

Revenue Commissioners

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

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Relevant Contracts Tax

Clarification about Claiming Offsets/Repayments

Background

Relevant Contracts Tax [RCT] legislation provides that where a sub-contractor does not provide the principal contractor with a valid C2 certificate, or where the subcontractor provides the principal contractor with a valid C2 and the principal contractor does not hold a Relevant Payments Card in respect of the subcontractor, the principal contractor is obliged to deduct tax at the rate of 35% from all payments which he or she makes to the sub-contractor in respect of a relevant contract. The principal contractor returns the deducted tax to Revenue and issues the sub-contractor with a Form RCTDC as proof that the tax has been deducted. The general position then is that the Form RCTDC enables the subcontractor to use the tax deducted to satisfy his or her tax liability for the year in respect of which the payments received from the principal contractor are taken into account for tax purposes by the subcontractor and to offset any balance against other taxes and/or to receive a repayment

Scope of Provisions

Section 531(5) of the TCA 1997 provides that where a subcontractor who is chargeable to tax for a chargeable period has suffered an RCT deduction from a payment made to him or her by a principal contractor, the deducted tax is to be treated as a payment on account of the subcontractor's liability to tax on trading profits (being the trade in respect of which the payment giving rise to the deduction was made) for that chargeable period. The RCT deducted is, therefore, treated as a downpayment on the sub-contractor's liability to tax on trading income or profits for the chargeable period.

Where the amount of RCT deducted is in excess of the sub-contractor's liability, including any liability for other taxes (VAT, CGT, etc), the excess may be repaid to the sub-contractor. However, *Section 531(5A) of the TCA* provides that any such repayments are subject to the four-year time limit in *Section 865 TCA 1997*. Accordingly, a claim for any such repayment must be made within four years of the end of the chargeable period to which the claim relates. Therefore, a sub-contractor claiming a repayment of tax deducted under the RCT system is not entitled to a repayment where the RCTDC is submitted outside the four-year period.

RCTDCs received late

As just indicated, a claim for repayment of tax on foot of an RCTDC must be made within four years. However, by virtue of *Section 531(5)* mentioned above, a subcontractor is entitled to have the tax deducted (and to the extent it is evidenced by the amount set out in the RCTDC) treated as a payment on account in respect of his or her tax liability, if any, on trading income or profits (being the trade in respect of which the deduction made from the payment arose) for the chargeable period in question. This is the case even in circumstances where the sub-contractor submits

the Form RCTDC outside the four-year time limit for repayments. In such a case, while it is not possible to repay any excess tax deducted over the subcontractor's tax liability on trading profits (from the trade which gave rise to the deduction) for the chargeable period, the sub-contractor is entitled to have tax contained in the RCTDC taken into account and credited against any outstanding tax liability on trading profits (from the trade which gave rise to the deduction) for the particular chargeable period. However, any balance remaining on the RCTDC after allowing such credit for outstanding tax liability on trading profits is lost. This is because a repayment is prohibited due to the lateness of the claim for repayment. Neither can any such balance be offset against any tax liability for the chargeable period from any income source other than the trade in question or against a tax liability for another year due to the limited scope of *Section 531(5)* of the TCA.

Finally, such a balance cannot be offset against any liabilities to other taxes that the sub-contractor may have. This is because *Section 1006A* of the TCA, the main offset provision, only allows for an offset in circumstances where a repayment is due to a taxpayer. Thus, where the four-year repayment time limit has expired a repayment is not due and therefore tax overpaid cannot be offset.

Example

Subcontractor submits a Form RCDTC on 5 June 2008. The RCTDC relates to a chargeable period ending on 31 December 2003. The RCTDC is outside the four-year time limit. The amount of tax deducted contained in the RCTDC is €100,000. The subcontractor also submits a return in respect of the chargeable period showing a liability of €105,000. The subcontractor requests Revenue to offset the amount shown on the RCTDC against his liability for the chargeable period.

The liability for the chargeable period breaks down as follows:

Liability from trade of bricklayer
€90,000

Liability from rental Income
€15,000

The subcontractor is entitled to have €90,000 contained in the RCTDC credited against his outstanding liability on his trading profits from his trade of bricklayer. The balance of €10,000 remaining on the RCTDC is lost.

Operational Date

These arrangements will apply in respect of claims for offset or repayment of RCT received after 31 March 2006 (operational date for *Section 531(5A)*) but which had not been dealt with by close of business on 20 June 2008.

Pay & File and ROS 2008

Revenue recognises and appreciates the continued co-operation of tax practitioners in increasing the use of the Revenue On-line system (ROS) for filing returns and making payments. In recent years the increased use of ROS for filing Form 11s has been particularly noteworthy. Revenue looks forward, in close cooperation with tax practitioners, to building on that success in 2008.

Tax practitioners who will be filing the 2007 Form 11s and making payments through ROS can avail of the extended due date of 17 November for this purpose. **Please remember that the return *and* payment must be made through ROS to avail of the extended deadline.**

Checklist:

In order to ensure that ROS can be utilised for Form 11 filing and paying in November 2008, tax practitioners are asked **to please ensure that the following matters are attended to well in advance of the 17 November deadline:**

Registration and Certificates

- In order to use ROS you must have a working e-mail account. When applying to become a ROS customer, you will be required to furnish an e-mail address. The e-mail address you supply can be changed at any time by using the Profile section of ROS (see also FAQs on ROS website in this regard).
- If you are not already registered for ROS, please do so as soon as possible - but, at the latest, by mid-October.
- Ensure that your clients are registered for Income Tax for 2007 and your agent/client links are in place. You may contact 1890 20 30 70 to confirm your client details or you may contact your local tax office to update your client listing on ROS; quoting your client's taxpayer reference number and your TAIN (Tax Agent Identification Number). Dublin based agents can e-mail dublinagents@revenue.ie.
- If required, ensure that you renew your digital certificate(s) in good time and update your profile (digital certificates have a life span of two years).
- ROS Administrators, please ensure that sub-users are set up with the correct filing permissions and can successfully log in to ROS.

Form 11

- Before creating a Form 11 in the ROS offline application, check that the most recent version of ROS off-line application is installed on your computer and also check that the most recent version of the Form 11 is downloaded on your computer.
- Ensure that you regularly clear your cache/delete temporary internet files to prevent transient errors.
- Ensure that the details entered in the personal details panel of the Form 11 are accurate. The information included in the remaining panels of the Return depends on the data included in the personal details panel; any subsequent changes to this panel will result in information in the other panels on the Return being cleared.

Payments

- Ensure that facilities for making payments electronically are in place. The options for making payments on ROS are ROS Debit Instruction, Laser Card or Online Banking. The online banking option is available only for the payment of income tax and capital gains tax liabilities, and the facility would have to be arranged directly with the appropriate bank.
- The ROS Debit Instruction may be set-up in ROS using the digital certificate to sign and submit. Details of the bank account from which the payments are to be debited are required, i.e. Account Name, Sort Code and Account Number. The tax type should also be indicated, as it is possible to pay more than one tax type from the same account. Once these details are submitted online, payments can be made. An instant acknowledgement of your on-line payment will issue to your inbox including a ROS Notice number.
- **Revenue guarantee that only the amount specified by the agent/taxpayer will be taken from the account, on the specified date.**

Further matters to please bear in mind:

- Do not change your computer settings if ROS is currently functioning properly on your computer.
- Do not move your ROS Digital Certificate from one computer to another. Instead use the add user option to create a linked certificate (sub-user) which will allow you to set up on another computer. You can also allocate Administrator rights if considered appropriate.
- Do not assume that the return and payment have been received unless it is confirmed by receipt of a ROS Notice number.

Technical Information

- To download 2007 Form 11, please note that the recommended RAM is 512 or more.
- Please note that the ROS offline application is no longer compatible with the computer operating systems Windows 95 and Windows 98.
- Users of Apple Mac Personal Computers should note that ROS is now compatible with MAC OS X.
- Be aware that automatic software enhancement updates can affect your ROS access.
- The technical requirements that are necessary to use ROS may be accessed by clicking on "System Requirements" on the ROS website.

Making payments through ROS:

A ROS Debit Instruction (RDI) is not a Direct Debit Instruction. Unlike Direct Debit, RDI is not a fixed monthly payment amount. With RDI the amount of and the timing of the payment are determined solely by the customer. RDI does not confer on Revenue a right to take money from a customer's bank account.

In order to make a payment, you must set up a ROS Debit Instruction using the ROS system. You will be asked to enter the details of the bank account from which you wish the payments to be debited i.e. account name, sort code and account number. You will be asked to indicate which tax type you wish to pay from this account. It is possible to pay more than one tax type from the same account. You will be asked to

sign the Debit Instruction with your digital certificate and send the form to ROS. Once you have submitted these details on-line, you will be permitted to file returns for the relevant taxes.

Some bank accounts require that two signatures be appended to a payment instruction. If you have such an account, we can provide you with an on-line facility to set up the ROS Debit Instruction using dual signatures. We also provide a facility on ROS whereby you can print the instruction form and have it manually signed by both signatories. You may then send it to:

**ROS Payment Support Unit,
Collector-General's Office,
Sarsfield House,
Francis Street,
Limerick.**

When your RDI payment has been accepted, you will receive an acknowledgement of payment (ROS Notice number) in your inbox.

Troubleshooting

If you are experiencing difficulty accessing the Revenue On-Line service, please go to the FAQs section of the ROS website and click on Troubleshooting. The Troubleshooting section contains practical information on how to resolve difficulties you might encounter when using ROS. You may also access the "Troubleshooting" section by clicking on the following hyperlink,
http://www.ros.ie/PublisherServlet/info/faq_troubleshoot.

ROS Technical Helpdesk

If you still continue to experience difficulty accessing ROS, after visiting the Troubleshooting section of the ROS website, you may call the ROS Technical Helpdesk for further assistance:

Telephone: 1890 20 11 06

Outside the Republic of Ireland: +353 1 7023021

Fax: 061 401012

E-mail: ros-help@revenue.ie

ROS Tax Technical Support.

Please contact your local ROS Liaison Officers (RLOs). Contact details can be located on the ROS Liaison Officer Link under Help Section of the ROS Home Page.

Pay & File and ROS 2008

Changes to Form 11 2007

A number of changes have been made to the ROS Form 11 2007. The screens have been modernised to facilitate our customers, and in accordance with guidelines on accessibility and in conformity with guidance from the National Disability Authority.

Principal Changes:

- There is now a larger calculation facility incorporated into the Form, and this may result in the Form being slower to open in comparison with previous years.
- If there are any invalid or missing entries on the Form, a *Validation Button* will appear on the side menu. When customers click on this button, a list of errors will be displayed.
- The Form 11 opens on the *Personal Details* screen which now includes a *What's New* section to provide customers with details of the changes on the return.
- The *Personal Details* screen is mandatory and other sections of the return cannot be accessed until this screen has been completed. Care should be taken in entering the correct marital status and basis of assessment, as any subsequent changes to this information will result in information on other panels in the Form 11 being cleared.
- The *Spouses' Details* panel (2nd page) is not mandatory; but it is recommended that it be completed where the details are known.
- The Personal Tax Credit must now be claimed by selecting the *Calculate* button on the *Personal Tax Credits* panel of the Form.
- The 2007 return incorporates a full calculation facility for the new High Income Individual's Statement (RR1) under *Section 485E Taxes Consolidation Act 1997*. Customers required to complete this statement should elect to do so on the *Personal Details* screen and then complete the RR1 return which is available on a new *Restriction of Reliefs* tab in the Form.
- The user is not required to click the next button to confirm the completion of a page or section with the exception of *Personal Details* page. A given page can be selected at any point from the left hand side navigation bar. The user can determine the panel they have completed by viewing a tick box in the side navigation bar.
- The *Accounts* menu is now part of the Form 11 (under the *Self-Employed Income* panel), i.e. there is no separate *Accounts* button to be chosen.
- Rent-a-Room relief is now included on the *Exempt Income* panel.
- On the *Personal Taxes Credit* panel, the option to claim Incapacitated Child Tax Credit is based on inputting information on the number of children. This request is for the number of *incapacitated* children only.
- When a saved Return is re-opened, the form opens on the first page containing the personal details. This is to ensure that the user has selected the correct Form 11 and that the Marital Status and Basis of Assessment are correct. Any subsequent changes to the Marital Status or Basis of Assessment will result in the clearing of all details from other Form 11 panels. Selecting the *Next* button at the bottom of Page 1 allows the user to proceed.

Other Matters to Note

- When a Form 11 is completed online, the form cannot be printed until after it has been signed and submitted to ROS. The form can then be printed from the customer's ROS Inbox.

- While the Retirement Annuity Contract (RAC) and Personal Retirement Savings Accounts (PRSA) headings on ROS state that both will be calculated, only RAC will in fact be calculated.
- Rental Income: details of the number of rental properties are mandatory, although the field does not have a mandatory asterisk marker.

Extension to Filing Date

There is an extension to the filing date for self-assessment customers who both pay and file their returns through ROS.

For those customers who file their 2007 return and submit their payment through ROS for:

- Preliminary Tax for 2008,
- Income Tax balance due for 2007, and
- Capital Gains Tax on gain arising in initial period 2008 (1 January 2008 - 30 September 2008),

the due date will be extended until **Monday 17 November 2008**.

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

Customers who pay or file by means other than ROS are required to submit both payments and returns on or before 31 October 2008.

Application of extended filing deadline to RAC, PRSA and AVC payments

- Under *Sections 787(7) and 787C(3) TCA 1997*, relief may be claimed in respect of a Retirement Annuity Contract (RAC) or a Personal Retirement Savings Account (PRSA) payment made on or before the return filing date of 31 October.
- Where an individual qualifies for the extended Pay and File deadline available to ROS customers, who both file and pay online, the deadline for making RAC and PRSA payments and claiming the relief is also extended to 17 November 2008.
- This extended deadline also covers payments of Additional Voluntary Contributions (AVCs) made under *Section 774(8) or Section 776(3) TCA 1997*, where the individual qualifies for the extended Pay and File deadline.
- High-income individuals who are required under *Section 485FB(3) TCA 1997* to submit [Form RR1](#) and who both pay and file through ROS, may also avail of the extension to 17 November 2008.

Consultations on mandatory e-filing and epaying- ROS

Background

In September 2007, Revenue issued a press release regarding plans to consult businesses and tax practitioners about mandatory electronic tax filing and payment, in certain prescribed circumstances. In April 2008, following feedback on the initial press release, Revenue published a more detailed document setting out the timing and scope of the proposals, and inviting interested parties to comment on the proposals. Eighteen replies were received, including responses from the general public, the practitioner representative bodies and accountancy practices. A high-level summary of the main issues raised, and the responses received, is set out in this article.

At the outset, it should be stated that Revenue has always acknowledged the key role of practitioners in the utilisation and support of ROS, particularly in relation to the filing of income tax returns. Constructive feedback from practitioners and customers has helped to develop the ROS product, and Revenue will continue to respond to, and act on, such feedback.

Revenue's proposal is for a two-phased introduction of mandatory e-filing and payment for larger corporations and government departments and agencies between 2009 and 2010. In effect, by the end of phase 2 all government departments and agencies and all incorporated businesses obliged to file audited accounts with the Companies Registration Office will be obliged to use ROS. At that point, a decision will be made about any further extension of mandatory e-filing and payment.

General issues

Some of the replies received were in relation to the availability of broadband and a concern that mandatory e-filing and epaying would impact on smaller businesses or individual taxpayers without the capacity to e-file or e-pay. Revenue has consistently stated that our plans for mandatory e-filing and e-paying only extend to Phase 1 (Large Cases Division cases and Government Departments in 2009) and Phase 2 (large corporates, local authorities and state agencies in 2010). The proposals are focused on computerised and sophisticated larger businesses that possess the capacity, but have not adopted e-filing or e-paying.

ROS capacity and security

Some of the responses requested clarity and reassurance in relation to the capacity of ROS to deal with a large volume of returns and about the level of security on ROS.

The ability of ROS to deal with large volumes is shown by the annual Form 11 filing campaign. In 2007, over 279,000 Form 11 returns were submitted on time through ROS, or 74% of the total number of returns. This included over 37,000 returns successfully filed on the last day. In relation to queries about security, ROS uses Public Key Infrastructure cryptography to secure the submission of returns on ROS.

Furthermore, the ROS application itself secures the retrieval and viewing of customer data with its own Access Control system. This is designed to not only ensure that a customer's data will not be seen by another customer, but also to restrict the users within a company who are permitted to view the data. Additionally, all traffic to and from the ROS website is encrypted via 128-bit SSL (Secure Sockets Layer) encryption. This secures the network connection from the user's PC to the ROS servers and prevents the customer's data from being intercepted en route.

Technical queries

Among the technical queries and comments about the ROS system were the following:

- concern that ROS forms are not as flexible as paper;
- concern that the Form CT1 is not available early enough in a year to facilitate early filing (or to meet the legal requirement that companies being liquidated in the first two months of the year file within three months of the event);
- request that there should be additional space in the comment box to include information normally contained in a covering letter, and that it should be possible to attach PDF documents;
- request for more information on ROS schemas and webservice, and concern that some forms are only available online and cannot be linked to client's accounting systems;
- request for a systems change in ROS to allow information to be carried forward from previous years.

The ROS-generated Forms 11 and CT1 are generally the same as the paper versions of those forms. It is easier to apply validation rules to a computer form; therefore, an incorrectly completed ROS return will not be accepted by the system. However, Revenue staff are instructed not to process incorrectly completed paper returns; such returns are sent back to the customer for amendment.

The release date for the Form CT1 2008 applied to both the ROS form and to the paper form. The timing of its availability is due to the passage of the Finance Act through the Oireachtas and the time required to update Revenue's computer systems in order to take account of the legislative changes.

Additional space can be added to the comment box. There are no plans to provide for PDF attachments, but the matter can be considered in due course. The ROS schemas are available on the ROS website and additional information on online forms can be provided. Information on webservices is available on the ROS website at <http://www.ros.ie/PublisherServlet/info/wsindex>. The following webservices are currently available: *Form 11 File and Calculate*; *CT File and Calculate*; *Customs*; *Transit*; *Inbox*; *Customer Information Services*; *Client List* and *Administration Services*. Proposals to carry forward information will be considered for future ROS developments.

Help and support for users, direct communication with taxpayers affected by proposals

Some of the feedback related to the need for additional support in using ROS, more training, better facilities to amend innocent error, increased support for Irish-language users of ROS and more Frequently Asked Questions to help users. Some feedback requested Revenue to engage in direct contact with taxpayers in phases 1 and 2.

There are a number of Revenue staff available to assist customers in using ROS. The main contact is via the ROS helpdesk (1890 20 11 06), which can deal with the bulk of queries. In some cases, the Helpdesk staff may need to forward the query to another area, e.g. ROS Payment Support Unit or the ROS Liaison Officer in the local Revenue District for direct help on a particular case. Full contact details are provided on the ROS/Revenue website for all areas; because this assistance is spread across Revenue, it is accessible from the initial contact point, say the ROS helpdesk. Any calls transferred from one area to another bypass call queues, and staff in all areas are familiar with their roles and with the roles of other areas.

Revenue staff are always available to guide and assist customers in using ROS. Staff regularly provide presentations on ROS at relevant seminars and conferences and will supply relevant reference material for familiarisation and training purposes. A range of information about ROS is accessible on the Revenue website. In light of some of the issues raised by practitioners during the consultation process, summary FAQ material is being prepared; this material will draw together some of the key ROS reference material e.g. information about US Securities and Exchange Commission filing and independence requirements; information about the digital certificate and what a digital signature means; additional information about the legislation providing for printing a hard copy of a ROS return, etc. All concerns about these topics have been addressed.

There has been communication about Revenue's proposals for mandatory e-filing and e-paying. Revenue will be in direct contact with taxpayers in Phase 1. There will be communication with taxpayers in Phase 2 during 2009, in advance of Phase 2 commencing. Any taxpayer is, of course, welcome to commence using ROS immediately to file and pay. Phase 2 business will be welcome at any time in ROS; it is not necessary to wait until Phase 2 begins.

Additional issues for practitioners

Some of the feedback received concerned the additional compliance costs of e-filing and e-paying for practitioners, arising from practitioners having to print returns for clients, or because they would have access to client bank account details and would need to put procedures in place to address any additional risks arising.

The main tax accountancy packages are developed in line with ROS and are ROScompatible, with options for both 'printing' and 'submitting to ROS'. Accordingly, there are not additional software or data entry costs arising. In relation to costs arising from additional risks, it is possible to split functions on ROS; for example, a practitioner can file and a client can pay and both transactions will be updated on the

customer's Revenue record. It is sometimes overlooked, in discussions about ROS payments, that a ROS payment instruction contains the same information about a customer's bank details as are on a cheque. The taxpayer determines what is paid and when it is paid; Revenue systems automatically accept the ROS payment instruction.

Future ROS Developments

In relation to the views that ROS should be developed to include a Form 12, e-Registration and e-RCT before mandatory e-filing/ e-paying is introduced, Revenue is planning to develop eRegistration and eRCT. It is recognised that there are demands for an online Form 12 and Revenue is prioritising ROS IT developments (including developments to the ROS PAYE anytime service). However, none of these developments are required in order for taxpayers in Phases 1 or 2 to e-file or e-pay.

Incentives

The consultation paper proposed some incentives to encourage e-filing and e-paying. These included extended deadlines for filing and payment where returns are filed and related payments are made via Revenue's Online systems. Revenue also proposed an extension of the period in which approved facsimile versions of Form CT1 will be accepted.

The extended deadlines proposed for ROS filers and payers would apply to all ROS users, not just those companies in phases 1 and 2. Taxpayers who are already using ROS will benefit. The consultation paper set out that the extended deadline did not apply for corporation tax payments in November, because of the requirement to have accurate information on receipts in advance of the Budget. It is not possible to extend this deadline, given the volume of corporation tax paid in November and the impact of that on forecasting Budget tax receipts for the following year.

In a recent eBrief (38/2008), Revenue clarified that facsimile versions of Form CT1 2007 (filed before 21 December 2008) and of Form CT1 2008 (for accounting periods ending 31 March 2008, filed before 21 December 2008) will continue to be accepted. Companies in Phase 2 of the mandatory e-filing and e-paying proposals will be able to use facsimile versions of Form CT1 for filings before 21 December 2009.

In relation to a question about the sanctions for taxpayers that don't e-file or e-pay, Revenue has always shown a willingness to work with taxpayers in using ROS. The main cost for taxpayers in not e-filing and e-paying is that they will not get the benefit of the incentives noted above.

FAQ's - VAT on Property

Introduction

The new rules for VAT on property transactions came into effect on 1 July 2008. For full details of these new rules please see VAT on Property Guide on www.revenue.ie. Briefly, the rules can be summarised as follows:

- There are simplified rules for sales of property; sale of property is taxable for a maximum period of five years and exempt from VAT after that period. A joint option for taxation is allowed where the sale is exempt.
- Simplified rules for lettings of properties. The distinction between long and short leases is removed. All leases are now treated as an exempt supply of service. A landlord can opt to tax lettings subject to certain conditions.
- A capital goods scheme for property regulates VAT deductibility in relation to a property over the "life" of a property, which in most cases is twenty years.
- Transitional rules to deal with properties that were acquired before 1 July ensure that there is minimal disruption to the property market and that the disposal of such properties are subject to the new rules from 1 July.
- A number of anti-avoidance rules close down schemes that were used by connected persons to defer VAT payments over long periods.

Below is a collection of replies to frequently asked questions in relation to the new VAT on property provisions that has been prepared by Revenue in response to questions that were submitted by the representative bodies on the TALC Indirect Taxes Sub-Committee.

1. At the end of April 2008 Revenue posted the New VAT on Property Guide. On 6 May 2008 Revenue posted a slightly different version of the New VAT on Property Guide. Can the Revenue explain the difference between the new version and the old version?

There were two changes:

- page 20, para 3.5 - addition of sentence "However....required"
- page 31, para 4.11 - addition of ..."or a legacy lease (see Chapter 3.7)"

2. Under Section 7A(1)(d)(iii) it is provided that a landlord's option to tax is terminated where the landlord and the tenant become connected persons after the lease has been granted. Upon a strict reading of the legislation this applies whether or not the tenant has the ability to recover at least 90% of VAT on input costs.

Where a landlord and tenant become connected the landlord's option to tax is terminated. However, if the tenant is entitled to at least 90% deductibility in relation to the VAT on rents, the option to tax may remain in place. Similarly if the tenant sub-lets the property to a person who is connected to the landlord, the landlord's option is terminated. However, if the person connected to the landlord is entitled to at least 90% deductibility in relation to the VAT on rents, the option to tax may remain in

place. Accordingly, in Example 17 VAT on Property Guide, the termination of the option would not arise if "C" has at least 90% VAT recovery entitlement.

3. Section 5(3B) provides for a blanket period of twenty years following the acquisition or development of the goods by the accountable person. This does not take account of the fact that the adjustment period will be twenty intervals and not twenty years, the adjustment period for a refurbished property is ten intervals and the adjustment period for a legacy lease or a property acquired under transfer of business rules could be any period but will inevitably be less than twenty years.

The provisions in *Section 5(3B)* deal with diversion to non-business or private use. These rules are independent of the CGS. The rules for adjusting deductibility in *Section 12E* relate to diversions to exempt use. Twenty years is the period over which the taxpayer must account for the VAT where a deduction has been taken and the property is subsequently diverted to a non-business use in accordance with *Section 5(3B)*. The amount on which VAT is chargeable as a result of this supply is based on this same twenty-year period in accordance with *Section 10(4D)*. See also Regulation 21B of *S.I. No. 548 of 2006 - VAT Regulations 2006* (inserted by *S.I. No. 238 of 2008 - VAT (Amendment) Regulations 2008*).

4. The final paragraph of Chapter 3.18 VAT on Property Guide confirms that the existing practice as regards "shared services" (i.e. where a landlord passes on VAT on such services to tenant) is continued for legacy lease after 1 July 2008. Is this practice also extended to new leases created after 1 July 2008?

Yes this practice extends to such leases.

5. Where a tenant carries out a refurbishment in say year fifteen of a twenty-year lease and the lease expires at the end of the twenty years without being renewed, is the tenant responsible for a capital goods adjustment in respect of the refurbishment when the lease expires?

In the case described above there is no obligation on the tenant to make an adjustment since the lease simply expires. It is not assigned or surrendered. It should be noted that Revenue will examine cases where a tenant carries out a significant refurbishment approaching the end of the lease to see if in fact the refurbishment is for the benefit of the landlord and the issue of entitlement to input credit of the landlord, etc., would need to be considered.

6. What is the VAT treatment of a premium/reverse premium payable by the tenant to his landlord on the surrender/assignment of a legacy lease on/after 1 July?

The payment of a reverse premium to the landlord by the tenant on the surrender of a "legacy" lease is not taxable: it is considered outside the scope of VAT. The consideration for the assignment/surrender of a legacy lease is based on the CGS amount as per *Section 4C(7)*. The position of premiums generally is set out in paragraph 4.11 of the VAT on Property Guide.

7. Where after 30 June a landlord makes a letting by way of an occupational lease to a tenant and exercises the landlord's option to tax, what is the VAT treatment if the tenant then makes a sub letting of part only of the original property to a person connected with the landlord where the sub tenant does not have at least 90% VAT recoverability? Is the landlord's option to tax terminated for the entire of the property let by the landlord or only in respect of part of it, namely the part occupied by the connected sub tenant?

Only the part occupied is effected by the termination of the option to tax. *Section 12E(6)(c)* has the effect of clawing-back the proportion of the landlord's deduction that relates to the part occupied by the connected tenant.

7a. What is the position as regards charging VAT on such an occupational lease if, for example, 25% of the property was sub-let to a connected person with less than 90% recovery. The clawback would be based on 25% of the VAT recovered by the landlord. Would the landlord only charge VAT on 75% of the rent paid under the occupational lease?

Yes, the landlord would only charge VAT based on 75% of the rent charge to the main (unconnected) tenant. Please note that the apportionment of the rent between the taxable and exempt use would have to be made on a fair and reasonable basis. For example, if the ground floor represented 25% of the floor space but was more valuable in terms of the amount of rent receivable this would affect the amount of the claw-back under *Section 12E(6)(c)* and the corresponding amount of the rent subject to VAT.

8. *Section 4C(11)* provides that the adjustment period for an assigned or surrendered legacy leasehold interest in the hands of the assignee or person who makes the surrender is 20 years. The capital goods scheme operates by intervals. Can Revenue explain how the capital goods scheme will work in relation to an assigned or surrendered legacy lease?

Where a legacy lease is assigned/surrendered from 1 July onwards, the person who is assigning or surrendering the lease calculates the number of intervals remaining in the adjustment. This is calculated from *Section 4C(11)(c)*.

The adjustment period for the new owner (assignee/landlord) is advised by the assignor/surrendering tenant per *Section 4C(8)(b)(i)*, which will be the number of intervals remaining (being the number of intervals remaining in the latter's adjustment period, including that in which the assignment/surrender takes place).

Section 4C(8)(b) provides that the assignee/landlord is a capital goods owner for the purposes of *Section 12E*. The initial interval runs for a full twelve months from the date on which the assignment and surrender occurs. The second interval (as per *Section 12E*) will end on the date of the end of the accounting year of the capital goods owner. (Example 1 in Appendix A illustrates how this operates in practice)

9. In *Section 12E(3)(a)* the adjustment periods for various classes of capital goods are set out. This sub section does not refer to shorter adjustment periods which will apply in the case of capital goods to which the transfer of

business applies and legacy leases. The words "in all other cases 20 years" give cause for concern. Can the Revenue confirm that different periods than those set out in *Section 12E(3)* can apply in the case of properties transferred under transfer of business rules and legacy leases?

The adjustment period for legacy leases for the person who holds the interest on 1 July is provided for in *Section 4C(11)*. For a person to whom a lease is assigned or surrendered post 1 July the adjustment period is provided for in *Section 4C(8)(b)(i)*.

In relation to a transfer of business there are two separate scenarios. If a transfer of business occurs during the period where the property is considered "new" then the adjustment period is 20 intervals as per *Section 12E(3)(a)(iii)* for the transferee and the "total tax incurred" is the amount of tax that would have been chargeable on the transfer but for the application of *Section 3(5)(b)(iii)* as per *Section 12E(3)(b)(ii)*.

If the transfer occurs outside the period where the property is considered "new" then *Section 12E(10)* provides that transferee will effectively "step into the shoes" of the transferor and must make adjustments for the remainder of the adjustment period as provided for in *Section 12E(10)(c)*. Where the transferee's accounting year ends on a different date to the transferor's, the transferee may align the end of the CGS intervals with his or her end of accounting year. See *Regulation 21A of S.I. No. 548 of 2006 - VAT Regulations 2006* (inserted by *S.I. No. 238 of 2008 - VAT (Amendment) Regulations 2008*).

10. Can a body that is considered outside the scope of VAT, such as local authority avail of the option to tax the sale of a transitional property under *Section 4C(2)*?

A local authority, or any other person or entity to the extent that their activities are outside the scope of VAT, cannot avail of the option to tax since they are not a "taxable person" and therefore do not come within the provisions of *Section 4C* which only applies to immovable goods acquired or developed by a taxable person. Similarly the CGS will not apply to such a person since it only applies to taxable persons.

11. When a person leaves a VAT Group and is either the landlord or the tenant of a person who remains a member, can the landlord avoid a deductibility adjustment by opting to tax the letting?

Yes, subject to the connected persons rule in *Section 7A*.

12. Does a CGS positive adjustment apply where a landlord has a short term letting pre 1 July 2008 without a waiver and opts to tax the letting on or after 1 July 2008?

A CGS positive adjustment is not provided for in these circumstances as transitional properties are not subject to the change of use provisions in *Section 12E*.

13. More clarification is needed regarding the meaning of "freehold equivalent" - What is the position of a lease for 50 years, for 70 years, for 80 years that do not fall foul of the "50% rule"?

The length of the lease is not of great importance. The amount of the payment and the nature of the payment(s) is the most significant issue. However, as a very general rule of thumb, leases of 75 years duration or longer are likely to be considered as "freehold equivalent".

14. What is the position for a waived letting between connected persons (where the connected tenant is not entitled to at least 90% deductibility) where the VAT on the rents prior to 1 July satisfies the minimum test in the 12-year rule?

In such cases the landlord simply continues to charge VAT on the rents. The landlord must however ensure that the VAT on the rents continues to satisfy the minimum amount provided for in the 12-year rule.

15. What is the position for a waived letting between connected persons (where the connected tenant is not entitled to at least 90% deductibility) where the VAT on the rents prior to 1 July is less than the minimum amount provided for in the 12-year rule?

In such cases the waiver is cancelled with effect from 1 July. However, the landlord may increase the rents so that the VAT on the rents is at least equal to the minimum amount provided for the 12-year rule on 1 July. Rents will not have to apply on a monthly or bimonthly basis in order to satisfy the 12-year rule. However rent payable from 1 July 2008 should, irrespective of the period for which it is payable, be at such a level that when "annualised" the 12-year rule will be satisfied. The VAT on the rents, which meets the minimum amount, must be accounted for in the July / Aug VAT return.

It is important to note that the 12-year rule is subject to the landlord paying the resulting VAT liabilities on time. It is not a requirement that the tenant must have paid the VAT to the landlord.

Note - bad debt relief does not apply in such a case. See *Regulation 16A of S.I. No. 548 of 2006 - VAT Regulations 2006* (inserted by *S.I. No. 272 of 2007 - VAT (Amendment) Regulations 2007* as amended by *S.I. No. 238 of 2008 - VAT (Amendment) Regulations 2008*).

16. Will there be flexibility with the practical application of the CGS in regard to the first and second interval? For some businesses, the partial exemption calculation is a major task performed once a year - the application of the CGS would require partial exemption calculations throughout the year. Would it be acceptable to allow some flexibility in the timing of calculating the initial interval adjustment?

In practice this major task of calculating the partial exemption calculation is likely to be dealt with in Large Cases Division (LCD) and should be taken up by each

business with LCD. In the majority of cases the proportion of taxable use should be readily identifiable by direct attribution. See paragraph 6.9 of the VAT on Property Guide. Revenue appreciate the practical application of the CGS may give rise in certain circumstances to some issues and some flexibility will be considered as these issues come to light.

For example, if the minimum VAT as calculated by the formula is €12,000 per year, the minimum amount for each taxable period is €2,000. Therefore €2,000 must be accounted for in the July/Aug VAT return.

17. Example 3 in the VAT on Property Guide would appear to relate to repairs not development. Can Revenue clarify the example?

Expenditure on repairs and renewals does not fall to be taken into account when calculating development expenditure. Example 3 in future editions of the Guide will be amended to enhance clarity.

18. Has the exclusion for supplies of immovable goods in the grouping provisions been removed?

The exclusion has not been removed. The grouping provisions do not apply to the supply of immovable goods.

19. Can a person who carries on an exempt business avail of the joint option for taxation and is such a person subject to the CGS?

Any person who carries on a business in the State (even an exempt business) is a "taxable person". The joint option for taxation is allowed when the sale is between taxable persons. The CGS applies to properties where VAT was chargeable on the acquisition or development of that property to a **taxable person**. This should not be confused with a person or body who is involved in activities that are outside the scope of VAT. (See Q10).

20. In relation to Section 12E(8) - are paragraphs (b)(i) and (b)(ii) separate exclusions?

The conditions for the non-application of Section 12E(8)(a) set out in (i), (ii) and (iii) of Section 12E(8)(b) are not separate - they are cumulative. The taxpayer must satisfy the three conditions in order to avoid the CGS adjustment.

21. Does Section 12E(8) apply to "legacy leases"?

Yes. It is separate to the tax charge that arises on the assignment or surrender of a legacy lease under Section 4C.

22. Can Revenue confirm that, where a long lease that is subject to VAT is granted before 1 July 2008 (passing EVT, etc.) and the landlord then disposes of the reversionary interest in that lease after 1 July 2008 in circumstances where S.4(9) applies, the landlord will not suffer any CGS adjustment on that disposal of the reversion?

A CGS adjustment will not apply in these circumstances.

23. When does development constitute "refurbishment"? Is it subject to the 25% rule?

Refurbishment is a concept within the CGS. Whenever a person carries out a development on a previously completed building, this constitutes a refurbishment and essentially "creates" a capital good. The adjustment period for a refurbishment is ten intervals, the first of which begins when that refurbishment is completed. If a property is sold, the 25% test and the materially altered test apply to determine whether or not a property is "new". For example, suppose a property was acquired in 1985 without VAT and developed at a cost of €1,000,000 + VAT €135,000 in Apr 2007 (the development was completed 5 July 2007). A further development was carried out in Jan 2008 (completed 18 Mar 2008) at a cost of €200,000 + VAT €27,000. Both developments constitute refurbishment and "create" two separate capital goods with ten intervals for each capital good. The adjustment period for the first capital good (development completed 5 July 2007) begins on 5 July 2007. The adjustment period for the second capital good (development completed 18 Mar 2008) begins on 18 Mar 2008.

If the property is subsequently sold, it is necessary to determine whether or not the sale is taxable or exempt. This means looking at all development carried out in the five years before the sale occurs. The property is sold in Feb 2009 for €4,000,000. The total cost of the development (neither of which materially altered the property) in the previous five years is €1,200,000. Since this is more than 25% of the consideration for sale the sale is taxable.

If the property had been sold for €6,000,000 the cost of the development would not breach the 25% rule and so the sale would be exempt. In order to avoid a CGS claw-back (separate claw-back for each capital good), the joint option for taxation would have to be exercised.

Note - if the property is not sold there are simply two capital goods - each with an adjustment period of ten intervals. Neither of these capital goods is subject to the annual adjustment provisions under the CGS since the development which "created" them was completed prior to 1 July 2008.

24. If a developer disposes of a holiday cottage after 1 July 2008, what are the VAT implications for the developer and the investor? Is the investor entitled to recover VAT on the purchase price and let the property to the management company as the letting of a holiday cottage is a taxable activity?

The position for such arrangements post 1 July 2008 is as follows. The developer charges VAT to the investor on the sale of the holiday home. As there is no distinction between long and short leases under the new system for VAT on property the granting of the lease from the investor to the management company is an exempt supply of a service. There is no entitlement to deductibility for the purchaser. However, the investor can choose to register for VAT and exercise the landlord's option to tax in accordance with *Section 7A* and opt to tax the letting to the management company (assuming that the investor and the management company

are not connected, or if connected the tenant is entitled to at least 90% deductibility). The investor must then charge VAT on the periodic rents to the management company at 21% over the term of the lease. The management company who are engaged in the provision of holiday accommodation are obliged to charge VAT at 13.5% (*para (xiii)(b) Sixth Schedule*) on the moneys received for providing the holiday homes to its customers.

25. Is VAT chargeable on the sale of commercial or residential "transitional" property post cancellation of waiver after payment of cancellation sum?

Generally no VAT due on sale but see **Tax Briefing 64** in respect of sales by a developer / builder - otherwise no change in treatment intended under new rules.

26. Can a waiver of exemption be backdated to a letting that commences prior to 1 July 2008?

Yes, providing all the normal criteria as provided for in *Regulation 4(4) VAT Regulations 2006* are applicable, e.g. tenant must be entitled to full deductibility, a waiver may be backdated in respect of an individual letting. The backdated waiver will not extend to any of the landlord's other lettings.

27. Where a property, in which there is a short-term letting that is subject to a waiver, is sold and the sale is subject to VAT Revenue have traditionally allowed the amount of VAT charged on the sale be included in the "tax paid" for the purposes of the cancellation adjustment. Will this practice continue for waivers that are cancelled after 1 July?

Yes, this practice will continue where VAT is chargeable on the sale of a property and the waiver is subsequently cancelled.

28. A landlord creates a 25-year letting in a property on or after 1 July and the landlord's option to tax is exercised. Two years later the landlord sells the property. Can the transfer of business relief in *Section 3(5)(b)(iii)* apply to such a situation where the purchaser will continue to apply the landlord's option to tax?

Yes the transfer of business relief can apply where a landlord sells a property in which there is a sitting tenant and where the purchaser (landlord 2) will continue with the landlord's option to tax and charge VAT on the rents to the sitting tenant.

29. A landlord has two properties that are let short-term and are subject to a waiver of exemption on 1 July 2008. In December 2008 the landlord wishes to cancel his or her waiver of exemption. Can he or she cancel in respect of just one of the properties?

No, the normal waiver cancellation rules as contained in *Regulation 4 of S.I. No. 548 of 2006 - VAT Regulations 2006* apply and the cancellation amount must be calculated in respect of both properties.

30. What is the VAT treatment of a premium / reverse premium payable by a landlord to a tenant or a tenant to a landlord on or after 1 July in respect of leases created prior to 1 July?

There are essentially four possible scenarios -

1. Long lease created prior to 1 July on which VAT was chargeable when created.
2. Long lease created prior to 1 July on which VAT was not chargeable when created.
3. Short lease created prior to 1 July where waiver of exemption did not apply (i.e. exempt lease).
4. Short lease created prior to 1 July where waiver of exemption did apply (i.e. landlord charges VAT at 21% on the rents).

In respect of (1) the VAT chargeable on the assignment or surrender of the lease is restricted to the amount specified in *Section 4C(7)*. (See *question 6 above*)

In respect of (2) and (3) no VAT is chargeable on the assignment or surrender of the lease in such cases.

In respect of (4) VAT is chargeable at 21% the payment on the assignment or surrender of the lease is linked to the taxable waived letting.

Note - the treatment of premiums and reverse premiums on leases created on or after 1 July is explained in paragraph 4.11 VAT on Property Guide.

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

Appendix A

Example 1 - CGS intervals for legacy leases

Mr X grants Ms Y a 35-year lease on 1 July 2000. VAT is charged on the capitalised value of the lease of €1million. Ms Y is still the tenant (and so has the 'interest' in the property on 1 July 2008.) The adjustment period for the legacy lease for the person who holds the legacy on 1 July 2008, i.e. Mr Y, is 20 years from 1 July 2000. (This is determined from *Section 4C(11)(c)*).

On 15 April 2012 Ms Y assigns the lease to Mr J. The assignment is taxable, on the reverse charge basis, as it occurs within the 20-year adjustment period. VAT charged on the assignment is calculated as follows -

$$T \times \frac{N}{Y}$$

$$\begin{aligned} & \text{€1,000,000} \times \frac{9}{20} \\ & = \text{€450,000} \end{aligned}$$

The assignment is reverse charged which means that Mr J is liable to account for VAT of €450,000 on the supply in his Mar/Apr 2012 VAT return. Ms Y must issue a document to Mr J which contains-

- The amount of tax due on the assignment (€450,000)
- The number of intervals remaining in the adjustment period at the time of the assignment, which is in this case is 9 intervals.

Section 4C(8)(b) deems Mr J to be a capital goods owner for the purposes of *Section 12E*. Therefore, the interest that he owns is subject to the annual adjustments and all the other rules in the CGS. The number of intervals in the adjustment period for the person to whom a legacy lease is assigned or surrendered after 1 July 2008, is determined by *Section 4C(8)(b)(i)*. For Mr J it is 9 intervals. The initial interval for Mr J begins on 15 April 2012 and end on 14 April 2013. Mr J's accounting year ends on 31 December. The second interval for the interest will begin on 15 April 2013 and end on 31 December 2013. Mr J must make any adjustments required under the CGS until the end of the adjustment period (9 intervals) the last of which will end on 31 December 2020.

VAT - Reverse Charge on Construction Services

New rules for Principal Contractors and Sub-contractors from 1st September 2008

The *2008 Finance Act* amended the *1972 VAT Act* to introduce a new system of reverse charge for VAT on services provided by subcontractors to principal contractors in the construction industry.

From 1 September 2008, principal contractors will be obliged to self-account for VAT on amounts charged by sub-contractors for construction operations to which RCT applies (but excluding haulage for hire). From 1 September the amount a sub-contractor charges to a principal contractor should not include VAT. Instead, the principal contractor must calculate the VAT on the amount charged by the sub-contractor and account for the VAT directly to the Revenue Commissioners through his/her VAT return.

The subcontractor should continue to issue invoices to the principal contractor. The invoice should include the statement: 'VAT on this supply to be accounted for by the principal contractor' together with all the information normally required on a VAT invoice, except the VAT rate and the VAT amount. The principal contractor may issue the invoice, and give a copy to the subcontractor, if both the principal contractor and the subcontractor agree. Where RCT is to be deducted from the payment, the deduction should be 35% of the amount actually paid (i.e. excluding VAT).

A list of frequently asked questions is included below; these are updated regularly on the Revenue website, where there is more detailed information at: "**Construction Services - New VAT rules for Principal Contractors and Sub-contractors**" - from 1 September 2008.

Frequently Asked Questions

When does the new system take effect?

It will take effect from 1 September 2008.

Who does it affect?

All those involved in construction services within the scope of RCT i.e. all principal contractors and sub-contractors within the construction industry, but excluding those providing haulage for hire.

What is the reverse charge?

The reverse charge is a method of accounting for VAT.

Meat processing and forestry operations come under the scope of RCT. Does reverse charge apply to them?

No. Although it is closely linked to RCT reverse charge VAT only applies to construction services that come under the scope of RCT.

When a sub-contractor invoices a principal contractor, who must account for the VAT?

From 1 September 2008, the principal must account for the VAT.

How does the principal contractor show the reverse charge VAT on the VAT?

The principal contractor must include the VAT due on supplies from the sub-contractor with VAT on Sales under T1. If the principal contractor is entitled to a deduction s/he should claim a simultaneous deduction for the VAT on the supplies from the sub-contractor in T2 (VAT on Purchases).

If a sub-contractor is no longer required to charge VAT is s/he still required to be registered for VAT?

Yes, if his/her turnover exceeds the threshold of €37,500 (effective from 1st May 2008) in any continuous period of twelve months, unless s/he is a sub-contractor who is not established in the state.

Does the new system apply to construction services supplied outside of the construction industry?

No. Sub-contractors who also supply services to customers outside of the construction industry will continue to account for VAT on these services as before. These services are not within RCT and therefore the reverse charge does not apply.

Who is responsible for issuing the reverse charge invoice?

The sub-contractor normally issues the invoice but, if both the sub-contractor and the principal contractor agree, the principal contractor may issue the invoice and provide a copy to the subcontractor.

What information must appear on the reverse charge invoice?

The invoice must contain the statement *VAT on this supply to be accounted for by the Principal Contractor* as well as all the same information that would appear on a normal VAT invoice, except the VAT rate and the VAT amount.

Is VAT due on the supply if a sub-contractor does not have a VAT number?

If a sub-contractor is not VAT registered because his turnover is under the threshold, he will not have a VAT number. VAT is not then due on the supply. However, where a sub-contractor who is not established in the State makes a supply to a principal

contractor VAT is due on the supply irrespective of whether the sub-contractor provides an Irish VAT number.

How will a principal contractor know he must account for VAT by reverse charge?

The invoice issued by the sub-contractor will state *VAT on this supply to be accounted for by the principal contractor*. However the principal should ensure that the correct documentation is received i.e. (a) that an invoice received with the above notation is for services correctly subject to reverse charge and (b) that where services supplied do not come within reverse charge a normal VAT invoice is received.

How are prepayments and progress payments dealt with under the new system?

The principal must account for VAT when the payment is made. The principal may claim input credit for the VAT on such payments for the same period.

If a progress payment is made in August 2008 and the invoice does not issue until after 1 September 2008, what is the VAT treatment?

VAT is deemed to be included in the progress payment. The sub-contractor must issue a VAT invoice before the 15 September 2008 and account for the VAT to Revenue. The principal contractor can claim a deduction in the period the invoice issued.

What is the position where payment is made in September 2008 for construction services provided in August 2008?

A principal should not include VAT in any payment (in respect of construction services) made to a subcontractor on or after 1 September 2008 unless that VAT is in respect of a VAT invoice issued on or before 31 August 2008. The table below sets out when the VAT is due and who is liable in various scenarios.

Date progress claim issued or work completed	Invoice/ settlement voucher must issue before	Invoice/ settlement voucher issued	Payment Made	Who is accountable?	VAT liability arises
12/08/08	15/09/08	25/08/08	25/08/08	Subcontractor	July - Aug 08
12/08/08	15/09/08	20/08/08	06/09/08	Subcontractor	July - Aug 08 (if subcontractor on invoice basis) Sept - Oct 08 (if on cash receipts basis)
12/08/08	15/09/08	12/09/08	30/09/08	Principal	Sept - Oct 08

Date progress claim issued or work completed	Invoice/ settlement voucher must issue before	Invoice/ settlement voucher issued	Payment Made	Who is accountable?	VAT liability arises
22/09/08	15/10/08	25/09/08	02/11/08	Principal	Nov - Dec 08

How is retention money dealt with?

Liability on retention money will arise when the payment is made.

Work completed	Guarantee period expires	Invoice issued	Payment Made	Who is accountable?	VAT liability arises
22/09/07	22/09/08	25/09/08	10/10/08	Principal	Sept - Oct 08

What is the two-thirds rule?

Where the VAT exclusive cost of goods supplied in the course of providing a service exceeds two-thirds of the total VAT exclusive charge for the supply, the rate of VAT applicable is the rate that applies to the goods.

Is there any change relating to the two-thirds rule?

The two-thirds rule will not apply where the reverse charge applies.

If, as is the practice in some cases, a principal contractor applies RCT to all payments made to a sub-contractor, even if some of the services supplied are not construction services, what is the VAT treatment of the non-construction services?

Reverse charge should only be applied to those services that are construction operations. For example, an alarm company installs an alarm system for a local authority and gets the contract for the routine maintenance of the alarm. The installation of the alarm is subject to reverse charge, so the local authority accounts for the VAT. The maintenance service is not subject to reverse charge and the alarm company should account for the VAT on the maintenance service.

Is there any change in the application of RCT as a result of the reverse charge system?

The only change is that the principal contractor will calculate RCT on the VAT exclusive amount.

How does a subcontractor know that a customer is actually a principal?

The principal and the subcontractor are obliged to complete Form RCT 1, making a joint declaration that they are proposing to enter a relevant contract. If it is the first time that principal and subcontractor have entered a relevant contract, the principal is obliged to lodge the form with his Revenue district within seven days of making the declaration. Where the subcontractor has any doubts in relation to the bona fide of the principal, he would be advised to contact his Revenue office to verify or investigate.

Are non-established sub-contractors required to register for VAT?

Not if their only supplies within the State are to principal contractors. However those subcontractors who are already registered should remain registered for the purpose of claiming any VAT repayments due. Non-established sub-contractors who are commencing work in the State for the first time and who only provide services to principal contractors are not obliged to register for VAT but should register for the purpose of claiming any VAT repayments. Non-established subcontractors who also provide construction services for customers other than principal contractors must register. For example, a carpenter from the UK who carries out work only for principal contractors in this State is not obliged to register. However if he also gets a contract from a retailer to fit out a shop, he must register irrespective of turnover.

If the principal is a Government Department, Local Authority or Public Body what is their VAT situation?

Many of these organisations were not previously registered for VAT. They must now register for VAT. Instead of paying VAT to the subcontractor they must pay the VAT on the supplies from subcontractors directly to Revenue, showing it on the VAT 3 return form under T1. Most of these organisations are not carrying on taxable activities and so are not entitled to claim input credit in respect of the reverse charge VAT.

VAT treatment of property developers renting out residential properties

Introduction

New rules for VAT on property transactions came into effect on 1 July 2008. This article deals with situations where a property developer (or a person connected with a property developer) who was entitled to deduct the VAT incurred on the acquisition or development of residential property subsequently rents out that residential property on or after that date. There are two separate VAT rules for such scenarios depending on when the property was completed.

When is a property considered 'completed'?

'Completed' is defined in legislation [\[1\]](#). Generally speaking, a property is completed when it is ready to be used for the purposes for which it was designed. There are certain criteria that must be met before a property can be considered completed. For example, the utility services required for the purposes for which it was designed must be connected. However, the fact that the utility services are connected does not in itself necessarily mean that a property is completed. Revenue is prepared to accept, in cases to which this article applies, that a property may be regarded as not having been completed until it has been rented.

Properties completed before 1 July 2008 and rented on or after that date

Where a property developer develops a residential property, that property is completed before 1 July 2008, and that property is rented on or after 1 July 2008, then there is a full claw-back of the VAT deducted by the developer. This claw-back is triggered by *Section 4C(3) VAT Act 1972* (as amended) and is effected at the time the letting of the residential property is created. Example 1 below illustrates how this operates.

Example 1

Developer D constructs a house for sale. The cost of constructing this house is €1,000,000 + VAT €135,000. D deducts all of this VAT. The development of the house is completed on 1 Feb 2008. D is unable to sell the house and instead rents it out. The letting is for two years and is created on 4 Aug 2008. This triggers an immediate claw-back under *Section 4C(3) VAT Act 1972* (as amended) using the formula in *Section 4(3)(ab)* -

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

T = amount of tax deducted;

Y = 20

N = 0 (number of full years since development occurred)

$$\frac{135,000 \times (20 - 0)}{20}$$

= €135,000 VAT payable by D in taxable period in which the letting is created (Jul/Aug 2008).

D must account for this amount in the VAT return for Jul/Aug.

It should be noted that the adjustment that Developer D makes in the above example as a result of letting the house from 4 August is the same that would have been required if the letting had commenced prior to 1 July 2008. The only difference is that, under the new rules, the formula in *Section 4(3)(ab)* is applied through the operation of the new *Section 4C(3)*; prior to 1 July, *Section 4(3)(ab)* applied directly to such a transaction.

[1] See *Section 4B(1) VAT Act 1972* (as amended)

Properties completed on or after 1 July 2008 and rented on or after that date

Where a property developer develops a residential property, that property is completed on or after 1 July 2008, and that property is rented on or after 1 July 2008, no immediate claw-back occurs. Instead, the developer will be required to adjust the VAT deductibility at the end of the second capital goods scheme (CGS) interval [\[2\]](#) and each subsequent interval-until the property is sold. Example 2 below illustrates how this operates.

Example 2

Developer E constructs a house for sale. The cost of constructing this house is €1,000,000 + VAT €135,000. E deducts all of this VAT. The development of the house is completed on 15 Jul 2008. E is unable to sell the house and instead rents it out. The letting is for two years and is created on 4 August 2008. There is no immediate claw-back of the VAT deducted. E's accounting year ends on 31 December each year.

The CGS initial interval for E in respect of the property begins on 15 Jul 2008. It ends on 14 Jul 2009. The second interval ends on 31 December 2009 (end of accounting year). An adjustment arises at this point in accordance with *Section 12E(5) VAT Act 1972* (as amended) as follows -

C - D

C = reference deduction amount

D = interval deductible amount (see VAT on property Guide for details)

6,750 - 0

= €6,750 payable as tax due by E for the taxable period following end of second interval; that is, the tax is due for the Jan/Feb 2010 VAT period.

This payment essentially amounts to E paying back 1/20th of the VAT deducted in respect of the development of the property. At the end of each subsequent interval (in the taxable period following the end of each 31/12

financial year) the same amount (€6,750) will be payable by E for as long as the property is not used for a taxable purpose.

[2] See VAT on Property Guide Chapter 6 for full details. Available from www.revenue.ie

What is the position when a residential property - such as the properties in Examples 1 and 2 above - is subsequently sold after being rented?

In both cases, the sale is subject to VAT on the full consideration received regardless on of how long a period of time the properties have been let. However, there are two different treatments in relation to the deductibility that has been clawed back depending on the scenario. This is illustrated by example below.

Example 1 Continued

At the end of the lease (3 Aug 2010) D sells the property for €1,200,000. The sale is subject to VAT @ 13.5% = €162,000.

There is a VAT credit given to D for the VAT that was clawed back on the letting of the property, but this credit is reduced by the number of years that have elapsed since the property was completed -

$$\frac{E \times N}{T}$$

E = non-deductible amount^[3]

N = 18 (no of full intervals remaining in adjustment period + 1)

T = 20 (total number of intervals in adjustment period)

$$\frac{135,000 \times 18}{20}$$

= **€121,500** given as VAT credit for the taxable period in which sale occurs (Jul / Aug 2010). D must, however, also account for VAT of €162,000 for that period, being the VAT due on the sale of the property, for a net liability of €40,500.

[3]Where there has been an adjustment using the formula in *Section 4(3)(ab)* - whether by the operation of that section or via *Section 4C(3)* - the 'non-deductible amount' is the total amount of tax that the person had an entitlement to deduct in respect of the acquisition or development of the property, as employed originally in the formula in *Section 4(3)(ab)* for the purpose of calculating the deductibility adjustment. In some cases this non-deductible amount may be greater than the deductibility adjustment made as a result of applying the formula in *Section 4(3)(ab)*; but in the majority of cases - as in this example - the figures will be the same.

Example 2 Continued

At the end of the lease (3 Aug 2010) E sells the property for €1,200,000. The sale is subject to VAT @ 13.5% = €162,000.

There is no VAT credit given as the claw-back of €6,750 that occurred in the Jan / Feb 2010 taxable period was in respect of the use to which the property was put during the second interval - i.e. an exempt use. No further claw-back of inputs arises as the taxable supply of the property in August 2010 constitutes a taxable use for the third and all subsequent intervals.

E must account for VAT of €162,000 for the Jul / Aug 2010 taxable period, being the VAT due on the sale of the property.

While the net amounts that Developers D and E will return in respect of their sales of the two houses differ greatly, this reflects the fact that Developer D, in making the deductibility adjustment in 2008 had already accounted for the potential exempt use of the property for the full remaining portion of its CGS adjustment period, and will therefore benefit from its diversion to taxable use via its taxable sale in 2010. Developer E, on the other hand, would have made adjustments for exempt use only on an interval by interval basis. In consequence, both developers have consistent entitlements to deductibility for the remaining intervals in the adjustment periods.

Treatment for Stamp Duty

Where an intended purchaser occupies a new house under 'a rent with an option to buy scheme' and the house is subsequently purchased by that person as part of the scheme, the property will be regarded as new for the purposes of reliefs that apply on the purchase of a new house.

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Property Developers and Capital Allowances

Finance Act 2000 restricted the availability of capital allowances for property developers for expenditure incurred on the construction or refurbishment of certain industrial and commercial buildings. A property developer could no longer claim capital allowances where he/she, or a person connected with him/her, had incurred the capital expenditure on the particular building. An article on the restriction was included in **Tax Briefing 41**. *Finance Act 2008* extended the restriction on the availability of capital allowances to persons connected with property developers. The purpose of this article is to outline the new restriction.

Meaning of "property developer"

A property developer is defined as a person (includes a company) carrying on a trade that consists wholly or mainly of the construction or refurbishment of buildings with a view to their sale. Accordingly, if more than 50% of the turnover from a person's trading activities arises from such construction or refurbishment, the person is regarded as a property developer. Where the person is involved in a number of trading activities, the test is applied to the aggregate of the turnover from all of those activities.

In the case of an individual, the turnover test is applied at the end of the basis period for the year of assessment to which the claim relates. In the case of a company, the test is applied at the end of the company's relevant accounting period.

Meaning of "connected person"

Section 10 TCA, 1997 defines "connected person". Some common examples of connected persons are an individual and his or her spouse, relatives and in-laws, partners in a partnership, companies under common control and a company and its controlling shareholder(s).

Position before Finance Act 2008

Following *Finance Act 2000*, a property developer could not claim capital allowances where the capital expenditure on the particular building had been incurred by that property developer or by a person connected with that property developer. The restriction applied only to an actual property developer. Thus, for example, a person could claim capital allowances where the capital expenditure on the building had been incurred by a company of which that person had control if that person was not a property developer in his/her own right. The fact that the company of which the person had control was a property developer was not relevant.

Position after Finance Act 2008

Section 29 of Finance Act 2008 extended the restriction on the availability of capital allowances to cover both property developers and persons connected with property developers. The restriction now applies in the following circumstances:

- A property developer holds the relevant interest in a building and incurs the capital expenditure on that building;
- A property developer holds the relevant interest in a building and a person connected with that property developer incurs the capital expenditure on that building;
- A person connected with a property developer holds the relevant interest in a building and incurs the capital expenditure on that building;
- A person connected with a property developer holds the relevant interest in a building and that property developer incurs the capital expenditure on that building;
- A person connected with a property developer holds the relevant interest in a building and another person connected with that property developer incurs the capital expenditure on that building.

A property developer or a connected person who engages an unconnected builder to carry out the construction is regarded as incurring the capital expenditure.

Purchase of new building from unconnected persons

While a property developer, or a person connected with a property developer, cannot claim capital allowances where either party has incurred the capital expenditure, or it was incurred by some other person connected with the property developer, they can claim capital allowances where they purchase a newly constructed (or refurbished) building from an unconnected person who may or may not be a property developer. This arises from the Revenue interpretation and application of *Section 279 TCA, 1997*. As outlined in **Tax Briefing 41**, in the context of the original restriction, *Section 279* applies where a property developer purchases a newly constructed building, or a building that has been used for less than a year from its first use, from an unconnected person where no capital allowances have been claimed on the building. For the purposes of the extended restriction, Revenue takes the view that, because *Section 279* only deems the purchaser to have incurred the construction expenditure, the property developer, or a person connected with a property developer, has not incurred the actual capital expenditure where they purchase from an unconnected person who has incurred the expenditure and can, therefore, claim the capital allowances. The restriction would apply where the actual construction expenditure was incurred by either party, or it was incurred by some other person connected with the property developer.

Application of extended restriction

The effective date for commencement of the extended restriction is *1 January 2008*. It is possible to interpret the new legislation in a way that could result in capital expenditure on certain buildings having to be apportioned between qualifying expenditure (*pre 1 January 2008*) and non-qualifying expenditure (*post 1 January 2008*). As such an apportionment could result in unfair treatment of certain projects where work had commenced before 1 January 2008, Revenue will treat the extended restriction as applying only where expenditure that would qualify for capital allowances is first incurred on a building on or after *1 January 2008*.

Affected buildings

The original restriction on the availability of capital allowances applied to the following schemes:

- Urban Renewal scheme (industrial and commercial)
- Rural Renewal scheme (industrial and commercial)
- Town Renewal scheme (industrial and commercial)
- Enterprise Areas (airports)
- Sports Injury Clinics
- Private hospitals
- Mental Health Centres
- Childcare facilities

The latest restriction was not extended to some of the above schemes because of their 31 July 2008 termination date. It applies to the following schemes:

- Private hospitals
- Mental Health Centres
- Childcare facilities
- Specialist Palliative Care Units
- Mid-Shannon Corridor Tourism Investment scheme

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Mid-Shannon Scheme

The Commencement Order for the Mid- Shannon Corridor Tourism Investment Scheme has been signed by the Minister for Finance with effect from *1 June 2008*. The period during which qualifying construction/refurbishment must be carried out is three years from this commencement date, i.e. up to *1 June 2011*. The scheme provides for capital allowances over seven years for qualifying expenditure on certain approved tourism infrastructure projects located in those mid-Shannon corridor areas listed in *Schedule 8B TCA, 1997*. The Minister for Arts, Sport and Tourism has published guidelines in relation to the approval and certification of tourism projects. These guidelines are available on that Department's website.

The scheme is similar in certain respects to previous area-based tax incentive schemes. However, there are some important differences and the purpose of this article is to highlight these differences.

Approval and certification

Capital allowances are only available for certain types of tourism projects. The guidelines specify the classes of infrastructure facilities that may qualify. Projects must be approved and certified at various stages of their development by the Mid-Shannon Tourism Infrastructure Board ('the Board'). The Board must approve projects in principle before expenditure is incurred and after full planning permission has been sought. Applications for approval in principle must be received within a year of the commencement of the scheme, i.e. by *1 June 2009*. After the expenditure has been incurred, the Board must certify that the project has complied with the criteria in the guidelines. Finally, the Board must certify the facility after it has first been used. No capital allowances can be given unless the Board has given the required approval and certification.

Revenue has no role in relation to the approval and certification of projects. Applications for approval should be sent to either of the following:

John Crowe,
Shannon Development,
Town Centre,
Shannon,
Co. Clare.
Tel: 061 710215
Email: CroweJ@ShannonDevelopment.ie

Mark Rowlette,
Fáilte Ireland,
Amiens Street,
Dublin 1.
Tel: 01 8847132
Email: Mark.Rowlette@failteireland.ie

Applicants may find it helpful to discuss projects with the above people prior to submitting applications.

Residential accommodation

Some of the previous incentive schemes had a strong focus on residential accommodation. There is no similar focus with this scheme. In addition to restricting the type of qualifying accommodation allowed, a maximum limit has been imposed on the extent to which capital expenditure on eligible accommodation buildings may be certified by the Board. The amount of relief that may be given in relation to capital expenditure incurred on accommodation buildings is restricted to the amount of such expenditure that was eligible for certification. The maximum limit is the lower of 50% of the overall project costs or the expenditure on the nonaccommodation part of the project. While the Board has the authority to specify a lower percentage than 50%, it has not done so in the guidelines as they currently stand.

Buildings that are industrial buildings (or that are deemed to be such) in accordance with *Section 268 TCA, 1997* are specifically excluded from relief under the scheme. This means that buildings such as hotels and guesthouses cannot qualify for relief. However, there is an exception to this general exclusion for industrial buildings in the case of registered holiday camps.

Grant assistance

The relief is not available in respect of expenditure incurred where any part of the expenditure has been met, directly or indirectly, by way of grant assistance from the State or from any public body. For example, no relief will apply where expenditure is met directly or indirectly by a grant or by BES funding.

Non-BMW areas

To comply with E.U. Commission State Aid rules, the amount of qualifying expenditure is restricted where the project is located in the counties of Clare or Tipperary. In such cases, capital allowances are restricted to 80% of the amount that would otherwise qualify for relief.

Qualifying resort areas - listed self-catering accommodation

Issue **68** of **Tax Briefing** contained an article on the implications for certain claimants of tax relief under the Resort Areas Incentive Scheme of Fáilte Ireland's decision to phase out the inspection and approval of self-catering accommodation for listing purposes. Revenue now understands that Fáilte Ireland has since decided to continue with its approval and listing of self-catering accommodation and has introduced a new online application and approval system for this purpose. There are a small number of properties, for example, group schemes of more than seven properties, that cannot be accommodated by the new online system and that will have to continue to be processed 'offline'. However, as the conditions that previously had to be met by 'listed' self-catering accommodation to qualify for capital allowances are unchanged in the new system, the Resort Areas Incentive Scheme can continue to operate as before and the alternative arrangements that were outlined in **Tax Briefing issue 68** will not apply.

Details of the new arrangements are available at www.failteireland.ie.

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Exchange Rates (2007)

Average Market Mid-Closing Exchange Rates v. Euro as Supplied by The Central Bank

1st February 2008

	2004	2005	2006	2007
US Dollar	1.2439	1.2441	1.2556	1.3705
Sterling	0.6786	0.6838	0.6817	0.6843
Danish krone	7.4399	7.4518	7.4591	7.4506
Japanese yen	134.44	136.85	146.02	161.25
Swiss franc	1.5438	1.5483	1.5729	1.6427
Swedish krona	9.1243	9.2822	9.2544	9.2501
Norwegian krone	8.3697	8.0092	8.0472	8.0165
Canadian dollar	1.6167	1.5087	1.4237	1.4678
Australian dollar	1.6905	1.6320	1.6668	1.6348

Lloyds Conversion Rate

For accounts closed in the calendar year 2007 the conversion rate of sterling to Euro should be calculated by reference to the sterling mid-closing rate supplied by the Central Bank.

2007: Stg £1 = Euro 1.3636

Voluntary Disclosure Initiative - Deposit Interest Reporting

Introduction

In May, Revenue announced a voluntary disclosure initiative for persons holding untaxed funds in domestic deposit accounts. Regulations were signed by Revenue in early May requiring financial institutions to provide details of interest paid to deposit holders where the interest paid exceeded €635. The regulations provided that the reports are to be made to Revenue on or before 15 September 2008 for payments made in 2005 or 2006. For payments made in 2007, the reporting deadline date is on or before 31 October 2008.

With effect from 15 September 2008, Revenue will have information on certain interest payments made by financial institutions where the interest payment exceeded €635.

It is not considered appropriate that persons who will be reported could avail of the benefits of a qualifying disclosure from such an intervention. Accordingly, after 15 September 2008, certain persons are precluded from obtaining the benefits of a qualifying disclosure.

Terms and Conditions of the Voluntary Disclosure Initiative

Persons who have undeclared tax liabilities in relation to accounts, now subject to the reporting regulations, which in aggregate held €100,000 or more at any time during the years 2005, 2006 and 2007, and who fail to avail of this disclosure initiative are precluded from making a qualifying disclosure if:

- A Notice of Intention is not submitted on or before 15 September 2008 and
- A full payment and disclosure is not made on or before 15 January 2009

The following persons are not eligible to make a voluntary disclosure under this initiative:

- Persons previously required to make a disclosure under the BNR, Offshore or SPIP project and who failed to make a complete disclosure,
- Ansbacher and CMI/NIB cases and
- Persons who have come or may come under the investigations arising from the Moriarty or Mahon Tribunals.

Benefits of Voluntary Disclosure

Where a notice of intention is submitted on or before 15 September 2008 and a full and complete disclosure and payment is submitted on or before 15 January 2009, the following benefits will apply:

- The disclosure will be regarded for the purposes of Section 1086 of the Taxes Consolidation Act, 1997, as a voluntary disclosure - this means that the

identity of the person involved and details of the payment to Revenue will not be published,

- Revenue will not take steps to initiate the prosecution of any offence that may have been committed and
- Penalties will be mitigated in accordance with the [Code of Practice for Revenue Audit](#).

Scope of Revenue Enquiries

With effect from 15 September 2008, Revenue will commence to assess and analyse the information received. The primary concern for Revenue will be the capital funds in the accounts. Practitioners will be aware that, from 1993/94, DIRT became a final liability tax. Therefore, irrespective of whether a person was taxed at the standard rate or higher rate no further tax is owing where DIRT was applied to the interest payment for the years 1993/94 et seq.

Calculation Issues

Practitioners should also note that Revenue has designated 1997/98 as the roll-up year. For income tax, therefore, the liability for all years up to and including 1997/98 may be calculated on the basis that the aggregate undisclosed income of all years preceding 1997/98 was income chargeable for 1997/98 and not any other year. Similarly, for VAT the liability for all taxable periods up to and including January/February 1998 may be treated on the basis that the total undisclosed taxable supplies for all periods preceding January /February 1998 arise in that January/February 1998 period and not in any other period.

Where tax is owing for periods prior to 1991, Revenue is statute barred from mitigating penalties for these periods. In such cases, the undeclared income for these periods may be taxed by reference to the rates pertaining in 1997/98 but a 100% penalty applies.

In order to assist practitioners in the calculation of liabilities owing, interactive spreadsheets are available on the [Revenue website](#).

Further information

An [explanatory note](#) with further information (together with [detailed FAQs](#)) are available on the [Revenue website](#). Notice of intention forms and disclosure forms ([form IRP1](#)) are on the website, may be obtained from any Revenue office or from the Revenue Forms & leaflets Service by telephoning **LoCall 1890 306706**. This service is available 24 hours a day, 7 days a week.

A Revenue helpline is also available at **01-6474818** Monday to Friday 08.30 am to 4.30 pm. Enquiries may also be addressed to:

Office of the Revenue Commissioners,
Investigations & Prosecutions Division,

Underlying Tax Project (Interest Reporting),
4th Floor,
1 Clanwilliam Court
Lower Mount St,
Dublin 2

e-mail: utproject@revenue.ie
Fax number: 01 - 6474821



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Completion of Paper Form 11 2007

To support Revenue's aim of issuing accurate Notices of Assessment for your clients, and to minimise the need for further contact with Revenue, practitioners are urged to follow the recommendations below when completing the 2007 Income Tax Return (Form 11) on behalf of clients:

Things to Do

- Please write clearly within all the relevant boxes.
- Include only annual figures on the income / claim lines.
- Use only Euro amounts. If your client is in receipt of foreign income, please ensure the amount entered is the Euro equivalent of that foreign income.
- Include income from all sources, including PAYE pay and tax, at lines 212 and 226(a) respectively.
- Claim all relevant tax credits to which your client is entitled, including the PAYE Tax Credit, by ticking the box on line 515.
- Leave blank any part of the form not relevant to your client's circumstances.
- Include the annual taxable Social Welfare income, where applicable, for example, Jobseeker's (Unemployment) Benefit, Old Age/Survivors' Pension, Illness (Disability) Benefit or Pension.
- Tick the box at line 20, page 3, if you have a genuine doubt about the tax treatment of any item on the return and enclose a brief note explaining the point at issue.

Please Do Not

- Enter weekly/monthly figures on any line.
- Use entries such as 'see P60', 'as previously', 'see attached', 'none' or insert lines through sections of the form not relevant to your client.
- Include non-taxable Social Welfare income, for example Farm Assist, Maternity Benefit, Back to Work Allowance.
- Include any attachments, for example P60's, medical receipts. [Supporting documentation - including business accounts - must, however, be retained for six years and may be requested by Revenue for the purpose of an assurance check or audit.]
- Enter, at Line 511, interest, for which relief has already been granted at source (TRS).
- Enter, at Line 519, medical insurance premiums.
- Make an entry, at Line 520(b), if the relevant RICT3 certificate number(s)/Designated Fund reference numbers are not known.
- Make an entry, at Line 521, if the relevant Film 3 certificate number(s) are not known.
- Enter, at line 526, medical insurance premiums paid by your client for him/herself.

If not already a ROS (Revenue On-Line Services) customer, you are encouraged to change over to ROS and avail of the extended Pay and File

deadline of 17 November 2008. This will also provide an instant calculation of liability. Access ROS at www.revenue.ie

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