

Revenue Commissioners

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Taxation of Married Couples

Cases Involving Non-Residence

Introduction

The charging to tax of the assessable spouse in respect of the joint total incomes of both spouses in accordance with *Section 1017 Taxes Consolidation Act [TCA 1997]* is more commonly known as the 'aggregation basis of assessment' or 'joint assessment'.

Arising from a commitment given at a recent TALC Direct Tax Subcommittee meeting, this article outlines the Revenue practice regarding the application of the aggregation basis of assessment where one spouse is, or both spouses are, non-resident.

Statutory Position

Entitlement to the married personal tax credit and double rate bands is dependent upon the assessable spouse being chargeable to tax in respect of the joint total incomes of both spouses in accordance with *Section 1017 TCA 1997*. This view was upheld in the High Court in the tax case of *McConnologue v Fennessy [1995 ITR 133]*.

Non-statutory Practice as regards tax credits and rate bands.

Tax Treatment where only one spouse is resident in the State and that spouse has income chargeable to tax in the State.

Where only one spouse is resident in the State and in receipt of income chargeable to tax in the State, the statutory position is that he/she :

- is chargeable to tax on that income on the basis of separate treatment as a single person; and
- is entitled to the single person's tax credits and reliefs.

However, in cases where:

- only one spouse is resident in the State;
- that spouse has income chargeable to tax in the State, and
- the non-resident spouse has no income (i.e. the earnings of the spouse working in the State are the only source of income of the couple)

then, by way of practice, aggregation basis may be applied in the normal way (i.e. the Married Persons Tax Credit and the increased rate band should be given accordingly).

Even if the non-resident spouse has income, a measure of relief may, depending of the level of that income, be due where the Irish tax payable under separate treatment in respect of the income chargeable to Irish tax exceeds the tax that would have been payable in respect of that income if the total income of both spouses had been chargeable to tax on the basis of aggregation. [See Example 1](#) (below).

To avail of this practice, the married couple should make a specific election for aggregation basis; and the spouse with income chargeable to Irish tax should be

requested to give details of the couple's total incomes (i.e. the income of both spouses, including income not chargeable to Irish tax).

Cases where both spouses are non-resident but one spouse has income chargeable to tax in the State

The most common type of case in which this situation will arise is that of a spouse who is a cross-border worker or who is working in this country on a temporary assignment.

Where neither spouse is resident in the State but one spouse is in receipt of income chargeable to tax in the State (e.g. income from exercising an employment here), the statutory position is that he/she :

- is chargeable to Irish tax on that income on the basis of separate treatment as a single person; and
- may be granted the single person's tax credits and reliefs, or a proportion thereof, in accordance with the provisions of *Section 1032 TCA 1997*.

Where entitlement to tax credits derives from *Section 1032 TCA 1997*, any apportionment of the allowances, etc. is carried out by reference to the world income of the spouse with the Irish source. The income of the other spouse should not be taken into account.

[Note: As regards *Section 1032*, residents of another Member State of the European Union are entitled to full personal tax credits and reliefs in respect of any tax year in which 75% or more of their worldwide income is taxable in Ireland.]

However, in cases where

- both spouses are non-resident;
- one spouse has income chargeable to tax in the State; and
- the other spouse has no income (i.e. the earnings of the spouse working in the State are the only source of income of the couple),

then, by way of practice, aggregation basis may be applied in the normal way (i.e. the Married Persons Tax Credit and the increased rate band should be given accordingly).

Even if the other spouse has income, a measure of relief may, depending of the level of that income, be due where the Irish tax payable under separate treatment in respect of the income chargeable to Irish tax exceeds the tax that would have been payable in respect of that income if the total income of both spouses had been chargeable to tax on the basis of aggregation. [See Example 2](#) (below).

To avail of this practice, the married couple should make a specific election for aggregation basis and the spouse with income chargeable to Irish tax should be requested to give details of the couple's total incomes (i.e. the income of both spouses including income not chargeable to Irish tax).

Example 1

In 2007, an individual has income of 45,000 from an Irish employment. His spouse, who is non-resident, has foreign investment income of 10,000.

His income tax liability on the basis of separate treatment is -

Earnings	45,000
34,00 @ 20%	6,800
11,000 @ 41%	4,510
	11,310
Tax Credits	
Personal Credit	1,760
PAYE Credit	1,760
	3,520
Liability	7,790

The notional tax liability on the total income of the spouses on the basis of aggregation would be -

Earnings (husband)	45,000
Investment Income (wife)	10,000
	55,000
53,000 @ 20%	10,600
2,000 @ 41%	820
	11,420
Tax Credits	
Personal Credit	3,520
PAYE Credit	1,760
	5,280
Liability	6,140

The tax attributable to the Irish income is -
6,140 x

$$\frac{45,000}{55,000}$$

$$= 5,023$$

The aggregation relief is -
7,790 - 5,023 = 2,767

The individual's final liability is, therefore, as follows -

- Income tax on the basis of separate treatment 7,790
- Less aggregation relief 2,767
- Net liability 5,023

During the tax year, the estimated aggregation relief may be granted in the individual certificate of tax credits.

Example 2

For 2007, a husband and wife are resident in the United Kingdom. The husband has income of 25,000 from an Irish non-proprietary directorship and 26,000 from a U.K. employment. The wife has no income. The husband's income tax liability on the basis of separate treatment and relief under *Section 1032, TCA 1997*, is -

Irish Directorship		25,000
25,000 @ 20%		5,000
Personal Credit		
1,760*(25,000/51,000)	863	
PAYE Credit		
1,760*(30,000/62,000)	863	1,726
Total		3,274

The notional tax liability on the total income of the spouses on the basis of aggregation would be

Irish Directorship	25,000
U.K. Employment	26,000
	51,000
43,000 @ 20%	6,400
8,000 @ 41%	3,280
	9,680
Personal Credit	3,520
PAYE Credit	1,760
	5,280
9,680 - 5,280	4,400

The tax attributable to the Irish income is - 4,400 x

$$\frac{25,000}{51,000}$$

$$= 2,157$$


The aggregation relief due is -

$$3,274 - 2,157 = 1,117$$

The individual's final liability is, therefore, as follows -

- Income tax on the basis of separate treatment 3,274
- Less aggregation relief 1,117
- Net liability 2,157

In relation to *Example 2*, it should be noted that the procedures outlined are ancillary to and not in substitution for *Section 1032 TCA 1997*. Where the normal operation of *Section 1032 TCA 1997* (applied on the basis of a single treatment) produces a lower liability, that liability should not be increased by reference to these procedures (e.g. if in *Example 2*, the tax attributable to the Irish income exceeded the tax on the

Irish directorship as shown in the first computation [3,274], the tax due should not be increased by the excess) 

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Key Dates 2007

November 2007

14 PAYE/PRSI

P30 monthly return and payment for October 2007

14 DWT

Return and payment of DWT for October 2007

14 PSWT

F30 monthly return and payment for October 2007

14 RCT

RCT 30 monthly return and payment for October 2007

19 VAT

VAT 3 return plus any payment for period September/October 2007

1-21 Corporation Tax

PT for APs ending between 1-31 December 2007

Returns for APs ending between 1-28 February 2007

Pay balance due on APs ending between 1-28 February 2007

1-30 Corporation Tax

Returns of Third Party Information for APs ending between 1-28 February 2007

December 2007

14 PAYE/PRSI

P30 monthly return and payment for November 2007

14 DWT

Return and payment of DWT for November 2007

14 PSWT

F30 monthly return and payment for November 2007

14 RCT

RCT 30 monthly return and payment for November 2007

1-21 Corporation Tax

PT for APs ending between 1-31 January 2008

Returns for APs ending between 1-31 March 2007

Pay balance due on APs ending between 1-31 March 2007

1-31 Corporation Tax

Returns of Third Party Information for APs ending between 1-31 March 2007 

January 2008

14 PAYE/PRSI

P30 monthly return and payment for December 2007

14 DWT

Return and payment of DWT for December 2007

14 PSWT

F30 monthly return and payment for December 2007

14 RCT

RCT 30 monthly return and payment for December 2007

19 VAT

Bi-Monthly VAT 3 return and payment (if due) for period November/December 2007.

Total VAT payments greater than 14,001 for the year.

Bi-Annual VAT 3 return and payment (if due) for period July-December 2007.

Total VAT payments less than 3,000 for the year.

4 Monthly VAT 3 return and payment (if due) for period September-December 2007.

Total VAT payments between 3,000 and 14,000 for the year.

1-21 Corporation Tax

PT for APs ending between 1-29 February 2008

Returns for APs ending between 1-30 April 2007

Pay Balance due on APs ending between 1-30 April 2007

1-31 Corporation Tax

Returns of Third Party Information for APs ending between 1-30 April 2007

31 Capital Gains Tax

Payment due on gains arising between 1 October 2007 to 31 December 2007

Claims for Research and Development (R&D) Tax Credit Projects Approved for Research Technology & Innovation [RTI] Grants from Enterprise Ireland

Background

Section 766 TCA 1997 provides for a tax credit of 20% of incremental expenditure by a company or group of companies on research and development (R&D). Expenditure on buildings is not taken into account in calculating the incremental expenditure.

Section 766A

contains rules for the treatment of expenditure on buildings. The purpose of this article is to simplify administrative procedures for smaller claims in receipt of Research Technology & Innovation (RTI) grants from Enterprise Ireland.

Definition

“Research and development activities” is defined in *Section 766A* 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 be 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.

Examination of a Claim

The process of examining a claim may be considered by reference to two criteria:

- **The Science Test:** that the activities under review are consistent with the statutory definition of research and development activities.
- **The Accounting Test:** that the expenditure claimed as being laid out on qualifying research and development activities is correctly so claimed.

Experts within a claimant company should have no difficulty in deciding whether the *Science Test* is satisfied. In the absence of in-house expertise in specialised fields of science and technology, it has been necessary for Revenue to employ experts to provide opinion as to whether an activity would satisfy the *Science Test*.

Compatibility with RTI Grants

In broad terms, the definition of R&D contained in *Section 766 TCA 1997* and the Enterprise Ireland grant-aided scheme for RTI grants are comparable and are both based on the OECD Frascati definition. Unlike the tax credit relief, the RTI scheme does not explicitly require that activities seek to achieve scientific or technological advancement. However, a requirement that a project must represent an advance in the level of technical innovation relative to the company's current products/processes is quite similar. The receipt of such a grant is thus a strong indicator of eligibility for the tax credit.

With a view to simplifying administrative procedures for smaller claims and minimising the need to engage experts to verify tax credit claims, it has been decided that Revenue would not, as a rule, seek to independently/separately have a claim in respect of smaller projects examined by an expert, where an Enterprise

Ireland RTI grant has been approved in respect of the project. This practice will apply where:

- the project has been the subject of an RTI grant, and
- the R&D tax credit claimed for an accounting period (of not less than 12 months) is €50,000 or less, and
- the project is undertaken in a prescribed field of science or technology, as defined in regulations (S.I. No. 434 of 2004).

Limits to Practice

This treatment applies only to RTI grants administered by Enterprise Ireland and not any other grant, whether for R&D or otherwise. Companies may claim a tax credit, up to and including the amount indicated, in respect of activities arising in a number of projects. Not all of those activities or projects will be granted. Therefore the receipt of a grant would not be an indication that the entire claim qualifies for the credit.

Moreover, in respect of grant-aided and other projects, all the claimed cost will not necessarily qualify. Where an R&D tax credit is claimed for an accounting period, all claims examined in the course of a Revenue audit must be subjected to the accounting test to ensure that costs correctly attributable to other activities are not included as R&D costs and that any allocations of cost are reasonably and correctly so allocated. Revenue may from time to time, on a risk basis, check a number of claims supported by RTI grants.

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

Isolde Hampson,

Direct Taxes Interpretation and International Division,

Stamping Building,

Dublin Castle,

Dublin 2

E-mail: ihampson@revenue.ie

Lump Sum Payments & Top Slicing Relief

Introduction

Arising from recent discussions, there is a change in the calculation of Top Slicing Relief (TSR) on the taxable element of a termination payment in cases where either joint assessment or separate assessment applies.

Background

The purpose of TSR is to ensure that the taxable element (i.e. the gross payment less the exempt amount) of a payment made on termination of an office or employment is not taxed at a rate greater than the taxpayer's average rate of tax for the three income tax years prior to the tax year in which the termination payment refers.

The calculation of TSR is determined by the formula $A - (P \times T/I)$ where

- A is the tax chargeable on the taxable portion of the lump sum;
- P is the taxable lump sum;
- T is the total amounts of income tax payable for the three years preceding the tax year to which the termination payment refers; and
- I is the total amount of taxable income for the three years preceding the tax year to which the termination payment refers.

When calculating TSR in joint assessment cases, the practice to date has been to:

- determine A above by reference to the tax chargeable on the couple's joint income;
- include both spouses' income for the purposes of I ; and
- include the tax payable on the couple's joint income for the purposes of T .

When calculating TSR in separate assessment cases, the practice to date has been to calculate TSR based on separate assessment reviews with the overriding principle that the taxpayers are neither better off nor worse off than if joint assessment had applied. In other words, a separate calculation was carried out to ensure the TSR was the same as would apply in joint assessment cases.

Current Issue

The question was raised in the course of recent discussions as to whether elements A , T and I of the TSR formula should, in joint assessment cases, be determined by reference to either

- the joint total incomes and tax payable of both spouses; or
- only the total income and tax payable of the spouse in receipt of the termination payment.

Revenue now accepts that TSR may be calculated by reference to whichever of the two above is more favourable for the taxpayer.

The new procedure applies to married couples who are jointly assessed or who are taxed under separate assessment within joint assessment (*Section 1023 of the Taxes Consolidation Act 1997*) but does not apply to married couples who, for the

relevant tax years, have elected to be treated under *Section 1016 of the Taxes Consolidation Act 1997* as not married for tax purposes.

Cases already settled will not be re-opened unless there is, subject to the four-year time limit on claims for repayment, a specific request from the customer.

Current Issue

John and Mary are a married couple who have been assessed to tax under joint assessment for all relevant tax years.

On 30th April 2006, Mary (the non-assessable spouse) was made redundant and received a termination payment, the taxable element of which, after exemptions, was 90,000. Their income for all relevant years is as follows -

	Emoluments Assessable Spouse	Emoluments Non-assessable Spouse
2003	60,000	25,000
2004	70,000	25,000
2005	80,000	25,000
2006 Taxable Element of lump sum	90,000	10,000 90,000

Computation under Joint Assessment:

Married Personal Tax Credit and PAYE tax credits are due each year

Year	Taxable Income	Tax Payable
2003	85,000	18,740
2004	95,000	22,460
2005	105,000	25,464
Total	285,000	66,664

Tax chargeable (A) on the taxable portion of the lump sum in 2006 is 34,940. The *Top Slicing Relief* ($A - (P \times T/I)$) is -
 $34,940 - (90,000 \times$

$$\frac{66,664}{285,000}$$

$$= 13,888.21$$

Notional Computation as if Separate Assessment applied (under which only the income and tax of the spouse receiving the termination payment is taken into account):

Single person's Tax Credit and PAYE credit due

Year	Taxable Income	Tax Payable
2003	25,000	2,680
2004	25,000	2,440
2005	25,000	2,150
Total	75,000	7,270

Tax chargeable (A) on the taxable portion of the lump sum in 2006 is 32,960. The *Top Slicing Relief* is:
 $32,960 - (90,000 \times$

$$\frac{7,270}{75,000}$$

$$= 24,236$$

Under these circumstances, the more beneficial *Top Slicing Relief* of 24,236 should be allowed.

Final Computation for 2006:

Joint

Income - Assessable Spouse	90,000
Income - Non-assessable spouse	
(10,000 + 90,000)	100,000
Total Income	190,000

64,000 @ 20%	12,800
126,000 @ 42%	52,910
	65,720

less credits

Personal Credit	3,260	
Paye Credit		2,980
	6,240	

Tax Liability		59,480
Top Slicing Relief	24,236	
Net Liability		35,244

Separate Assessment - Assessable Spouse

Income- Assessable	90,000
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32,000 @20%	6,400
58,000 @42%	24,360
	30,760

less credits

Personal Credit	1,630	
Paye Credit		1,490
	3,120	

Liability	27,640
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Separate Assessment - Non Assessable Spouse

Income- Assessable	100,000
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32,000 @20%	6,400	
68,000 @42%	28,560	
	34,960	
less credits		
Personal Credit	1,630	
Paye Credit		1,490
	3,120	
Tax Liability	31,840	
Top Slicing Relief	24,236	
Net Liability	7,604	

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Tour Operators and VAT

Introduction

For the purpose of this article, a 'tour operator' is a person who, as a principal, supplies 'package holidays' (transport, accommodation and related services) outside of this State to its customers. Typically, a tour operator will own or lease the aircraft and the holiday apartments that form the basis of the package. This position differs from that of a travel agent, who only acts as an agent in booking transport or accommodation on behalf of a customer.

Previous Position

Prior to 1979, tour operators were treated as carrying on qualifying activities and were entitled to claim repayment of VAT on their inputs. Travel agents, however, were exempt, with no entitlement to claim such repayment. Following the transposition of the EU Sixth Directive into national law, Revenue and representatives of tour operators agreed that tour operators were to be treated in the same manner as travel agents with effect from 1 March 1979. Since then, tour operators have been treated as being exempt from VAT and, as such, were not entitled to claim repayment of VAT incurred on expenses.

Revised treatment

Following a decision in principle by the Appeal Commissioner, Revenue has accepted that tour operators, who had previously been treated as exempt, may now be entitled to claim repayment of Irish VAT on their inputs in respect of their transport and accommodation services supplied outside of this State.

It should be noted that tour operators - including those established outside of this State who supply accommodation services in this State - are no longer treated as carrying on exempt activities. Accordingly, such tour operators must register for VAT in respect of the accommodation services supplied in this State unless they are accounting for VAT on these services under the EU Special Scheme for travel agents in another Member State.

Claims for repayment for prior years

All claims to repayment of VAT must be supported by an explanation of the circumstances in which they have arisen, together with a detailed computation of how each claim has been calculated.

It should be noted that any claims to repayment of VAT 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:

Claims relating to taxable periods ending before 1 May 1998

- 10 years, *where the claim is made before 1 May 1999.*
- 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.

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.*
- 4 years *where the claim is made on or after 1 January 2005.*

Claims relating to taxable periods ending on or after 1 May 2003

- 4 years.

Revenue will treat a letter from a tour operator, which notifies 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 30 April 2007, subject to full details of the claim(s) now being provided.

Documentation in support of the claim

Any tour operator who claims repayment of VAT, on the grounds that he/she has supplied 'qualifying services', will be required to provide the following:

- Copies of all agreements with carriers which support the claim that the tour operator is/was supplying, as principal, transport of passengers outside of this State.
- Evidence of ownership of accommodation outside of this State which is/was supplied to its customers, or

Copies of any agreements with the accommodation providers in other States, which support the claim that accommodation was provided outside of this State by the Irish Tour Operator as principal.

- Confirmation that repayment of VAT was not claimed by the tour operator, in respect of the tour operator business, from any other Member State under the *Eighth Council Directive 79/1072/EEC*.
- Evidence that the tour operator was liable to income/corporation tax in other States in respect of the profits from the provision of accommodation as principal in those other States.

Entitlement to input credit

Credit is allowable for VAT incurred on goods and services insofar as the goods and services are used for the purposes of the 'tour operator's qualifying activities', subject to the usual restrictions set out in *Section 12(3) of the VAT Act 1972*.

Credit is not allowable for VAT incurred on goods and services insofar as the goods and services are used for the purposes of the tour operator's exempt supplies, if any (e.g. travel agency services or foreign exchange services).

Where VAT is incurred on goods or services used for the purposes of the tour operator's exempt supplies and qualifying activities (dual-use goods/services), credit is allowable for the proportion of the VAT incurred which correctly reflects the extent to which the dual-use goods/services are used for the purposes of the tour operator's qualifying activities. (See Revenue leaflet [A Guide to Apportionment of Input Tax](#)).

How to calculate the amounts of the repayments

Where the tour operator has not claimed input credits for prior years, Revenue is prepared to accept repayment claims calculated according to the methodology set out hereunder:

Step 1

Identify the total amount of input VAT incurred in the relevant period.

Step 2

Reduce this figure by the following:

- the amount of VAT which is non-deductible in accordance with *Section 12(3) VAT Act*,
- the amount of VAT referable to any exempt activity carried on by the tour operator,
- the proportion of the amount of VAT incurred on dual-use goods/services referable to the exempt activities carried on, if any.

Example 1: Period January to December 2005 (Taxable and Exempt activities)

Input VAT		â,−50,000
Less		
VAT on nondeductible items (<i>Section 12(3)</i>)	â,−2,000	
VAT referable to exempt activities	â,−1,000	â,−3,100
VAT exempt portion of dual use inputs	â,−100	
Total refundable		â,−46,900

Example 2: Period January to December 2005 (No exempt activities)

Input VAT		â,−50,000
Less VAT on non-deductible items (<i>Section 12 (3)</i>)		â,−2,000
Total refundable		â,−48,000

Interest

Interest is payable by Revenue in relation to repayment claims in accordance with *Section 21A of the Value-Added Tax Act 1972* (as amended). Tour operators should submit their computation of interest payable with their claims.

Adjustments to repayment claims to take account of income tax/corporation tax liabilities

Tour operators will have claimed a deduction for income tax or corporation tax purposes in respect of VAT borne on the provision of tour operator services that are now the subject of a VAT repayment claim. Accordingly, adjustments will be required to the income tax/corporation tax liability for the relevant years/accounting periods arising from any repayment of VAT made to the taxpayer. Rather than re-opening prior years of assessment/accounting periods to give effect to these adjustments, the VAT repayment plus interest to be made for the years/periods in question should - for ease of administration - be reduced by the amount of the additional income tax/corporation tax that falls due.

Claims already submitted

Some tour operators may have already lodged claims to repayment of VAT to the Accountant General VAT Repayments or their local Revenue District. The required documentation (as specified above) should now be submitted in support of claims. The Revenue office to which the claims were made will be in contact with the tour operator in the near future.

Position from 1 May 2007

All claims to repayment by tour operators for future periods should be submitted to:

*Office of the Revenue Commissioners,
Strategic Planning Division,
VAT Unregistered Repayments,
3rd Floor, River House,
Charlotte Quay,
Limerick.*

Telephone: Lo-call 1890 252449 or 00353 61 212799

Fax: 00353 61 402125

Email: unregvat@revenue.ie 

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The Revenue Technical Service (RTS)

The Revenue Technical Service - (RTS) was launched in June 2007 in order to give a better service to practitioners and business taxpayers in dealing with their complex technical queries.

Guidelines

In advance of launching the service, Revenue consulted with practitioner representatives and agreed a set of Guidelines for the operation of the service.

These can be accessed on the following link -

http://www.revenue.ie/en/practitioner/rts_guidelines.pdf. The guidelines also contain the contact details of the Revenue staff who are managing the RTS service at local level. The person who initially deals with the queries is called a Queries Management Officer (QMO) and their secure email and postal addresses are included in the guidelines.

Secure email

Queries can be sent in the form of secure emails or letters; phone or fax queries are not accepted. The secure email facility was set up specially for the RTS and guarantees that emails sent this way will be safe from interception or hackers. This means that PPSNs, tax reference numbers, names and any other confidential information remains safe from unauthorised disclosure. To date, there have been nearly 1,200 registrations for the service. The instructions for registering with, and accessing, secure email are on the Revenue website - www.revenue.ie and can be found on the [for BUSINESSES](#) or the [for PRACTITIONERS](#) pages.

What queries?

The RTS was not set up to answer simple questions. If the answer can be found on the Revenue website, in the taxes acts or in standard taxation textbooks or articles, then the query is not appropriate to the RTS.

It was also agreed, from the outset, that the RTS would only deal with case-specific, nonhypothetical, complex technical queries. This means that the customer's PPSN or tax reference number and their name must be given and the query must be of a high level of technical difficulty. QMOs will reject queries that do not fulfil these requirements and either return them to the practitioner/taxpayer or refer them to the relevant District.

Some queries will end up being sent to the customer's local Revenue District for direct follow-up with the practitioner/taxpayer. QMOs decide if queries can be replied to at District level based on the level of complexity involved. The types of queries that have been forwarded to Districts include queries about CGT retirement relief, the appropriate VAT rate to charge on services provided or the applicability of capital allowances in particular circumstances. If a query is being sent to a local District for follow-up, the QMO will tell the practitioner/business taxpayer that this has been done and will let them know who is dealing with the query at the local level.

A query that is sufficiently technical and complex for the RTS is routed to the appropriate RTS expert in the region. The expert will make a decision on the query and the QMO will reply to the practitioner/taxpayer. It may transpire that the query raises issues (perhaps precedential, policy-related or of sufficient complexity) which require the expert to consult internally with the appropriate tax or duty specialists in Revenue's central interpretation divisions with responsibility for deciding on policy/precedent matters.

However, certain queries will not be dealt with by the RTS. Cases belonging to the Large Cases Division will continue to be handled only by the LCD case manager. Equally, questions relating to debt management will continue to be dealt with by the Collector-Generals Division, customs issues will be handled by the Customs Division in Nenagh, and some excise issues will be handled by Indirect Taxes Division in Dublin Castle.

By mid-October 2007, in excess of 250 RTS queries had been received from practitioners.

Advance Opinions


The main purpose of the new Revenue Technical Service is to help those engaged in preparing tax returns and payments to do so accurately and in time. Accordingly, there should be a limited number of circumstances where a practitioner or taxpayer requests an opinion in advance of a transaction actually taking place. In general, the RTS will not offer such opinions. However, there are some instances (e.g. a company restructuring, an inward investment issue or a complex VAT or stamp duty issue) when the RTS is prepared to offer an opinion. In these cases, the additional information requirements and undertakings are set out in *Appendix C* of the Guidelines.

Given that the RTS was established to deal with complex technical queries and will, in some instances, give an advance opinion in accordance with the Guidelines, it is appropriate to amend previous references to advance opinions in earlier **Tax Briefings**. The contact details for advance opinions included in the following articles should be replaced by the RTS. The other information in the articles, particularly as regards the information that should be included in a submission seeking an advance opinion, remains valid. The following table sets out the relevant **Tax Briefing** issues that are now to be taken as referring to the RTS:

TB Issue and Date	Page ref	Topic
48 June 2002	pages 15-17	Company Amalgamations & Reconstructions - if Ss 586, 587, or 624 TCA apply
44 June 2001 51 January 2003	pages 34-35 page 6	Partition of Family Trading Companies and Family Trading Companies
25 February 1997	pages 9-10	Company Buy-Back of Shares - Trade Benefit Test

It should be noted that an advance opinion is only a preliminary view based on the specific information provided; the position will only be known with certainty after the events have taken place. The issue of an advance or pretransaction opinion will not prevent a possible review of the case by Revenue at a later date and the appropriate tax treatment being decided on the basis of the information available at that time. In particular it should be noted that an advance opinion is given on the basis that it is not part of a tax avoidance scheme.

Further Information

The Guidelines on Revenue's Service to *Practitioners and Business Taxpayers* describes how the RTS operates and gives the contact points such as the QMOs in each region 

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Foreign Effective Rates (with effect from 1 January 2007)

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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%
France	43%
Germany	37%
Italy	43%
Japan	44%
Luxembourg	35%

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.

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Double Taxation Relief

Legal and General Case and Related Issues

In the recent past, there has been discussion amongst tax practitioners regarding the impact of the decision in the case of *Legal & General Assurance Society Limited v Commissioners for Her Majesty's Revenue and Customs (HMRC) [2006] EWHC 1770*, on the computation of Double Taxation Relief [DTR] for Irish tax purposes. The enactment of *Sec 63 Finance Act 2006* has further extended the discussion. The purpose of this article is to deal with the matter from a Revenue perspective.

Legal and General Case

It has been suggested that the above case can be interpreted in such a way as to permit the offset of DTR against income generally, as opposed to foreign income specifically. No basis for such interpretation is to be found in the report of the case; in fact, the decision would appear to affirm the view that double tax relief can be available only to the extent that income has suffered double taxation. In this connection, one should note paragraph 39 of the Chancery Division judgement and, in particular, the following extract:

It is clear that that phrase when used in Sec 795(2) must mean the income computed for the purposes of foreign tax grossed up under paragraphs (a) and (b) by the amount of foreign tax or underlying foreign tax. It seems to me that Sec 797 is to be construed as placing a ceiling on the credit for foreign tax obtainable by a taxpayer, which equates to the United Kingdom corporation tax, at the appropriate rate, (here 33%), chargeable on the income received from abroad grossed up by any tax deducted at source or underlying tax which it suffered at source.

This view is again confirmed in the actual ruling on the first point at issue - see paragraph 42 (the point on which Legal and General were successful):

If double taxation is to be eliminated in circumstances similar to those of the example, it must follow that the taxpayer should be entitled to credit against the UK corporation tax thrown up by its computation, for foreign tax paid in the relevant period of assessment, such credit to be limited only so that the foreign tax cannot exceed the UK tax which would have been chargeable on that income.

Based on the above, the only issue which was ruled on by the Court was the question as to whether the 'gross' or 'net' basis should apply in the granting of double taxation relief; and it was found, in the UK context, that the gross basis could apply because 'income' was not so defined under UK statute as to permit application of a net basis. The position in Ireland is fundamentally different and has been since the mid 1990s. The definition of 'income' per *Schedule 24* refers back to the definition in accordance with the *Taxes Acts* - which, in the Case 1 context, clearly means *gross receipts less expenses*. Therefore the net basis is the only basis that was open in Ireland, and this continues to be the case subsequent to the *Legal and General* decision because of the construction of the Irish legislation.

Section 63 Finance Act 2006

Prior to the amendment in *FA 2006*, even though the *net* basis applied, there was no

direction as to how expenses were to be set against *gross* receipts and therefore it was open to argue that in certain cases 'attribution' rather than 'turnover' should apply in arriving at net income. As a matter of practice the 'turnover' basis generally applied in the absence of a case for an alternate attribution of expenses. The 2006 amendment settles the 'turnover'/'attribution' issue going forward, but has no implication as to the correctness of the net basis in prior years. 📌

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Revenue Online Service (ROS)

Mandatory Electronic Filing of Returns

Revenue is to begin a detailed and widespread consultation process with tax practitioners, industry representative bodies, software providers and customers with a view to introducing a requirement that tax returns and payments for specific categories of taxpayers must be made electronically through ROS. The consultation process will aim to achieve as much consensus as possible on the scope of mandatory electronic filing and payments as regards who will be affected, what returns will be included and the timescale over which it will be implemented.

Legislation providing for mandatory electronic filing and payment was passed by the Oireachtas in the *2003 Finance Act*, subject to a Commencement Order to be made by the Minister for Finance. Once the consultation process is completed and the necessary Commencement Order has been made by the Minister, Revenue will then make regulations governing the implementation of mandatory electronic filing and payment.

PAYE anytime

From January, agents will have access to PAYE anytime. This new facility will allow agents to claim tax credits or reviews for clients.

Form 11

There will be some changes to the screens for the *Form 11 2007*. The screens have been modernised to facilitate customers and Revenue compliance with the National Disability Authority guidelines. Some of the changes are set out here.

The *Form 11* will open on the **Personal Details** screen. Personal Details are mandatory and customers cannot access other screens until the Personal Details screen is completed.

Revenue On-Line Service

FORM 11 - 2007

Personal Details

Personal Details Help

* Denotes a required field

Status

*Please indicate your marital status:

Married [Go]

After updating Marital Status please click the 'Go' button. This will clear all data entered on the form.

If your personal circumstances have changed in 2007 please indicate:

-Previous Status []

-Date of change in status []

Number of Dependent Children []

Date of Birth (dd/mm/yyyy) []

*Select item to indicate basis of assessment applicable for 2007

Joint Assessment []

Remittances

If you are a citizen of Ireland, resident but not ordinarily resident in the State

Self [] Spouse []

If you are resident but not domiciled in Ireland

Self [] Spouse []

If either of the above apply you are assessable on tax on your Irish and UK income and remittances of other foreign income. Enter the amount of remitted income in Panel F.

Once the Personal Details screen is completed, customers can then move between all screens.

On the Self Employed Income screen the Accounts Extracts button has been removed and details should be entered on this screen.

There are some changes to the **Personal Tax Credits** screen. The Personal Credits shown will be based on the information given on the **Personal Details** screen.

The screenshot shows the 'Form 11 for period 01/01/2007 to 31/12/2007' window. The left sidebar contains a list of navigation options: Personal Details (selected), Self Employed Income, Irish Rental Income, PAYE/BIK/Pensions, Foreign Income, Irish Other Income, Exempt Income, Charges & Deductions, Personal Tax Credits, Restriction of Reliefs, Calculate, Request For Short Notice, Capital Gains, Chargeable Assets, Property Based Incentive, and Print View. The main area is titled 'Personal Tax Credits' and includes a 'Form Help' icon. Below this, it says 'Please Choose from the following tax credits:' followed by two columns of checkboxes and labels: Approved Bodies, Approved Sports Bodies, Blind Persons Tax Credit, Business Expansion Scheme, Dependent Relative Tax Credit, Employing a Carer Credit, Film Relief, Guide Dog Tax Credit, Health Expenses, Home Carers, Incapacitated Child Tax Credit, Job Assist Allowance, Medical Insurance, Owner Occupier Relief, PAYE Tax Credits, Permanent Health Benefit, Personal Tax Credit, Purchase of New Shares in a Company, Qualifying Tuition Fees, Rent Tax Credit, Seafarers Allowance, Seed Capital Scheme, Service Charges, Trade Union Subscriptions, and Year of Marriage Credit. At the bottom, there are input fields for 'Personal Tax Credit' and 'Home Carers', each with a 'Calculate' button and a 'Self' label. A note states: 'Note: Where it is more beneficial to you, the increased rate band will be granted instead of this relief.' Below this is a field for 'Amount of Home Carer Tax Credit due for 2007'.

The *High Income Individuals Statement (RRI)* is incorporated into the *Form 11* and can be accessed through the **Restriction of Reliefs** screen.

The screenshot shows the 'Form 11 for period 01/01/2007 to 31/12/2007' window. The left sidebar is the same as the previous screen. The main area is titled 'Restriction of Reliefs' and includes a 'Form Help' icon. Below this, it says 'Amounts at here should be transferred from a completed High Income Individuals Statement: Form RRI'. A note states: 'To complete a High Income Individuals Statement: Form RRI click the following button (Form 11 details entered will not be lost)'. There is a button labeled 'RRI'. Below this, there are input fields for 'Taxable Income calculated on the basis that limitation on use of reliefs does not apply' and 'Recalculated Taxable Income for 2007', each with a 'Self' and a 'Spouse' label. At the bottom, there are 'Clear Page' and 'Next' buttons.

When the *Form 11* is completed, customers can click the **Calculate** button to get details of liability. If a short notice of assessment is required, customers can opt for this by clicking on the **Short Notice** button. ♦

Double Taxation Treaties entered into by Ireland

44 Treaties currently in force

COUNTRY	DATE OF SIGNING	DATE OF RATIFICATION	DATE OF ENTRY INTO EFFECT			
			Income Tax	Corporation Tax	Capital Gains Tax	S.I. No.
AUSTRALIA	31 May 1983	21 Dec 1983	06 Apr 1984	01 Jan 1984	06 Apr 1984	406 of 1983
AUSTRIA	24 May 1966	05 Jan 1968	06 Apr 1964	* 01 Apr 1964		250 of 1967
AUSTRIAN PROT.	19 Jun 1987	09 Dec 1988	06 Apr 1976	01 Jan 1974	06 Apr 1974	29 of 1988
BELGIUM	24 Jun 1970	31 Dec 1973	06 Apr 1973	* 01 Apr 1973		66 of 1973
BULGARIA	05 Oct 2000	05 Jan 2001	01 Jan 2003	01 Jan 2002	01 Jan 2003	372 of 2000
CANADA	8 Oct 2003	12 April 2005	01 Jan 2006	01 Jan 2006	01 Jan 2006	773 of 2004
CHILE	2 June 2005	Not yet in force				815 of 2005
CHINA	19 April 2000	28 Dec. 2000	06 Apr 2001	01 Jan 2001	06 April 2001	373 of 2000
CROATIA	21 June, 2002	29 Oct 2003	01 Jan 2004	01 Jan 2004	01 Jan 2004	574 of 2002
CYPRUS	24 Sep 1968	04 Dec 1970	06 Apr 1962	* 01 Apr 1962		79 of 1970
CZECH REPUBLIC	14 Nov 1995	21 Apr 1996	06 Apr 1997	01 Jan 1997	06 Apr 1997	321 of 1995
DENMARK	26 Mar 1993	08 Oct 1993	06 Apr 1994	01 Jan 1994	06 Apr 1994	286 of 1993
ESTONIA	16 Dec 1997	23 Dec 1998	06 Apr 1999	01 Jan 1999	06 Apr 1999	496 of 1998
FINLAND	27 Mar 1992	26 Nov 1993	06 Apr 1990	01 Jan 1990	06 Apr 1990	289 of 1993
FRANCE	21 Mar 1968	15 Jun 1971	06 Apr 1966	* 01 Apr 1966		162 of 1970
GERMANY	17 Oct 1962	02 Apr 1964	06 Apr 1959	* 01 Apr 1959		212 of 1962
GREECE	24 Nov 2003	29 Dec 2004	01 Jan 2005	01 Jan 2005	01 Jan 2005	774 of 2004
HUNGARY	25 Apr 1995	05 Dec 1996	06 Apr 1997	01 Jan 1997	06 Apr 1997	301 of 1995

ICELAND	17 Dec 2003	17 Dec 2004	01 Jan 2005	01 Jan 2005	01 Jan 2005	775 of 2004
INDIA	6 Nov 2000	26 Dec 2001	01 Jan 2002	01 Jan 2002	01 Jan 2002	521 of 2001
ITALY	11 Jun 1971	14 Feb 1975	06 Apr 1967	* 01 Apr 1967		64 of 1973
ISRAEL	20 Nov 1995	24 Dec 1995	06 Apr 1996	01 Jan 1996	06 Apr 1996	323 of 1995
JAPAN	18 Jan 1974	04 Nov 1974	06 Apr 1974	*01 April 1974		259 of 1974
KOREA (REP. OF)	18 Jul 1990	27 Nov 1991	06 Apr 1992	01 Jan 1992	06 Apr 1992	290 of 1991
LATVIA	13 Nov 1997	28 Jan 1998	06 Apr 1999	01 Jan 1999	06 Apr 1999	504 of 1997
LITHUANIA	18 Nov 1997	05 June 1998	06 Apr 1999	01 Jan 1999	06 Apr 1999	503 of 1997
LUXEMBOURG	14 Jan 1972	25 Feb 1975	06 Apr 1968	* 01 Apr 1968		65 of 1973
MALAYSIA	28 Nov 1998	11 Sep 1999	06 Apr 2000	01 Jan 2000	06 Apr 2000	495 of 1998
MEXICO	22 Oct 1998	31 Dec 1998	06 Apr 1999	01 Jan 1999	06 Apr 1999	497 of 1998
NETHERLANDS	11 Feb 1969	12 May 1970	06 Apr 1965	* 01 Apr 1965		22 of 1970
NEW ZEALAND	19 Sep 1986	26 Sep 1988	06 Apr 1989	01 Jan 1989	06 Apr 1989	30 of 1988
NORWAY	22 Nov 2000	27 Nov 2001	01 Jan 2002	01 Jan 2002	01 Jan 2002	520 of 2001
PAKISTAN	13 Apr 1973	20 Dec 1974	06 Apr 1968	* 01 Apr 1968		260 of 1974
POLAND	13 Nov 1995	22 Dec 1995	06 Apr 1996	01 Jan 1996	06 Apr 1996	322 of 1995
PORTUGAL	01 Jun 1993	11 Jul 1994	06 Apr 1995	01 Jan 1995	06 Apr 1995	102 of 1994
PORTUGAL PROT.	11 Nov 2005	19 Dec 2006	01 Jan 2007	01 Jan 2007	01 Jan 2007	816 of 2005
ROMANIA	21 Oct 1999	29 Dec 2000	06 Apr 2001	01 Jan 2001	06 Apr 2001	427 of 1999
RUSSIA	29 Apr 1994	07 Jul 1995	06 Apr 1996	01 Jan 1996	06 Apr 1996	428 of 1994
SLOVAK REP.	08 June 1999	30 Dec 1999	06 Apr 2000	01 Jan 2000	06 Apr 2000	426 of 1999
SLOVENIA	12 Mar 2002	11 Dec 2002	01 Jan 2003	01 Jan 2003	01 Jan 2003	573 of 2002
SOUTH AFRICA	07 Oct 1997	05 Dec 1997	06 Apr 1998	01 Jan 1998	06 Apr 1998	478 of 1997
SPAIN	10 Feb 1994	21 Nov 1994	06 Apr 1995	01 Jan 1995	06 Apr 1995	308 of 1994

SWEDEN	08 Oct 1986	05 Apr 1988	06 Apr 1988	01 Jan 1989	06 Apr 1988	348 of 1987
SWEDISH PROT.	01 Jul 1993	21 Dec 1993	20 Jan 1994	20 Jan 1994	20 Jan 1994	398 of 1993
SWITZERLAND	08 Nov 1966	16 Feb 1968	06 Apr 1965	* 01 Apr 1965		240 of 1967
SWISS PROT.	24 Oct 1980	25 Apr 1984	06 Apr 1976	01 Jan 1974	06 Apr 1974	76 of 1984
UNITED KINGDOM	02 Jun 1976	23 Dec 1976	06 Apr 1976	01 Jan 1974	06 Apr 1976	319 of 1976
UK PROTOCOL	07 Nov 1994	21 Sep 1995	06 Apr 1994	01 Apr 1994		209 of 1995
UK PROTOCOL	04 Nov 1998	23 Dec 1998	06 Apr 1999	01 Jan 1999	06 Apr 1999	494 of 1998
UNITED STATES	28 Jul 1997	17 Dec 1997	06 Apr 1998	01 Jan 1998	06 Apr 1998	477 of 1997
US PROTOCOL	24 Sept. 1999	13 July, 2000	1 Sept. 2000	1 Sept. 2000	1 Sept. 2000	425 of 1999
ZAMBIA	29 Mar 1971	31 Jul 1973	06 Apr 1967	* 01 Apr 1967		130 of 1973
				* Corporation Profits Tax		
U.S.S.R.	17 Dec 1986	23 Dec 1987	Air Transport Agreement			349 of 1987

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Irish Tax Treaties

Table of source country tax rates in Irish tax treaties for dividend, interest and royalty payments

Country	Year	Maximum Source Country Tax Rates (% of gross payment) (for split rates, please consult the relevant article in the treaty)		
		Dividends (a)	Interest	Royalties
AUSTRALIA	1984	15	10	10
AUSTRIA	1964	10	0	0/10
BELGIUM	1973	15	15	0
BULGARIA	2002	5/10	0/5	10
CANADA	2006	5/15	0/10	0/10
CHILE	Not in force	5/15	5/15	5/10
CHINA	2001	5/10	0/10	6/10
CROATIA	2004	5/10	0	10
CYPRUS	1952	0	0	0/5
CZECH REP.	1997	5/15	0	10
DENMARK	1994	0/15	0	0
ESTONIA	1999	5/15	0/10	5/10
FINLAND	1990	0/15	0	0
FRANCE	1966	10/15	0	0
GERMANY	1959	15	0	0
GREECE	2005	5/15	5	5
HUNGARY	1997	5/15	0	0
ICELAND	2005	5/15	0	0/10
INDIA	2002	10	0/10	10
ISRAEL	1996	10	5/10	10
ITALY	1967	15	10	0
JAPAN	1974	10/15	10	10
KOREA REP.	1992	10/15	0	0
LATVIA	1999	5/15	0/10	5/10
LITHUANIA	1999	5/15	0/10	5/10
LUXEMBOURG	1968	5/15	0	0
MALAYSIA	2000	10	0/10	8
MEXICO	1999	5/10	0/5/10	10
NETHERLANDS	1965	0/15	0	0
NEW ZEALAND	1989	15	10	10
NORWAY	2002	0/5/15	0	0
PAKISTAN	1968	10/no limit	no limit	0
POLAND	1996	0/15	0/10	10
PORTUGAL	1995	15	0/15	10
ROMANIA	2001	3	0/3	0/3

RUSSIA	1996	10	0	0
SLOVAK REP.	2000	0/10	0	0/10
SLOVENIA	2003	5/15	0/5	5
SOUTH AFRICA	1998	0	0	0
SPAIN	1995	0/15	0	5/8/10
SWEDEN	1988	5/15	0	0
SWITZERLAND	1965	10/15	0	0
UK	1976	5/15	0	0
UNITED STATES	1998	5/15	0	0
ZAMBIA	1967	0	0	0

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