S.I. No. : 515 of 2003

O R D E R

entitled

Finance Act 2003 (Commencement of Section 145) Order 2003

Made by the

Minister for Finance

Prn: 1133

Price: 76c

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Finance Act 2003 (Commencement of Section 145) Order 2003

I, Charlie McCreevy, Minister for Finance, in exercise of the powers conferred on me by section 145(2) of the Finance Act 2003 (No. 3 of 2003), hereby order as follows:

1. This Order may be cited as the Finance Act 2003 (Commencement of Section 145) Order 2003.

2. The 1st day of November 2003 is appointed as the day on which -

   (a) paragraph (a) of section 145(1) of the Finance Act 2003, and

   (b) paragraph (d) of section 145(1) of the Finance Act 2003 in so far as it relates to section 57 (other than subsections (2) to (5)) of the Capital Acquisitions Tax Consolidation Act 2003 (No. 1 of 2003), as respects repayments made on or after that day (except repayments in respect of claims for repayment made before that date not being claims for repayment made by virtue of section 18(3) of the Capital Acquisitions Tax Consolidation Act 2003),

come into operation.

3. The 1st day of January 2005 is appointed as the day on which paragraphs (b) and (c) of section 145(1) come into operation.

4. The date of the making of this Order is appointed as the day on which paragraph (d) of section 145(1) of the Finance Act 2003 in so far is it relates to subsections (2) to (5) of section 57 of the Capital Acquisitions Tax Consolidation Act 2003 comes into operation.

GIVEN under my Official Seal,

31 October 2003.

Charlie McCreevy,

Minister for Finance.

Explanatory Note – Section 145

(*This note is not part of the Instrument and does not purport to be a legal interpretation.)*

This Order appoints the coming into operation of section 145(1) of the Finance Act 2003 in the following manner:

(a) as regards paragraph (a) of that subsection, on 1 November 2003. That paragraph deletes section 18(5) of the Capital Acquisitions Tax Consolidation Act 2003, which provides that notwithstanding section 57 of that Act interest shall not be payable on any repayment of tax which arises by virtue of section 18(3) of that Act. Section 18(3) of the Act provides that the 6 per cent charge imposed on the property comprised in certain discretionary trusts is reduced to 3 per cent in specific circumstances;

(b) as regards paragraphs (b) and (c) of that subsection, on 1 January 2005. Those paragraphs restrict the period within which the Revenue Commissioners may make enquiries or raise assessments in relation to underpayments of capital acquisitions tax to a period of 4 years from the date of receipt of the return by the Revenue Commissioners. This restriction will not apply where the underpayment arises from fraud or neglect on the part of the taxpayer;

(c) as regards paragraph (d) of that subsection, in so far as it relates to section 57(2) to (5) of the Capital Acquisitions Tax Consolidation Act 2003, on the date this Order is made (31 October 2003). Those subsections restrict the repayment of capital acquisitions tax to valid claims made within 4 years of the later of the valuation date or the date of payment of the tax concerned. A valid claim is one where the Revenue Commissioners have been provided with all the information to enable them establish the extent of the overpayment. This measure is being introduced subject to transitional arrangements.

Paragraph (d) will come into effect other than in relation to section 57(2) to (5) of the Capital Acquisitions Tax Consolidation Act 2003, as respects repayments of capital acquisitions tax made on or after 1 November 2003. The new provisions will also apply to repayments made on or after 1 November 2003 in respect of claims for repayment made by virtue of section 18(3) of the Capital Acquisitions Tax Consolidation Act 2003. The existing provisions for interest on repayments will apply to claims for repayment made before 1 November 2003.

Under the new section 57, interest on a repayment will only be paid where the repayment has not been made by the Revenue Commissioners within the period of 183 days of receipt of a valid claim for repayment and then only from the expiration of that period. An exception to this general rule is that interest will be paid from the date of the event giving rise to the repayment for valid claims made where the Revenue Commissioners have made an error in the operation of capital acquisitions tax. The rate of interest on such repayments will be 0.011 per cent per day or part of a day.