

TAX BRIEFING

PAY AND FILE 2004



Introduction

October 31 is now recognised as one of the most important dates in the income tax calendar. In this article we are taking the opportunity to remind you of some of the main features for 2004 and to alert you to some potential pitfalls. Pay and File has also been a feature for Corporation Tax for over a year now and most companies will now have experienced at least one Pay and File deadline. A few practical issues that have come to attention are dealt with in this article.

Income Tax

Pay and File deadline

This year, as was the case in 2003, the only extension to the Pay and File deadline is for Revenue On-Line Service (ROS) customers who both pay and file on-line through ROS. The date for making the return and the date of payment will be extended to 18 November 2004, where **both** the return and payment are made through ROS. If the return is made through ROS before 18 November

and the payment is being made through ROS, then the payment will not be debited until 18 November 2004. The deadline of 31 October 2004 applies to all other customers. Revenue will however accept the date of postmark on the envelope as date of receipt of return for compliance purposes.

The guide, *'Pay and File and the 2003 Income Tax Return'* sets out the arrangements in place this year, as mentioned above, and details the various payment options available.

ROS

In addition to the benefit of the extended deadline mentioned above, ROS is the quickest and easiest way of meeting your pay and file obligations. The article on ROS on page 4 contains some very useful tips regarding the filing of returns and payments on-line, especially during the Pay and File period.

Personalised Paper Returns

When filing paper returns practitioners are again reminded of the importance of using only the personalised returns issued for the particular client.

If you do not have a personalised return, and you are not using ROS, 'non-personalised' returns may be obtained from Revenue's Forms and Leaflets Service at LoCall 1890 306 706, from any Revenue Office, or from the Revenue website, www.revenue.ie.

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KEY DATES

October

14 PAYE/PRSI

P30 monthly return and payment for September 2004

14 Dividend Withholding Tax

Return and payment of DWT for September 2004

14 Relevant Contracts Tax

RCT30 monthly return and payment for September 2004

1-21 Corporation Tax

2nd Instalment PT for APs ending between 1-30 April 2003

1st Instalment PT for APs ending between 1-30 November 2004

Returns for APs ending between 1-31 January 2004

Pay balance on APs ending between 1-31 January 2004

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1-30 Corporation Tax

Returns of Third Party Information for APs ending between 1-29 February 2004

December

14 PAYE/PRSI

P30 monthly return and payment for November 2004

14 Dividend Withholding Tax

Return and payment of DWT for November 2004

14 Relevant Contracts Tax

RCT30 monthly return and payment for November 2004

1-21 Corporation Tax

2nd Instalment PT for APs ending between 1-30 June 2004

1st Instalment PT for APs ending between 1-31 January 2005

Returns for APs ending between 1-31 March 2004

Pay balance on APs ending between 1-31 March 2004

1-31 Corporation Tax

Returns of Third Party Information for APs ending between 1-31 March 2004

31 Income Tax

Date for 'Top Up' payment under Pay and File

PAY AND FILE 2004

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Payslips

If you are not making an electronic payment via ROS you should use the payslip that is part of the personalised Form 11. Preliminary tax reminder letters, which issued recently, also have a copy of the personalised payslip.

If you wish to make a payment for any balance of income tax arising for 2002 as part of a review required by *Sections 65 or 67 TCA 1997* a non-personalised payslip is available from Revenue's Forms and Leaflets Service at LoCall 1890 306 706.

A non-personalised payslip is also available from Revenue's Forms and Leaflets Service for any additional 'top up' payment required under *Section 958 TCA 1997* (payment to be made by the 31 December 2004) - see *Tax Briefing*, Issue 44, pages 5 and 6 for more information on top up payments.

See section on Capital Gains Tax which follows for CGT Payslip.

RACs and PRSAs

Under *Sections 787(7) and 787C(3) TCA 1997* relief may be claimed in respect of an RAC or PRSA payment made on or before the return filing date. Where an individual qualifies for the extended Pay and File deadline available to ROS customers (see above), the deadline for making RAC and PRSA payments and claiming the relief is also extended to 18 November 2004.

Directors

Statement of Practice SP-GEN/1/93 was formerly withdrawn in *Tax Briefing* 53. This Statement makes reference to SP-IT/1/93 which deals with company directors and self assessment. SP-IT/1/93 is still in force and is not affected by the withdrawal of SP-GEN/1/93.

Corporation Tax

Revenue has been asked to clarify the place of filing for the corporation tax returns. These should be filed to the Collector-General's Division, PO Box 354, Limerick. The tax return together with relevant payment must be received in that office on or before the return filing date, otherwise a surcharge and or interest payments will be due. As for income tax returns, Revenue will accept the date of postmark on the envelopes as date of receipt of the return for compliance purposes, provided they are posted directly to the above address.

Turnover in excess of €13 million

Where accounts and financial statements are required in the case of a company with a turnover over €13 million, they should be sent with the paper return to Collector-General's Division, Box 354, Limerick. If the return is submitted electronically via ROS the accounts should be sent to the Revenue office dealing with the corporation tax affairs of the company.

Capital Gains Tax.

October 31 is also the due date for capital gains tax due on disposals in the 2004 initial period, that is gains arising between the 1 January and 30 September 2004.

CGT Payslip A (for the purpose of making a payment of CGT for this initial period) is available on the Revenue website, www.revenue.ie/pdf/cgta04.pdf, or from any Revenue office. ■

ROS

Performance Enhancement/P & F Tips

Introduction

This article provides some details on testing in relation to our recent performance enhancements, some useful information in relation to Pay and File 2004 and details of the latest release of the ROS Service (2 October 2004).

Performance Enhancements

Significant enhancements have been made to the ROS Service over the last six months to improve the capacity and performance of the service by upgrading our web and application servers and software. The ROS service is currently taking in between 8,000 and 10,000 returns or payments a day as well as handling up to 10,000 information requests per day on our Information Service without difficulty. We are confident from continuous background stress testing that we have recently undertaken that the system is capable of handling up to five times these figures. The performance of the service will be monitored carefully over the coming weeks.

In addition to these enhancements which have been in place since May this year our latest release on 2 October included changes to the sign in procedure for ROS which will result in a marked improvement in the amount of time taken by regular ROS customers when entering the secure services section of the service.

Pay and File 2004

The deadline for submission of returns and payment of tax is extended to 18 November 2004 for customers who use ROS to both Pay and File their 2003 Form 11. We recommend that you Pay and File early. The money will not be taken out of your clients' accounts until 18 November if you specify that date when arranging the payment.

Extended Helpdesk facilities

We will be extending the opening hours of the ROS Technical Helpdesk (1890 20 11 06) during the lead up to Pay and File, in line with demand for the service. We have also substantially increased the number of staff working in the Helpdesk to assist customers with any difficulties that they might have during this busy period. Please check the "News" on the ROS Homepage, accessible via www.revenue.ie, for these extended hours over the coming weeks. As previously advised we have also installed touch dial options on the Helpdesk Service to enable callers to identify particular areas where they require assistance and to help direct their call to a person in the area of concern to you e.g. digital certificates, uploading forms, VRT etc.

Your local ROS Liaison Officer (RLO) will also be available to assist with any difficulties during this busy time. A full list of the names of all local RLOs together with their telephone numbers and e-mail addresses is available from the Help button at the top right of the ROS Homepage.

Tips for Pay and File

The following information has been published on the ROS website to assist customers in their use of ROS particularly during the Pay and File period.

Existing ROS Customers

■ Digital Cert Issues

Have you got a valid ROS Digital Certificate?

Have you logged onto ROS since 2 April 2004? If not, please do so now to ensure the successful rollover of your digital certificate to the new ROS Digital Certificate provider.

Is your certificate due to expire on or before 18 November? If so, please ensure you renew your certificate before then.

Have you forgotten your ROS Digital Certificate password? If so, you can now arrange to have the password sent to you in the post. Simply enter the secure services section from the ROS homepage and click on the 'forgot your password?' link.

Have you changed your PC recently? If so, check that you have successfully copied your digital certificate from your old PC to your new PC at c:ros\roscerts. You should verify this now by logging in to ROS on your new PC.

■ Agents

Is your list of clients complete? If not, contact your local Revenue office with the relevant client details.

If you intend filing an Income Tax Form 11 for a client please check that the client is registered for Income Tax and that you are registered with Revenue on the client list as the agent.

If you plan to submit off-line returns or payments in batches during the peak Pay and File period it might be a good idea to restrict the size of the batches uploaded at any one time to avoid any unnecessary problems.

■ Administrators

Ensure all linked users have retrieved their Digital Certificates by 8 November.

Ensure all linked users have been granted the necessary permissions to file returns and/or make payments. You can check their permissions under the Admin Services tab.

Ensure that all linked users have their passwords. You can check their passwords yourself on the Admin Services tab.

■ ROS off-line Form 11

Use the ROS off-line Form 11 return to complete the return off-line before filing.

Ensure you have downloaded the latest version of the ROS off-line

ROS

Performance Enhancement/P & F Tips

Form 11. Click on the Refresh tab on the Download page of the off-line version.

File the returns when ready - don't wait until the last minute.

When completing the "Self Employed Income" page in the off-line facility you need to click on the Accounts Extract tab on this page and select one of the Accounts menu options. If you do not do this you will receive a warning message "ROS will not accept this Form 11 at upload stage in the absence of a completed Accounts Menu" when you attempt to click on the Continue tab on this page.

Social Welfare benefits and health insurance contribution details, if any, should be entered on the PAYE/BIK/Pensions page.

■ Making Payments

You can now prepare your payments off-line using the ROS off-line Payment facility.

Submit your Payment Instructions early. The money will not be taken from the account until 18 November if you specify that as the payment date. The money will only be taken out earlier if you specify an earlier payment date.

If planning to pay using the ROS Debit Instruction (RDI), ensure this has been set up beforehand.

Ensure that the bank account details and bank sort code are correct.

You must also ensure that the bank account selected is suitable for debit. Some banks will not allow debits from certain types of account i.e. deposit accounts. If in doubt, check with your bank.

Any requests for change of bank details must be sent to: ROS/SDA Unit, Collector General's Division, Apollo House, Tara Street, Dublin 2 (Fax: 01 6798224), in writing as soon as possible.

If a payment has been filed and it is subsequently discovered that an incorrect amount has been entered, any amendments to the payment amount should be notified in writing as soon as possible to: ROS/SDA Unit, Collector General's Division, Apollo House, Tara Street, Dublin 2 (Fax: 01 6798224).

If you use the Online Banking Payment Method, you must also log on to your bank's Online Banking System to authorise the debit of the relevant amount from your account. Your instruction to your bank should also include your PPS Number as a reference.

If you make payment through ROS, do not complete the Single Debit Authority mandate attached to paper return forms (Form 11, CT1) and the Pay and File Reminder form (P&FD). Otherwise, payment could be deducted twice from your bank account.

Technical/Connection to ROS

If this is your first time accessing the Revenue On-Line Service (ROS) please familiarise yourself with the various software, hardware and settings requirements by visiting the ROS System Requirements page from the link on the ROS homepage.

Have you considered a broadband connection to the internet? Broadband is not essential for ROS but it will help speed up the e-filing process.

New ROS Customers

If you intend filing your Form 11 on-line for the first time this year, please note that you should allow 8 working days approximately to register for ROS and obtain your digital certificate to enable you to file your return on-line. You will need to retrieve your digital certificate before 8 November 2004 to ensure you can log onto ROS successfully to pay and file before the extended deadline of

18 November. If, however, you fail to retrieve your certificate before the 8 November you may still be in time to register and to pay and file. You should contact your local ROS Liaison Officer <http://www.ros.ie/PublisherServlet/liaison> who may be in a position to assist you with your ROS Registration.

Returns Outstanding Facility

A problem was identified recently in relation to the Returns Outstanding facility in ROS. Some agents reported that not all of their clients whose 2003 Form 11 had not been filed were appearing on the ROS List. This problem has now been rectified and ROS is now showing a correct listing of outstanding returns. We apologise for any inconvenience this may have caused.

Release 2 October 2004

The following is a list of enhancements to the ROS service provided in our recent release.

2003 Form 11 upgrade

A new amended version of the 2003 Form 11 is included with this release. To ensure that you are using the correct version it is important that you download this latest version. Open the ROS off-line application, select Download, select Refresh, select Uninstall the 2003 Form 11, and then select Download to install the latest version.

Technical Architecture Changes

We have made some background changes to the way customers sign in to ROS when they select 'Enter your Secure Services'. These 'invisible' changes will improve the login times for agents and customers and speed up the processing of returns in advance of the busy Pay and File period.

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ROS

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Web Services (CT1 & CAP)

Web Services allow customers to prepare Returns using their own ROS compatible software and then upload the forms directly from the software package directly to ROS. All transactions take place over a secure connection. This facility has already been released for Form 11 filing and is now being extended to the Form CT1 and for CAP Traders.

2004 P35 Changes

P35s for year ended 31 December 2004 are due to be filed by 15 February 2005. In advance of this date some minor changes have been made to the ROS P35L to allow certain additional characters in name fields and also to cater for the inclusion of a figure on the P35 for Notional Pay for B.I.K. for the year.

Off-line Amended/ Supplementary P35Ls

These newly available returns will overcome the restriction for the larger employers which applies to the

on-line version of the form which only allows for the completion of details for 15 employees.

Forgotten/ Lost Passwords

If you have forgotten or lost your ROS Digital Certificate password you will now be able to request to have the password sent to you automatically by post. This facility will be available from the ROS Homepage, when you select to enter your secure services. For added security when this facility is requested an e-mail is issued to the certificate holder advising that the certificate password is being sent in the post. It should be noted however that the facility to have the password sent out by post applies to full ROS Customers or Local ROS Administrators only. Members of firms who use a linked (sub) certificate arranged by the Local ROS Administrator can continue to obtain their password from the Local Administrator on the administration services page via the Admin Services tab.

Vehicle Registration Tax (VRT) Enquiry Facility

Another facility being made available from the ROS Homepage, will allow customers to calculate the VRT liability on second-hand vehicles. As the facility is accessible from the homepage it will not be necessary to be a registered ROS customer to use this service. This facility will prove a valuable tool to anyone thinking of importing a vehicle to assist in the calculation of the VRT payable.

Vehicle Registration Tax Form RF100.

At the request of the Department of Environment and Local Government additional fields have been added to the Motor Tax Application Form RF100 to include the policy number for motor insurance details and to capture other details in relation to the motor tax period. In addition the wording of the notes on the reverse of the form has been amended slightly. ■

FIRST ACTIVE SHARES

CGT



Personal Exemption on the disposal of Free Shares

This note is intended to clarify the position regarding the annual personal exemption where joint investors or borrowers received free

and loyalty shares in First Active in the name of one account holder only.

Under the provisions of the Building Societies Act 1989, only the first named on a share account or a housing loan is treated as a member for de-mutualisation purposes. That person is usually the only one entitled to an allotment of free shares.

For CGT purposes, however, this does not necessarily mean that the first named account holder or borrower is treated as being the recipient, or only recipient, of the shares. It can happen that the first named will have received free shares wholly or partly on behalf of others

and, if so, it will be necessary to determine who has beneficial ownership.

Each beneficial owner of First Active shares is treated as disposing of his/her interest and is entitled to the annual personal exemption against the resultant gain. Thus, for example, in the case of a married couple who held a joint account in the First National Building Society, each is entitled to the annual personal exemption on gains arising on the disposal of their respective beneficial interests in the First Active shares notwithstanding that the shares were held in one name only. ■

NEW TIME LIMITS

Section 17 FA 2003

Introduction

Tax Briefing Issue 56 contained a detailed article on the new scheme for claiming repayments and interest on repayments as provided for in *Section 17 Finance Act 2003*. This article deals with the changes introduced by this section to the time limits within which an assessment or an amended assessment can be made on a person. The section made a number of changes, which effectively provide for reductions in time limits to four years for the making of assessments and enquiries with effect from 1 January 2005.

Section 17 Finance Act 2003 takes effect by way of *Commencement Order SI No. 598 of 2003*, signed by the Minister of Finance on 31 October 2003.

Reduced time limits for raising assessments

10-year time limit reduced to 4 years

The 10-year time limit provided for in the following sections of the Taxes Consolidation Act 1997 is reduced to 4 years with effect from 1 January 2005 in relation to the making, on or after that day, of assessments:

- 401(6) Change in ownership of company: disallowance of trading losses
- 504(3) Assessments for withdrawing BES relief, Seed Capital Scheme made under Schedule D Case IV
- 599(4)(b) Claw back of capital gains tax relief where assets transferred to "child" are disposed of by the "child" within 6 years.
- 611(1)(c) Disposal of assets to public bodies and charities and their subsequent disposal giving rise to capital gains tax
- 919(5)(c) Assessments to corporation tax
- 924(2)(b) Additional assessments under Schedule D, E or F
- 955(2)(a) Self assessment time limit for assessments to income tax (Applies to capital gains tax by virtue of *Section 931 TCA, 1997*).

Important Self Assessment time limit - 6 year time limit reduced to 4 years

One of the most significant time limit changes is the self assessment time limit contained in *Section 955(2)(a) TCA, 1997*.

Pre FA 2003 position

Under *Section 955(2)(a) TCA, 1997* there was a 6 year time limit on Revenue's right to make an assessment or to amend an assessment with a number of exceptions.

Post FA 2003 position

This 6 year time limit has now been reduced to 4 years in line with a taxpayer's right to claim a repayment of tax within 4 years, (see article in **Tax Briefing** issue 56). This takes effect from 1 January 2005.

The time limit runs from the end of the year of assessment in which the return of income is delivered and accepted as a full and true disclosure necessary to make an assessment.

This means that with effect from 1 January 2005, no assessment or amendment to an assessment to income tax for any relevant chargeable period can be made any later than 4 years after the end of the chargeable period in which the chargeable person has made a full and true disclosure of all material facts necessary for the making of an assessment.

An important point to note is that if a chargeable person has not met the condition of making a full and true disclosure of all material facts, there is no time limit and an assessment can be made at any time in these circumstances.

However, if the original return has not met the full and true disclosure condition, e.g. by omitting to disclose certain income, the chargeable person may correct this by submitting full details in writing. Where this letter gives the necessary full and true disclosure, no assessment or amendment may be made later than 4 years after the end of the chargeable period to which the correction is filed.

Exceptions to 4 year time limit

There are also a number of exceptions to the time limit in which an amended assessment can be made at any time. These remain unchanged and are as follows:

- Where (as already indicated) the return does not contain a full and true disclosure
- In order to give effect to the outcome of an appeal against an assessment
- To take account of a matter arising after the making of a return
- To correct an error in calculation
- To correct any mistake where the correction results in aligning the assessment with the position as disclosed by the chargeable person.

The right to make assessments at any time does not affect the time limits set down for the making of assessments in relation to the estates of deceased persons.

There is no time limit for the raising or amending of assessments in cases of fraud or neglect.

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NEW TIME LIMITS

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Practical significance

The significance of the reduced time limits is that as and from 1 January 2005 the earliest year Revenue will be able to raise an original assessment will be for the tax year 1999/2000, with the exception of fraud or neglect cases and cases that fall within the exceptions to the time limit outlined above. It should also be noted that the opportunity to raise such an assessment for 1999/2000 will be short lived as the 4 year time limit in relation to that year will expire on 5 April, 2005. From 6 April 2005 the earliest year in respect of which an assessment can be raised will be the tax year 2000/2001 and the authority to raise assessments for that year will remain in place until 31 December, 2006. The 4 year deadline for the making of assessments in respect of the short year 2001 will also expire on 31 December, 2006. This is because the end of the chargeable period in which the return is to be made is the same for the tax years 2000/2001 and 2001, namely, 31 December, 2002. From 1 January, 2007 the earliest year for which assessments can be raised will be the year 2002 and so on.

Practical Examples

Example 1

Full and true disclosure Post FA 2003

Ms Brown filed his tax return for the year 2004 on 31 July 2005 (before the return filing date for 2004). The return contained a full and true disclosure of all income and material facts for the making of an assessment to income tax for 2004 by Revenue. The latest date by which income tax assessments for 2004 or any amendment to an assessment may be made is as follows:

- ◆ Income tax assessment for year of assessment 2004
- ◆ Date when full and true return filed 31 July 2005
- ◆ Delivered in chargeable period 2005
- ◆ Latest date for assessment or amendment thereto: 31 December 2009

Example 2

Income omitted Post FA 2003

Mr Black filed his tax return for 2005 on 30 September 2006 (before the return filing date for 2005). Revenue made an assessment based on the return on 10 October 2006. However, through an oversight, Mr. Black forgot to disclose rental income amounting to €5,000 and wrote to Revenue on 31 January 2007 with a computation disclosing this income and confirming that he has no other undisclosed income. In accordance with paragraph 4, Tax Instruction 39.2.1, Section 16 Rules and Procedures Reference Book, Revenue agree to accept the

letter and the original return as a full and true disclosure, but as one filed in the tax year 2007.

The latest date by which income tax assessments for 2005 or any amendment to an assessment may be made is as follows:

- ◆ Income tax assessment for year of assessment 2005
- ◆ Delivered in chargeable period 2007
- ◆ Latest date for assessment or amendment thereto: 31 December 2011.

Example 3

Genuine expression of doubt case

Where a person has a genuine doubt as to the tax treatment of any item to be included in the return and he/she includes the item but expresses doubt under *Section 955(4) TCA, 1997* to Revenue over the treatment, then the person is treated as having made a full and true disclosure.

Ms White filed her tax return for 2006 on 30 September 2007 and expressed a doubt as to the tax treatment of a particular deduction being unsure as to whether it was a revenue expense. On receipt of the return Revenue considered the matter and concluded that the doubt expressed was genuine and that the deduction was indeed revenue expenditure and thus an allowable deduction. He then raised an assessment in accordance with Ms White's interpretation on 20 January 2008. Ms White is treated as having made a full and true disclosure with her return filed on 30 September 2007. In this example the latest date by which an income tax assessment or amendment to an assessment for the tax year 2006 may be made is:

- ◆ Income tax assessment for year of assessment 2006
- ◆ Delivered and accepted as full and true disclosure in chargeable period 2007
- ◆ Latest date for assessment or amendment thereto: 31 December 2011.

Example 4

Expression of doubt not genuine

Ms Greene filed her tax return for 2006 on 31 October 2007. She claimed a significant deduction for legal fees incurred in connection with a tax appeal for a previous tax year and expressed doubt as to the deductibility of this item in a short note in the tax computation which she submitted with her return of income. She did not draw Revenue's attention to the expression of doubt by ticking the box on the front page of the return, nor did she put a covering note with the return highlighting the expression of doubt.

NEW TIME LIMITS

Section 17 FA 2003

On receipt, the return was processed in accordance with Ms Greene's figures submitted and an assessment for 2006 was made. Twelve months later while screening returns for audit it is noticed that there was an expression of doubt, which was not drawn to Revenue's attention. On perusal of Ms Greene's file, he notices that she had corresponded with her local Revenue office on this issue and had been advised that the legal fees incurred were not deductible. The advice was based on *Revenue Published Precedent reference IT952564*. Revenue now concluded that her doubt was not a genuine expression of doubt and that the return was not a full and true disclosure. There is no time limit in this case for the making of an additional assessment to disallow the legal expenditure as a deduction.

Example 5

To give effect to outcome of an appeal

Mr Blue an amateur sportsman filed his tax return for 2002 on 31 January 2003 and an assessment was made in accordance with the return. Mr Blue had failed to disclose income in respect of payments received from winnings in respect of sporting events as he considered this to be a hobby and did not think it was taxable. Revenue conducted an audit of his tax affairs for the tax year 2002 in August 2004 and decided that Mr Blue was indeed chargeable to tax on this income.

Revenue made an additional assessment in September 2004 to reflect the additional income. Mr Blue took the matter to appeal. The case did not come before the Appeal Commissioner until March 2009 due to unforeseen circumstances. The Appeal Commissioner ruled in Mr Blue's favour as he did not consider on the facts of the case that Mr Blue was engaged in anything other than a hobby - he was not trading and the income was not a casual commission. Revenue did not express dissatisfaction with this determination of the Appeal Commissioner.

In this case there is no time limit restriction on amending the assessment in order to give effect to the outcome of Mr Blue's appeal against the assessment.

Example 6

Fraud - no time limit

Mr Gray filed a tax return for 2001 in January 2002. In addition to share disposal gains declared on his return he disclosed that he had sold a house for €1million and claimed principal private residence relief on the sale. This had the effect that no capital gains tax liability arose on the sale. In 2007 Revenue discovered that Mr Gray had never lived in the house in question. He had another property in which he lived. Revenue concluded that Mr Gray fraudulently claimed principal private residence relief on the disposal. Revenue raised an additional assessment on

Mr Gray for the capital gains tax liability arising on the €1million consideration for the disposal of the house. As the case involved fraud there is no time limit restriction on the raising of an assessment.

Revenue's right to make enquiries and amend assessments Section 956(1)(c) reduced from 6 to 4 years

Under Section 956(1) TCA, 1997 a Revenue official may, in making or amending an assessment on a chargeable person, make such enquiries or take any other action which he/she thinks necessary, within his/her powers to check the accuracy or otherwise of the information given in the chargeable person's tax return.

This right to make enquiries or take any actions to check the accuracy of information in a chargeable person's return for a relevant chargeable period is currently subject to a 6 year time limit running from the end of the chargeable period in which the return is made. The 6 year time limit continues up to 31 December 2004. With effect from 1 January 2005, the time limit is reduced to 4 years from the end of the chargeable period in which the return is made.

There is no time limit in cases of fraud or neglect and enquiries can be made at any time in such cases.

Schedule E Assessments

Section 17 Finance Act, 2003 also amended the existing provisions - *Section 997 TCA, 1997* in relation to time limits on:

- Revenue's right to raise an assessment under Schedule E, and
- The taxpayers' right to request an assessment under Schedule E

In the case of the Revenue's right to raise an assessment under *Section 997*, the time limit has been reduced from 5 years from the end of the relevant year of assessment to 4 years in respect of any assessment made on or after 1 January 2005.

In effect this means that from 1 January 2005, the earliest year Revenue will be able to raise an assessment under *Section 997* will be for 2000/2001 (which would have to be raised on or before 5 April 2005) except of course in the case of fraud or neglect where there is no time limit involved.

In the case of the taxpayer requesting an assessment under *Section 997* the time limit has been reduced from 5 years from the end of the relevant year of assessment to 4 years in respect of the year 2003 and subsequent years.

The 5-year time limit still remains in place in respect of years of assessment up to and including 2002. ■

CLASSIFICATION OF ACTIVITIES AS TRADING CT



Introduction:

Section 21 TCA 1997 sets the general rate of corporation tax at 12½%. That rate applies (subject to certain exceptions set out in *Section 21A*) to trading income of companies taxed under Case 1 of Schedule D.

Section 3(1) of the TCA 1997, describes “trade” as including “every trade, manufacture, adventure or concern in the nature of trade”. As “trade” is not specifically defined the term takes on the generally accepted meaning.

Guidance as to what constitutes “trading” is available from case law and from a set of rules known as the Badges of Trade. Revenue views on what constitutes trading are set out in the Revenue leaflet “Guidance on Revenue Opinions on Classification of Activities as Trading”. These guidelines are printed here in full.

Direct Taxes Interpretation and International Division give advance opinions in large inward investment cases. As a result there is a body of decided cases and these can be accessed on the Revenue website at http://www.revenue.ie/wnew/trad_act.htm

Guidance on Revenue Opinions on Classification of Activities as Trading.

Introduction

The introduction of the general 12½% corporation tax regime for profits from trading activities of companies is focusing attention on what activities can be classified as giving rise to trading income. Revenue is increasingly being asked to give opinions as to the appropriate classification for tax purposes. The purpose of this note is to give general guidance as to how Revenue approaches the subject and to outline the type of information that should accompany a request for an opinion.

Revenue Opinions

Under the self-assessment system the question of whether a company is, or would be, trading is decided initially by the company itself. For most companies it would be obvious whether or not they are trading. Where a taxpayer

has a doubt about the tax treatment, he or she may take a view on the issue and express doubt under *Section 955 TCA, 1997*. A formal expression of doubt protects the taxpayer from interest and penalties in the event that Revenue, for example, in the context of an audit, take a different view of the tax treatment at a later date. In addition, the Revenue Commissioners are prepared to give an opinion on the classification of income as trading in accordance with the guidelines issued in *Tax Briefing Issue 48 - June 2002* on *Seeking Revenue Opinions on Tax Consequences of Certain Complex or Unusual Transactions*. In accordance with these guidelines an opinion will not be given, where Revenue, having considered all the documentation submitted, are of the view that the transaction(s) is part of a scheme or arrangement for the purpose of tax avoidance.

Trading

Section 21 TCA, 1997 sets the general rate of corporation tax at 12½%. That rate applies (subject to certain exceptions set out in *Section 21A*) to trading income of companies taxed under Case I of Schedule D. *Section 3(1) TCA, 1997*, describes “trade” as including “every trade, manufacture, adventure or concern in the nature of trade”. As “trade” is not specifically defined the term takes on the generally accepted meaning.

Guidance as to what constitutes “trading” is available from case law and from a set of rules drawn up in 1955 by the UK Royal Commission on the Taxation of Profits and Income. These rules known as the Badges of Trade have been approved by the Irish Courts. (See appendix on page 12 for details of the Badges of Trade).

In the vast majority of cases there will be no doubt about whether a company’s activities constitute trading. Companies manufacturing, dealing in articles or commodities and those providing services will all come within the “trading” description. The 10% tax regime for companies in the IFSC and Shannon applies only to income arising from trading activities. Therefore such activities already meeting the requirements of these regimes will qualify for the 12½% tax rate.

Relevant Issues

Whether or not, in any situation, a trade is being carried on is determined by an examination of the facts of the particular case and by interpreting those facts in the context of the badges of trade and of case law in so far as it applies. There are an infinite variety of possible factual circumstances so that no fixed formula can be applied to determine whether or not an activity can be classed as “trading”. As already pointed out in the previous paragraph, in the vast majority of cases there will be no doubt about whether the activities constitute trading. However a number of issues have emerged in the recent

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past from cases brought to the attention of Revenue in the context of the introduction of the 12½% rate.

The issues are explored in the following paragraphs: -

(a) Trading Presupposes Activity

Trading presupposes that the company concerned is carrying on business activities from which its income derives. The activities will vary depending on the nature of the trade and will require people with the skill and authority necessary to carry them out.

Outsourcing of activities would not necessarily prevent a company's income being taxed as trading income. Where outsourcing is involved the company must provide details of how it conducts, manages and controls the outsourced part of its business.

(b) Distinction between Trading and Investment

Certain types of activity are more likely to be in the nature of an investment rather than a trade. In general where a company owns an asset and the mere ownership of that asset produces an income, the company's income from this asset will not be trading income. Routine ancillary services such as invoicing or accounting would not change the nature of the income to trading income where it is primarily generated by the ownership of the asset. The ancillary activities merely involve the management of the income flow from the investment. The activities of companies whose sole activity is the management and exploitation of intellectual property can sometimes be difficult to evaluate in terms of whether there is a trade being conducted. The nature of the property of such companies varies widely and can include brand names, patents, software, process formulations and know-how. Because intellectual property is an asset the mere ownership of which yields an income, there are significant hurdles to be cleared before the income of a company from licensing such property could be regarded as trading income. The case of *Noddy Subsidiary Rights Company Ltd v. CIR*⁴³ TC 458 is often quoted as an authority in favour of the proposition that the mere ownership of an asset and receipt of royalties can be a trade. However, in that case there was evidence of a high degree of activity associated with trying to promote the brand, seeking out and evaluating licensees and of dealing with third parties.

At one end of the scale, a company whose only activity is the licensing in of the rights to intellectual property, and the on licensing of such rights, is unlikely to be regarded as trading. The property licensed to it is not developed in any way. The company is merely a conduit through which the rights to the intellectual property pass. At the other end of the scale, income of a company that actually creates the intellectual property by engaging in Research

and Development, continues to develop it and bears the costs and the associated risks and actively promotes and licenses out the rights for its use to multiple third parties would invariably be regarded as trading income.

Not all of the income of a trading company will necessarily be classified as trading income. In this regard Revenue published a guidance note: - *Deposit Interest - Whether a Trading Receipt?* on the Revenue web site at www.revenue.ie/pdf/depositint.pdf. This Guidance Note clarifies the status of deposit interest earned by trading companies.

(c) Group Structures

Where a company seeking trading status is a member of a group and another group company or companies have an involvement in the conduct of the particular trade, Revenue would need to be satisfied as to the role of the various companies. In particular the company seeking trading status in respect of an activity must establish that it carries on sufficient activity to be trading in its own right. Evidence in relation to the levels of authority and responsibility across the group will clarify where the real decision making lies, and information in relation to the deployment of assets and personnel will clarify the business activities carried on by each company. An explanation of the commercial reasoning and the business objectives behind a particular group structure will be helpful in understanding the underlying strategic business purpose and the value added by the applicant company.

Information to be Included when Requesting an Opinion

A request for an opinion should include a description of the proposed activity and contain all the information necessary to enable Revenue to reach a conclusion in relation to the issues outlined in the earlier paragraphs. Any areas of doubt should be highlighted and reasons given as to why it is considered that trading status would be appropriate in the circumstances. In particular the following details should be given: -

- Outline of the trade to be carried on. If there is potential for viewing these activities as investments, explain why it is considered that trading should apply.
- The main activities involved in the conduct of the trade and the functions undertaken at senior level to manage the trade.
- The number of people at management level, their skills and authority level.
- The number and skill level of the other people who will carry out the functions involved in the conduct of

Continued on page 12

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(Continued from page 11)

- the trade. In relation to a group structure that might give rise to the concerns outlined at paragraph (c) above, provide the information set out in that paragraph.

Requests for an opinion should follow the procedures set out in the practice note on **Seeking Revenue Opinions on Tax Consequences of Certain Complex or Unusual Transactions** (*Tax Briefing* issue 48) and give the additional information indicated in this note.

Requests should be addressed to: -

*Ms Marie Hurley,
Direct Taxes Interpretation and International Division,
Stamping Building,
Dublin Castle,
Dublin 2.*

Appendix

Note on the “Badges of Trade”

The Tax Acts do not set out any specific rules for distinguishing between trading and non-trading income. However, a fairly well established set of guidelines has been laid down by the courts in various decided cases over the years. These are known as the “Badges of Trade”, which include:

1 The Subject Matter of the Sale

Whilst almost any form of property can be acquired to be dealt in, those forms of property, such as commodities or manufactured articles, which are normally the subject of trading, are only very exceptionally the subject of investment. Again, property, which does not yield to its owner an income, or personal enjoyment merely by virtue of its ownership is more likely to have been acquired with the object of a deal than property that does.

2 The Length of Period of Ownership

Generally speaking, property meant to be dealt in is realised within a short time after acquisition. However there have been many exceptions to this rule.

3 The Frequency of Similar Transaction

If realisations of the same sort of property occur in succession over a period of years or there are several such realisations at about the same date a presumption arises that there has been dealing in respect of each.

4 Supplementary Work

If the property is worked up in any way during the ownership so as to bring it into a more marketable condition, or if any special exertions are made to find or attract purchasers, such as the opening of an office or large-scale advertising, there is some evidence of dealing. When there is an organised effort to obtain profit there is a source of taxable income. But if nothing at all is done, the suggestion tends the other way.

5 The Circumstances that Were Responsible for the Realisation

There may be some explanation, such as a sudden emergency or opportunity calling for ready money that negates the idea that any plan of dealing prompted the original purchase.

6 Motive

There are cases in which the purpose of the transaction and sale is clearly discernible. Motive is never irrelevant in any of these cases and can be inferred from surrounding circumstances in the absence of direct evidence of the seller's intentions.

It is however, important to appreciate that the “whole picture” must be taken into account, so that the weight to be given to the various factors may vary according to circumstances. Furthermore, it is important to recognise that any given factor may be present to a greater or lesser degree, and that the absence (or presence) of any single factor is unlikely to be conclusive in its own right. ■

INTERNAL REVIEW PROCEDURE

Revenue Commissioners Internal Review Procedure

Statement of Practice SP-GEN/2/99 details Revenue's review procedures.

Where a taxpayer wishes to seek a review of Revenue's handling of his or her tax or duty affairs, or of a decision made by a Revenue official, he or she can choose that the review be undertaken at a local level, i.e. either by the appropriate Local Manager or by the Regional Assistant Secretary. This should be done by writing directly to the relevant person.

Where a taxpayer does not wish the review to be undertaken locally, he or she can request that the review be undertaken either by:

- The Revenue Principal Officer appointed to carry out reviews ; or
- Jointly by that Principal Officer and an External Reviewer.

This should be done by writing to the **Internal Review Unit, Revenue Commissioners**.

The Internal Review Unit of the Revenue Commissioners has recently relocated. The address for correspondence is now:

*Internal Review Unit,
Revenue Commissioners,
2nd Floor, Stamping Building,
Dublin Castle,
Dublin 2. ■*

SUBSISTENCE RATES

Domestic Subsistence rates effective from 1 September 2004.

The schedule of rates based on Civil Service Subsistence Rates for absences within the State is set out hereunder. Note that the class C rate will cease to apply with effect from 1 September 2004. Thereafter subsistence payments for staff in grades to which the class C rates currently apply will be paid at the Class B rate. For details of the rules, etc in relation to the application of these rates refer to Information Leaflet IT54 Employees' Subsistence Expenses, on the Revenue website at www.revenue.ie/pdf/it54_04.pdf. ■

Domestic Subsistence rates from 1 September 2004					
Class of Allowances	Overnight Rates			Day Rates	
	Normal Rate	Reduced Rate	Detention Rate	10 hours or more	5 hours but less than 10 hours
Class A	€136.10	€125.47	€68.03	€38.57	€15.73
Class B	€122.29	€104.59	€61.17	€38.57	€15.73

NEW VAT3 FORM

VAT

The image shows a scan of the new VAT3 form. The top section is titled 'VAT RETURN'. Below this, there are several sections of text providing instructions and information. At the bottom of the form, there is a table titled 'Trade with other EU Countries' with columns for 'E1' and 'E2' values. The table has two rows, one for 'Value of Goods sent to other EU Countries' and one for 'Value of Goods received from other EU Countries'. The 'E1' and 'E2' columns have numerical values in the bottom row.

The VAT3 return has been re-designed and came into effect from the July/August 2004 VAT period.

The content of the return has been unaffected - only the layout has been changed. Guidelines on how to complete the return can be found on the reverse.

The new VAT3 has combined Return and Payment details into a detachable portion at the bottom of the form. The return should be detached and forwarded (with payment or debit instructions, if liability arises) in the pre-paid envelope provided.

The detachable portion contains the following:

Bank Details	Return Details
(a) If you are changing the bank a/c to which a repayment should be credited - enter the sort code and account number only	<ul style="list-style-type: none"> ■ T1 - VAT on Sales ■ T2 - VAT on Purchases ■ T3 - Payable Amount ■ T4 - Repayable Amount or ■ Amount of Payment
(b) You want to pay your liability by Single Debit Authority - enter the sort code, account number and amount	
Trade with other EU Countries	
<ul style="list-style-type: none"> ■ E1 - Value of Goods sent to other EU Countries ■ E2 Value of Goods received from other EU Countries 	

Please note that photocopies of the return are not acceptable. The return should not be altered to cater for any period or any taxpayer other than that shown on the original. If copies of the return are needed, then contact the Collector General's call centre at 1890 20 30 70. Staff at the call centre will arrange for a customised return to issue.

You can also file your VAT 3 return electronically using the Revenue On-Line Service (ROS). This free service provides Revenue's customers with a secure, safe, easy to use and confidential facility to conduct their Revenue business 24 hours a day, 7 days a week. To register for ROS visit our website at www.revenue.ie and take the three easy steps to become a ROS customer. ■

“NOT RESIDENT ELSEWHERE”

Correction

Tax Briefing issue 56 contains an article on the meaning of “Not Resident Elsewhere” for the purposes of *Section 195* and *Section 234 TCA 1997*. In the second paragraph of this article the number of days an individual spends in the state over two years to be deemed resident is incorrectly stated as 240. This should have read 280 days. The correct Text for this paragraph is therefore as follows:

“Residence in the State

Irish rules of residence are set out in Section 819 TCA, 1997. The section provides that an individual is resident in the State if he/she spends 183 days or more in the State in a tax year. Alternatively, residence is established if an individual spends 280 days or more in the State over two years. There is also provision for an individual to elect to be resident, for example, in the year of arrival in the State if he/she has the clear intention of being resident in the State the following year. However, the focus of Section 819 is on residence in the State and it provides no assistance as to whether or not an individual is also resident elsewhere.”

Revenue wishes to apologise for any confusion caused. ■

FOREIGN EFFECTIVE RATES

Foreign Effective Rates (With Effect From 1 January 2004)

Belgium	45%
Canada	34%
France	44%
Germany	37%
Italy	43%
Japan	44%
Luxembourg	33%

Note:

Ireland’s Double Taxation Conventions with Cyprus, Pakistan, Russia and Zambia also provide for credit for tax paid in respect of the profits out of which dividends are paid to Irish portfolio investors (credit for underlying tax). Because of the number of potential rates of withholding/underlying tax applying in those countries, it is not possible to publish an effective rate for them. ■

Repayments, Interest & Time Limits

Correction

Tax Briefing issue 56, July 2004, contains an article on Repayments, Interest and Time. On page eight, there is an error in the second paragraph under the heading ‘Preservation of old time limits’. In the sentence “In practical terms the taxpayer can claim a repayment of

preliminary tax overpaid back as far as 1992/93 provided he/she claims before 31.12.2004” the year should have read 1994/95.

The correct text for this paragraph is therefore as follows:

This means that a taxpayer can claim a repayment before 31.12. 2004 under Section 953 TCA, 1997 for any year of

assessment the end of which is within 10 years of the date of claim. In practical terms the taxpayer can claim a repayment of preliminary tax overpaid back as far as 1994/95 provided he/she claims before 31.12.2004.

Revenue wishes to apologise for any confusion caused. ■

REVENUE NEWS

Update

New Guidance Notes Published

The following Guidance Notes have been recently published by Revenue:

Revenue Guidelines for Research and Development Tax Credit

Section 33 FA 2004 introduced a 20% tax credit for companies for incremental qualifying expenditure, over the amount spent in a base year, on research and development activities.

Updated Leaflets:

Pay and File and the 2003 Income Tax Return

Copies of this leaflet are available from Revenue Forms and Leaflets Service at 1890 306 706, any Revenue office or on the Revenue website at www.revenue.ie.

On-line Vehicle Registration Enquiry System

An On-line VRT Enquiry System is now available. Users can generate a VRT estimate for many passenger vehicles, vans and motorcycles. Access is through the ROS homepage, accessible via www.revenue.ie. It is not, however, necessary to be a registered ROS customer to use this service.

VAT Rate Subject Index

An extensive listing, which shows the rate of Value Added Tax (VAT) applicable to over 2,500 goods and services, is now available on the Revenue website, on the Practitioner's page. Because of the number of records involved and to facilitate speedy access, there is an "A - Z" subject index.

The legislation governing the VAT rating of goods and services is contained in the VAT Act, 1972, (as amended). The VAT treatment indicated in this rates database is based on current practice and is not to be regarded as a statement of law or as a substitute for consulting the legislation. The database will be updated regularly with new decisions and the information currently on display may also change from time to time depending on revised practice.

Revenue eBrief

A list of Revenue eBriefs which issued since the last issue of *Tax Briefing* 56 (July 2004) follows. These, together with earlier eBriefs can be accessed on the Revenue

website www.revenue.ie on the practitioners page.

No. 32

First Active - Personal Exemption on the disposal of Free Shares

No. 31

Computation of interest on Tax Overdue

No. 30

Issue of Tax Clearance Certificates

No. 29

New VAT 3 Return

No. 28

Clarification on *Tax Briefing* Issue 56

If you like to receive Revenue eBrief forward your e-mail address to eBrief@revenue.ie ■

**Pay and File Deadline
for self-assessed income tax payers**



File through **RDS** and get more time to pay