land to young trained farmers from stamp duty. The new section replaces the existing "Young Trained Farmer Relief" in *Section 81A* for instruments executed on or after 2 April 2007 and includes new education criteria and a simplified refunds procedure. Firstly, the FETAC Level 6 Advanced Certificate in Agriculture will become the new minimum education requirement from 31 March 2008. Secondly, the qualifying third-level course titles have been updated. Thirdly, the refunds procedure has been simplified with the following changes being made:

- The time limit within which young trained farmers can complete their education, following the transfer of the land, is extended from 3 to 4 years.
- The current requirement for specific minimum education attainments at the date of transfer of the land is abolished.
- The requirement that the claim for repayment of duty be made to Revenue within 6 months of attaining the educational qualification is also abolished.
- The 5 year period during which a young trained farmer is required to retain and farm the land will commence from the date the claim for repayment of duty is made to Revenue.

Finally, *Section 81AA* contains transitional arrangements which enable the educational qualifications held before the passing of the Finance Act 2007, for the purpose of the "old" "young trained farmer relief" *Sections 81* and *81A*, to be treated as educational qualifications held for the purpose of the new section.

Section 104 inserts a new *Section 81C* into the *Stamp Duties Consolidation Act 1999*. The new section will allow a farmer to claim relief from stamp duty where the farmer sells farm land and purchases farm land, in order to consolidate that farmer's holding, where both the sale and purchase of farm land occur within 18 months of each other.

The way that the relief will operate is that, where there is a purchase and sale of farm land within 18 months of each other that satisfy the "conditions of consolidation", then stamp duty will only be paid on the purchase to the extent that the value of the farm land that is purchased exceeds the value of the farm land that is sold. If the sale takes place before the purchase, then relief will be given at the time of purchase. However, if the purchase takes place first, then stamp duty will have to be paid but on the subsequent sale a claim for repayment can be made to the Revenue Commissioners.

Whether a claim for relief from stamp duty arises on a purchase of farm land where a sale of farm land has already taken place, or where relief is claimed in relation to a purchase where the sale of farm land occurs after the purchase, the following main conditions must be satisfied before relief will be granted by the Revenue Commissioners under the section:

- There must be a valid consolidation certificate issued by Teagasc in relation to the purchase and sale of land, occurring within 18 months of each other. This certificate must be submitted to the Revenue Commissioners in support of an application for relief together with the instrument giving effect to the purchase of the land and a certified copy of the instrument giving effect to the sale of the land.
- The farmer, or each of them if there is more than one, involved in the purchase of the land must each sign a declaration, for submission to the Revenue Commissioners, to the effect that the farmer will remain a farmer (i.e. will spend not less than 50% of that person's normal working time farming) and will farm the land purchased for at least 5 years from the date on which the first claim for relief in respect of the purchase of land is made to the Revenue Commissioners.
- All the joint owners of the land purchased, including the farmers, must make a declaration, for submission to the Revenue Commissioners, to the effect that it is the intention of each of them to retain ownership of their interest in the land and to use the land for the purpose of farming, for at least 5 years from the date the first claim for relief in respect of the purchase of land is made to the Revenue Commissioners.
- The instrument giving effect to the purchase of the land must be submitted to the Revenue Commissioners for adjudication.

The Minister for Agriculture and Food will make the necessary guidelines detailing how applications for consolidation certificates are to be made to Teagasc and also setting out, inter alia, the conditions of consolidation.

The relief applies to instruments executed on or after 1 July 2007 and on or before 30 June 2009. The commencement of the section is the subject of a Ministerial Order.

Section 106 amends *Section 83A* of the Stamp Duties Consolidation Act 1999 which provides that the transfer of a site from a parent to a child is exempt from stamp duty if the purpose of the transfer is for the construction of the child's principal private residence and the market value of the site does not exceed $\text{€} \frac{1}{2} 254,000$. The change being made limits the size of the site to 0.4047 hectare (i.e. one acre) exclusive of the area of land on which the child's principal private residence is to be constructed. The change applies to instruments executed on or after 1 February 2007.

Section 108 amends *Section 92B* of the Stamp Duties Consolidation Act 1999 which provides, inter alia, that a person whose marriage is the subject of a decree of divorce, judicial separation, nullity or a deed of separation may be treated as a first-time purchaser once and only once where the person buys another house to live in. The conditions for this are that the person no longer retains an interest in the former marital home and that, at the time of the new purchase, the spouse (or former spouse) of that person continues to occupy the former marital home, which was occupied by both of them prior to the decree or prior to the deed of separation being made.

This latter condition is being relaxed to provide that the spouse (or former spouse), must occupy the former marital home, as his or her only or main residence, following the granting of the decree or the making of the deed of separation, but does not necessarily have to still be occupying it at a time when the person, who originally left the marital home, purchases a new home. However, first-time purchaser relief will be denied to that person, where at the date of the decree or at the date the deed of separation is made, the person has an interest in another house/apartment apart from the former marital home.

Finally, in a case where the person, leaving the former marital home, would be denied firsttime purchaser relief on the purchase of a new home, for the sole reason, that he or she goes ahead and purchases a new home in anticipation of, but prior to, the actual grant of the decree or the making of the deed of separation, that person can apply to the Revenue Commissioners for a repayment of the stamp duty paid on the purchase of the new home, where, subject to complying with certain conditions, the purchase is made in connection with, and within 6 months of, the granting of the decree or the making of the deed of separation. All changes made apply to instruments executed on or after 1 February 2007.

Section 109 amends *Part 6* of the Stamp Duties Consolidation Act 1999 which contains the provisions relating to the transfer of uncertificated securities through the Crest electronic settlement system. The purpose of the change is to replace the existing "market maker relief", "broker/dealer relief" and "closings relief" with a new

intermediary relief for certain trades of members of exchanges and markets. In addition, a new exemption for transfers to and from a central counterparty, commonly known as a "CCP", in specified circumstances, is also contained in the section. This section is to be commenced by Ministerial Order.

Section 110 makes a number of amendments to the *Stamp Duties Consolidation Act 1999*. It inserts three new sections, *Sections 31A, 31B and 50A*, and makes consequential amendments.

The new *Section 31A* provides that a charge to stamp duty will arise in respect of a contract or agreement for the sale of an estate or interest in land in the State where 25 per cent or more of the consideration has been paid under that contract or agreement. The charge will arise where a conveyance of the lands has not been presented for stamping within 30 days after the relevant amount of consideration has been paid. This new section also provides that where stamp duty has been paid in respect of a contract or agreement, in accordance with the new section, a conveyance or transfer made in conformity with that contract or agreement will not be liable to stamp duty and the Revenue Commissioners will, on application made to them, either denote the payment of the duty on the conveyance or transfer or will transfer the duty to the conveyance or transfer on production to them of a stamped contract or agreement.

The new *Section 31B* provides that a charge to stamp duty will arise where the holder of an estate or interest in land in the State enters into an agreement with another person under which that other person is allowed to carry out development on that land and 25 per cent or more of the market value of the land is paid to the holder of the landowner, other than as consideration for the sale of all or part of the land. The charge will arise within 30 days after the relevant amount of the consideration has been paid.

The new *Section 50A* provides that an agreement for a lease for more than 35 years will be liable to the same duty as if it were an actual lease made for the term and consideration mentioned in the agreement where 25 per cent or more of that consideration has been paid. The duty will be payable by the person who has paid the consideration. Consequential amendments are made to delete *Section 36 of the Stamp Duties Consolidation Act 1999* (which provides that certain contracts for the sale of leasehold interests are charged to stamp duty as conveyances on sale) and to ensure that a lease executed in conformity with an agreement for a lease for more than 35 years will be liable to a duty of $\frac{1}{2}\text{€}12.50$ only. The section is subject to a commencement order by the Minister for Finance.

Capital Acquisitions Tax

Section 113 amends *Section 18 of the Capital Acquisitions Tax Consolidation Act 2003*, which provides that where all the assets comprised in each class of discretionary trust are appointed absolutely to one or more of the beneficiaries of those trusts within 5 years after the date when the charge arose, the tax charged in respect of each of the trusts will be reduced from 6% to 3%. The amendment, which arises as a result of a decision of the High Court last year, ensures that the reduced rate of tax will apply where all the assets are appointed absolutely to one or more of the beneficiaries of a discretionary trust created under a deceased person's will

within the period of 5 years after the date when the assets were transferred by the executors to the trustees of the discretionary trust, where none of the principal objects (i.e. the disponent's spouse, his or her children and certain grandchildren) of the trust was under the age of 21 years on the relevant date. The amendment will apply to inheritances deemed to be taken on or after 1 February 2007.

Section 114 amends Section 21 of the Capital Acquisitions Tax Consolidation Act 2003, which applies certain provisions of the Act to the 1% levy imposed on certain discretionary trusts. The amendment deletes provisions that are redundant as a result of a decision of the High Court last year in relation to when the 1% levy arises in respect of a discretionary trust created under a deceased person's will. The amendment will apply to inheritances deemed to be taken on or after 1 February 2007.

Section 116 amends Section 86 of the Capital Acquisitions Tax Consolidation Act 2003, which grants exemption (subject to certain conditions) in respect of a house comprised in a gift or an inheritance. One of the conditions for obtaining the exemption is that the beneficiary must have resided in the house for a period of at least 3 years prior to the date of the gift or inheritance. Where that house has replaced other property, the beneficiary must have resided in that house and the other property for periods which together comprised at least 3 years in the 4-year period immediately preceding the date of the gift or inheritance. The amendment ensures that any period during which a beneficiary of a gift of a house occupied a house that was during that period the disponent's only or main residence will not be treated as a period of occupation prior to the date of the gift unless the disponent is compelled, by reason of old age or infirmity, to depend on the services of the beneficiary for that period. It also ensures that the house which is gifted, or any house which it has replaced, must be owned by the disponent for the relevant 3-year period prior to the date of the gift. The amendment will apply to gifts taken on or after 20 February 2007.

Section 117 amends Section 89 of the Capital Acquisitions Tax Consolidation Act 2003, which grants relief at 90% in respect of the market value of agricultural property comprised in a gift or inheritance taken by a "farmer". A "farmer" means an individual in respect of whom not less than 80% of his or her assets, after taking a gift or inheritance, consist of agricultural property on the valuation date of a gift or inheritance. For the purposes of the 80% test, no deduction is allowed from the market value of property for borrowings in respect of that property. The amendment gives effect to the Budget proposal to allow borrowings to be deducted against the value of off-farm principal private residences for the purposes of the 80% "farmer" test. The amendment will apply to gifts and inheritances taken on or after 1 February 2007.

Miscellaneous

Section 121 provides for a reduction from 6 months or 183 days to 93 days in the period which must elapse, after the receipt of a valid claim, before Revenue is required to pay interest on overpayments. The shorter period applies for repayments arising after the passing of the Act.

Section 124 amends *Chapter 4 of Part 38 of the Taxes Consolidation Act 1997* that sets out various investigation powers that are available to the Revenue Commissioners. The purpose of this amendment is to help to make a person, under investigation by the Revenue Commissioners, aware as to whether that investigation is for the purposes of establishing a tax liability or with a view to criminal proceedings. The section introduces a power that enables Revenue, when investigating with a view to initiating criminal proceedings, to apply to a judge of the District Court for a search warrant. As a consequence of the introduction of this power specifically targeted at criminal investigations, consequential amendments are being made to the existing power to apply for a search warrant under *Section 905(2A)*.

In addition, in order to avoid the necessity to apply for a search warrant in inappropriate circumstances (e.g. when seeking information from an unconnected third party) the section introduces a power to apply to a judge of the District Court for an order requiring the person named therein to supply specified information to the Revenue Commissioners, when they are carrying out an investigation with a view to initiating criminal proceedings.

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