THE TAX IMPLICATIONS OF APPOINTING A RECEIVER

Department of Finance and Office of the Revenue Commissioners
Consultation Paper

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1. Introduction

As a result of the increase in the level of personal and corporate receiverships and property repossessions, certain tax implications have emerged which require a review of the existing provisions of the Taxes Consolidation Act 1997 (TCA 1997) and the Value-Added Tax Consolidation Act 2010 (VATCA 2010).

The Minister for Finance, Mr. Michael Noonan T.D., invites interested parties to make submissions regarding proposals to amend the relevant legislation with a view to dealing with the tax-related difficulties currently being experienced where a lender appoints a receiver over property or obtains possession of a property. The proposals are set out in part 5 of the Consultation Document.

While the role and responsibilities of receivers are largely governed by company law, the specific focus of this consultation is on the tax issues arising in receiverships and on obtaining the views of interested parties on all of the proposals set out in this document.

2. The Consultation Process

Consultation Period

The consultation period will run from 4 July to 4 September 2012, a period of some 2 months. Any submissions received after this date cannot be considered.

How to Respond

The preferred means of response is by email to:
receiverconsult2012@finance.gov.ie

Alternatively, you may respond by post to:

Receivership Tax Consultation,
Fiscal Division,
Department of Finance,
Government Buildings,
Upper Merrion Street,
Dublin 2.

When responding, please indicate if you are a business, business professional, adviser, representative body or member of the public.

Freedom of Information

Responses to this consultation are subject to the provisions of the Freedom of Information Acts. Parties should also note that responses to the consultation may be published on the Department of Finance's website.

Meetings with Representative Bodies

The joint Department of Finance/Revenue Commissioners consultation team will also be inviting bodies representing business and tax professionals to meet with the consultation team during the consultation period.

After the Consultation

Subject to the consultation, a submission will be made to the Minister for Finance with a view to making the necessary legislative amendments in Finance Bill 2013.

3. Background

A receiver is one of the ways by which a lender can enforce a mortgage or charge. There are various types of receivers. For example, there is a fixed charge receiver who is appointed under a mortgage in respect of a particular asset, e.g. an investment property. In contrast, a floating charge receiver is a receiver who takes control of all of a person's assets.

A receiver's main purpose is to realise the assets over which he/she has been appointed for the benefit of the charge holder. While a receiver doesn't have a duty to trade or to try to save the company or business, in practice he/she will often continue to trade, rent property etc. pending a sale of the property. For example, a receiver may take over a business on foot of fixed and floating charges and continue trading those businesses as receiver/manager.

A receiver may be appointed by court order where, for example, the lender doesn't have a power to appoint a receiver under the mortgage deed. A receiver appointed by the court is deemed an officer of the court and owes duties to the court. There are special tax rules concerning the tax treatment of a court appointed receiver (section 1049 TCA 1997 – see part 4).

The appointment of a receiver does not result in a change in the legal ownership of the assets of the borrower. However, while it can be argued that the borrower's activities, for example his or her trade or rental activities, have not ceased where they are the subject of a receivership, the receiver will for all practical purposes have full control over the trade/rental activities.

4. Tax and Receivers

Prior to the appointment of a receiver, a borrower's tax affairs are generally a matter for the borrower (and tax advisor) and Revenue. The taxpayer submits returns and other relevant information to Revenue and pays the necessary tax on the due dates. Any compliance issues are initially dealt with between both parties.

The initial amount of profits arising where a receiver continues to trade or receive rent after his/her appointment are computed in the normal way. However, the liability to tax on such profits is computed on the basis of the borrower's circumstances (e.g. there may be unused losses or capital allowances).

Difficulties and uncertainty can arise in a number of areas, e.g. the receiver/lender might be unable to obtain the necessary information from the borrower to compute the tax liability or there may be uncertainty regarding who is chargeable in respect of those liabilities.

As noted in part 3, a receiver may, in certain circumstances, be appointed by the court. In such cases section 1049 TCA 1997 provides that a receiver appointed by a court in the State which has the direction and control of property is assessed and charged to tax, as appropriate, on the property as if the property were not under the direction and control of the court. Such a receiver is answerable for doing all matters required under the Tax Acts for the assessment and payment of tax.

VAT legislation is very clear in respect of the obligations of a receiver/lender who disposes of goods forming part of the assets of the borrower. The legislation could be amended to provide greater clarity in relation to the delineation of responsibilities of borrowers and receivers/lenders in certain other circumstances.

It is acknowledged that the tax implications associated with the appointment of a receiver or the repossession of a property by a lender (which are summarised below) are complex. This summary reflects the Revenue's interpretation of the existing legislation as conveyed to the Department.

4.1 Income Tax, Corporation Tax and Capital Gains Tax

Who is the chargeable person and who is liable to pay any tax due?

Rental income (section 96(3) TCA 1997): Revenue is of the view that the existing legislation provides that tax on rental income from property in receivership is chargeable on the lender. This means that the lender (not the receiver) is chargeable to tax, has to make any necessary return and pay the liability.

Other income (section 52 TCA 1997): In the case of other income (i.e. income other than rents) received by a receiver, Revenue is of the view that the existing legislation treats the receiver as the person liable for tax where the charge is to income tax. As regards tax due by a company in receivership, other than in respect of the rental income referred to above and the capital gains referred to below, the corporation tax so assessed remains a liability of the company.

Capital gains tax (section 571 TCA 1997): As is the case with rental income, there is specific legislation in place which provides that any tax on capital gains arising on a disposal is chargeable on and payable by the "accountable person", e.g. a receiver or a lender. The tax is recoverable by way of an assessment to income tax under Case IV of Schedule D on the accountable person on a ring-fenced basis.

In the case of assets of a company in receivership, chargeable gains arising on their disposal by the receiver are subject to corporation tax in the hands of the company but the receiver, as the accountable person in possession of the sale proceeds, must pay over the tax and the tax so paid is treated as discharging the corresponding corporation tax liability of the company in relation to the disposal.

Computing the taxable income deriving from property in receivership

A receiver or lender must have access to all relevant information in order to compute the profits or losses of any trade or rental business that derive from the property in receivership.

Revenue is of the view that a receiver who carries on a company's trade will, as manager, have access to sufficient information to enable him/her compute the taxable results of the company in receivership as he/she generally takes control over the company's books and records and should, therefore, have access to company information/records in relation to tax computations, including information on capital allowances and other reliefs available, losses brought forward from earlier periods etc.

Revenue is also of the view that a fixed charge receiver appointed over a rental property should have sufficient information relating to rents receivable and expenses incurred (as specified in section 97 (2) TCA 1997) to be able to compute the profit rents (before, for example, capital allowances and losses forward) of that property while it is in receivership.

A receiver can, however, encounter difficulties in computing taxable profits where information relating to tax deductible items is not available. For example, in the absence of information on capital allowances or unused losses from earlier or current years a receiver might not be in a position to accurately compute the taxable profits of the receivership period in the manner required under existing legislation.

Computing the tax payable on income deriving from property in receivership

The computation of the tax payable can be problematic even if the receiver has sufficient information to enable him/her compute the taxable profits of the period in question. For example, where a receiver is appointed over rental property of an individual, the tax liability on the property is computed as if the borrower's liability to tax was being computed. In effect, this means that the liability can only be accurately determined if the lender/receiver has full access to details of the individual's other income and of a spouse's/civil partner's income and full details of their personal tax credits and reliefs for each year (or part) for which the property is rented by the receiver.

Computing chargeable capital gains and tax due on such gains

As noted, the receiver or lender is liable to income tax in respect of the capital gain arising when the property is sold. A receiver or lender should generally have sufficient information to accurately compute the gain or loss on such a sale, i.e. before unused losses and personal exemptions are taken into account.

However, as the tax liability is computed by reference to the borrower's circumstances, an accurate computation of the chargeable gain and the liability can only be made if the receiver or lender has the necessary information to carry out such computation. As with the income computations, the receiver/lender must have details of the borrower's (and, where appropriate, spouse's/civil partner's) personal allowances, other gains and unused capital losses to enable the tax liability to be accurately computed.

Balancing events and section 23/50 clawbacks[1]

Where capital expenditure is incurred on an industrial building or structure and capital allowances have been made in respect of that expenditure, a balancing allowance or charge may arise where, for example, the relevant interest in the industrial building is sold.

The balancing allowance or charge is made on the person holding the relevant interest (i.e. the interest which the person who incurred the expenditure was entitled to when that expenditure was incurred) in the building immediately before its sale.

Where such a person is chargeable to tax on rental income under Case V, the balancing allowance or charge is, by virtue of section 278 (1) TCA 1997, taken into account (i.e. a balancing charge must be added to the Case V income and a balancing allowance must be deducted from the Case V income) in charging that person's income under Case V.

Chapter 11 of Part 10 TCA 1997 provides relief (often referred to as section 23 relief) to lessors in respect of eligible expenditure incurred in respect of certain residential property. The expenditure is treated as an allowable deduction in calculating a surplus or deficiency on the rental income from the property.

The relief is clawed back where, for example, the property is sold during the 10-year holding period. Where a clawback occurs, the lessor is treated as receiving additional rent from the property in the year of sale equal to the amount allowed as a deduction.

On the basis of its interpretation of current legislation, Revenue is of the view, in the case of rented property where a receiver has been appointed over the property, that a balancing event or section 23 clawback is to be taken into account in computing the lender's, rather than the borrower's, tax liability in respect of the property in question.

Other issues

In addition to the matters referred to in the preceding paragraphs, practical difficulties can also be encountered in respect of properties in receivership. These include:

- ❑ Registration for tax in the case of receivers or lenders
- ❑ Application of Pay and File rules
- ❑ Application of the high earners restriction
- ❑ Application of USC
- ❑ The availability of reliefs and allowances, e.g. capital allowances, losses and group relief that would be available to the borrower
- ❑ Return filing dates and whether separate returns are required for each property or whether one annual return for all properties of a lender would suffice
- ❑ Payment of preliminary tax
- ❑ The interaction of sections 52, 890, 1049 and 1050 TCA 1997

[1] References in this document to section 23 clawbacks or clawbacks are references to the clawback of reliefs for lessors in respect of capital expenditure incurred on the provision of certain residential accommodation including student accommodation provided in Chapter 11 of Part 10 TCA 1997.

4.2 VAT

Who is the accountable person and who is liable to pay any tax due?

Supply of goods (sections 22(3) and 76(2) & (3) VATCA)

Where a receiver/lender disposes of property/goods forming part of the assets of the borrower, the borrower is deemed to be the accountable person in respect of any VAT arising on the supply. However, the receiver/lender is obliged to make the return and remit any tax due by the accountable person in relation to the disposal.

Supply of services/taxable lettings

Where a receiver/lender carries on the business of a borrower and, in the course of doing so supplies taxable services (e.g. operating a hotel or taking over lettings which include a VAT element), the receiver/lender is accountable for the VAT on those supplies, including the case where a receiver opts to tax a new letting of property.

Capital Goods Scheme (CGS) adjustments (section 64 VATCA)

A receiver/lender who disposes of a property forming part of the assets of a borrower is obliged to make the return and remit any amount due by the accountable person in relation to the disposal, including a CGS adjustment arising on the disposal.

Where a receiver takes over a letting or creates a new letting which gives rise to a CGS adjustment the legislation does not impose a specific obligation on the receiver/lender in relation to that adjustment. For the avoidance of doubt and to prevent loss of revenue, the legislation should be amended to clarify who is liable to pay the amount due as a result of a CGS adjustment. In receivership situations, the borrower frequently will not have the funds to meet the liability and also does not have access to the income generated by the capital good. The receiver/lender has control of the capital good and the income generated by it. It is, therefore, appropriate that the receiver/lender who receives the rental income is the person responsible for any liability arising as a result of a CGS adjustment during the period of receivership.

Cancellation of waiver (section 96 VATCA)

Where a cancellation of a waiver of exemption is triggered during the period of the receivership, by the receiver creating a letting to a connected person or by disposing of the last property owned by the borrower, which is the subject of a waiver, or the borrower cancelling his waiver, the legislation does not currently impose a specific obligation on the receiver/lender in relation to the payment of the cancellation adjustment. The legislation should be amended to clarify who is liable to pay the amount due as a result of a waiver cancellation adjustment. In receivership situations the borrower frequently will not have the funds to meet the liability and also does not have access to the income generated by the capital good. The receiver/lender has control of the capital good and the income generated by it. Therefore, it is appropriate that the receiver/lender is the person responsible for liabilities arising as a result of a cancellation of a waiver during the period of receivership.

A receiver or lender must have access to all relevant information in order to compute the CGS or cancellation adjustment. Revenue is of the view that a receiver who carries on a company’s trade will, as manager, have access to sufficient information to enable him/her calculate the adjustments as he/she generally takes control over the company's books and records and should, therefore, have access to the historic information/records required.

Revenue is also of the view that a fixed charge receiver will generally be in a position to access the information required to calculate the necessary adjustments. Revenue, however, acknowledges that in some cases a receiver/lender may have difficulty in obtaining all the information from the borrower and, in such cases, Revenue may be able to assist as outlined in Revenue e-brief 16/12.

Joint option to tax (section 94 VATCA)

A receiver and a purchaser, subject to certain conditions, can jointly opt to tax the sale of an exempt property thereby preventing a liability arising on a CGS adjustment as a result of the sale of a property during the adjustment period. Where an option to tax is exercised, it is the purchaser who is liable to account for and pay the tax on the sale.

However, as an anti-avoidance measure the joint option to tax is not available where the purchaser is connected to the owner (generally the borrower) or the vendor (the receiver).

5. Proposals

It is apparent from the foregoing that many of the difficulties currently being encountered are linked to the inability of the lender/receiver to obtain all of the information needed to compute the various tax liabilities in the manner required by the existing legislation.

As noted previously, it is understood by Revenue that this information deficit may be less of an issue where a receiver is appointed to a company. However, there may be an issue in relation to the collection of corporation tax payable by a company where, for example, a receiver might retain the full proceeds of income earned during the receivership for the benefit of the debenture holder, leaving the company without funds to discharge the relevant tax liability.

5.1 Income Tax, Corporation Tax & Capital Gains Tax

Proposals 1 - 3 seek to remove, in the case of non-corporate receiverships, the uncertainty encountered in computing the tax liability from the income of property in receivership. In relation to the computation of income and capital gains, it is proposed that certainty and simplicity can best be achieved by computing taxable income and capital gains solely on the basis of the results of the receivership period. This would mean creating a clear tax charge on the receiver for the period over which he/she has control of the property. Proposal 4 deals with the collection of corporation tax while a company is in receivership.

Under the following alternative proposals 1-3, the receiver would be responsible for the taxes incurred in respect of those activities that he/she directs. Where, for example, the individual continues to trade or rent property in parallel with the receiver, that individual would separately account for any taxes arising on their own activities in the normal manner.

Proposal 1

- ❑ Tax legislation would provide that a receiver is the person primarily chargeable to, and liable for, income tax and capital gains tax on the income and capital gains from a property in receivership for the duration of that receivership (the receivership period). The lender should have a secondary liability. This rule would apply to all receivers (including court appointed receivers – section 1049 TCA 1997).

- ❑ The income of a receivership period would be computed separately for each property in receivership on the basis of the income (including deemed income, i.e. section 23 or balancing charge), losses, allowable deductions and capital allowances, including balancing allowances/charges of each such property in that period. The results of activities, outside of the receivership (e.g. other income or losses of the borrower) or matters relevant to periods prior to the commencement of the receivership period (e.g. unused capital allowances, unused losses, etc.) would not be taken into account for this purpose.

- ❑ However, it is envisaged that unused losses and capital allowances of a receivership period could, in certain circumstances, be offset against the income of another property in receivership where the same lender has appointed a receiver over other assets of the same borrower.

- ❑ Personal tax credits, other reliefs and the high earners restriction would not apply in computing the tax liability of the income of the receivership period.

- The income of the receivership period (including balancing charges and section 23 clawbacks) would be subject to a flat rate of tax, which would be lower than the current 41% rate. This seeks to reflect the fact that no personal tax credits or other reliefs will be available while at the same time not seeking to tax receivers at the marginal rate of income tax that might have applied to the owner.

- USC would not apply, but a USC element would be incorporated into the flat rate tax rate.

- Capital gains accruing on the sale of an asset by a lender or receiver would be computed solely by reference to the asset in question. Capital gains or losses arising on assets not in receivership, prior year losses, exemptions and reliefs applicable to the borrower would not be taken into account by the lender/receiver. However, losses incurred by a lender/receiver on a sale could be available for offset against gains on the sale of other assets by a lender/receiver where the same lender and borrower are parties to both sales. Capital gains tax will be charged at the rates currently provided for in legislation.

- Where necessary, special provisions for the making of income returns and tax payments in respect of income arising in the receivership period would be developed and legislated for along side these changes.

The implications of this approach include the following:

- The computation of the income and capital gains of the receivership period will be easier and certain as there should be no 'information gap' difficulties.

- The computation of tax liabilities should also be easier as the liabilities will be computed on the basis of the income of the receivership period and, where necessary, be independent of the borrower’s circumstances, e.g. other income, tax credits, rate bands etc.

- The persons required to submit tax returns and pay tax will be clearly identified in law and put beyond doubt, as will the due dates for the submission of returns and payments.

- Tax liabilities that might not have arisen had a receiver not been appointed would now arise. For example, a borrower may have unused rental or capital losses from an earlier period which would be used, under normal circumstances, to reduce later liability. Under this proposal, a receiver will not have the use of such losses. This approach will result in a reduction in the amount passing back to the lender (and the borrower).

- Setting an appropriate rate of tax is problematic, as each borrower’s “effective rate” of tax differs, dependent as it is on so many variables, e.g. types of income, tax credits, reliefs etc. In addition, individuals also have to pay USC and PRSI. A set rate of tax may result in a higher or lower liability than would be the case if the liability was computed in the normal manner.

Proposal 2

An alternative to Proposal 1 is to dispense with balancing events and clawbacks completely in receivership cases (and allowing no relief to a new purchaser). This would mean no additional liability in the hands of the receiver and the allowances and deductions already granted to the individual would be left in place.

This approach might be perceived as a form of debt forgiveness. However, if the purchase price reflected the absence of allowances, the cost of the clawback not collected by the State would effectively be borne by the lender and the vendor rather than the new purchaser. While the forgiveness of balancing charges is likely to be welcomed, the same cannot be said if balancing allowances were also to be abolished in similar circumstances. It is difficult to see how an approach of dispensing with balancing charges but not with balancing allowancing could be justified.

This proposal is a variation on Proposal 1. It includes all of the features of that proposal other than it envisages that balancing charges and allowances and section 23/50 clawbacks would not apply where property is sold by a receiver or a lender in circumstances where a balancing charge etc. would occur. The implications of this approach would include the following:

- The receiver or lender would not be required to account for tax on "deemed income" arising on the sale of a property nor would they be entitled to a balancing allowance. This would
    1. remove the uncertainty faced by vendors/receivers contemplating the sale of such property,
    2. result in a reduced or greater tax liability (depending on whether the sale gave rise to a charge/clawback or an allowance), and
    3. impact (positively or negatively) on the amount of the sale proceeds the receiver can pay over to the lender.

- The allowances and deductions already granted to the borrower would be left in place.

- The purchaser of the property would not be entitled to any capital allowances or "section 23" relief in respect of that property. If the sale price reflected the absence of allowances, the cost of the clawback not collected by the State would, to some extent, effectively be borne by the lender and the vendor rather than the new purchaser.

Proposal 3

Under this proposal tax arising on the income or chargeable gains of property in receivership would be charged on the borrower rather than the receiver/lender.

The receiver/lender would be required to provide a borrower with all relevant information needed for the completion of annual tax returns which would enable the borrower prepare an accurate computation of the tax liability.

The receipts from a property in receivership, whether ongoing receipts, e.g. rents or the proceeds of sale would be subject to a withholding tax which would be available as a credit against the borrower's tax liability on the property in question.

The implications of this approach would include the following:

- The difficulties associated with the "information deficit" would be removed.

- Balancing events and section 23 clawbacks would attach to the borrower (who benefited from the original allowances).

- The borrower would not be able to draw on the funds from the receivership activity (including the proceeds of the sale of the property) to meet the tax liabilities from the property in receivership and might not have access to other funds.

- The proceeds from the sale of the property would flow untaxed to the lender.

- Further tax costs could arise if the new owner was entitled to draw down capital allowances where the tax life of the building had not expired, which would mean that the amount of capital allowances awarded would be far in excess of the original capital expenditure incurred and the State would have to pursue the borrower for large amounts of outstanding tax with little or no prospect of ever collecting that liability. This is likely to eventually lead to large-scale write off of tax liabilities.

- If the withholding tax rate was set too high, the funds available to the lender would be reduced and it would be difficult to get excess tax back from the borrower. If too low, the State would have to pursue the borrower for the balance of the tax due.

- If the borrower is bankrupt or in liquidation, the State is likely to recover little or no tax.

- Even if the borrower is not bankrupt or in liquidation there may be a lack of incentive to file returns and/or an inability to pay any tax.

Proposal 4

As noted at the beginning of this Part, there may be an issue in relation to the collection of corporation tax payable by a company in receivership in certain circumstances. A possible solution to this difficulty would be to make the receiver an accountable person for any corporation tax due by the company while in receivership.

5.2 VAT

To remove uncertainty and to protect VAT in receivership situations, each of the following measures is proposed as a legislative change:

Proposal A
Make a specific provision, similar to the provision relating to supplies of goods by receivers etc., to ensure that where taxable services/lettings are supplied by a receiver/lender in the course of carrying on the business of the borrower, or using the assets of the borrower, that those services/lettings are deemed to be supplied by the borrower but the receiver is obliged to make the return and remit the tax arising on the supplies. "Taxable lettings" includes both lettings that are the subject of a waiver by the borrower and lettings that the borrower has opted to tax.

Proposal B
Make a specific provision to ensure that where a borrower was making an exempt letting (not an accountable person) and a receiver/lender opts to tax a letting of that property, the borrower is deemed to be an accountable person in respect of that letting but the receiver is obliged to make the return and remit the tax arising on the supplies.

Proposal C

Make a specific provision to ensure that, for the duration of the period of receivership, although the borrower remains the capital good owner, the receiver/lender is responsible for the obligations of the borrower under the capital goods scheme, including payment on behalf of the borrower of any amount due as a result of an adjustment under the scheme. Where an adjustment under the capital goods scheme gives rise to an increase in deductibility, the entitlement to that deductibility will remain with the borrower being the person who incurred the expenditure that gave rise to the deductibility.

Proposal D

Make a specific provision to ensure that the receiver/lender is responsible for the payment of any amount due by the borrower as a result of a waiver cancellation adjustment arising during the period of the receivership.

Proposal E

Continue to provide that a receiver cannot opt to tax a sale to a person connected to the owner (borrower) or vendor (receiver) unless it can be demonstrated that the provision is operating in a manner not envisaged when this anti-avoidance measure was introduced.

6. The Consultation Questions

In responding to this consultation you are invited to:

- Comment generally on the proposals set out in this paper.

- Give your views on the specific questions set out below.

- Provide details of any alternative approaches or options you feel might be beneficial in dealing with the issues being addressed.

- Provide details of relevant issues not covered in this paper citing the current legislation and setting out how the current legislation could be improved.

- Provide some analysis of the Exchequer cost/yield of your preferred option.

Your views are important as they may help influence the taxation treatment to be applied where property is in receivership or the lender is in possession.

6.1 Income tax, corporation tax and capital gains tax

Question 1 Is it generally the case that a receiver/manager carrying on a company's trade would have access to the information needed to enable him/her compute the taxable results of the receivership period (i.e. before capital allowances, unused losses etc.)? If not —

(a) what type of information would the receiver have difficulty in obtaining, and why?
(b) is this a common difficulty for receivers?

Question 2 Would a fixed charge receiver appointed to rental property have sufficient information relating to rents receivable and expenses incurred (as specified in section 97 (2) TCA 1997) to be able to compute the profit rents (before, for example, capital allowances and losses forward) of that property? If not, what difficulties are receivers encountering?

Question 3 Would a receiver or lender generally have sufficient information to accurately compute a capital gain or loss arising on a sale of property i.e. before unused losses and personal exemptions are taken into account? If not, what difficulties are receivers encountering?

Question 4 What issues, if any, arise from making —

(a) the receiver primarily chargeable to and liable for income tax and capital gains tax arising on property in receivership?
(b) the receiver the accountable person for corporation tax liabilities incurred during the receivership period in the case of a company in receivership?
(c) the lender secondarily chargeable to and liable for income tax, corporation tax and capital gains tax arising on property in receivership?

Question 5 Does ring fencing the receivership period as provided in Proposal 1 for income and capital gains purposes overcome the information deficit faced by receivers/lenders? If not, please set out the reasons why you consider this approach might not work and suggest alternative solutions where possible.

Question 6 In Revenue's view balancing events and clawbacks arising on the sale of property would be chargeable on the receiver/lender rather than the borrower.

(a) What issues, if any, does this approach give rise to for receivers/lenders and borrowers?
(b) Is Revenue's view that borrowers in these situations do not, and are probably unlikely ever to, have the necessary funds to pay tax on balancing charges or section 23 clawbacks generally correct?
(c) If you do not agree with the Revenue approach, would you have any suggestions as to how this issue could be addressed in a manner which would minimize the exposure of the State in foregoing tax otherwise due?

Question 7 Does the non-availability of capital allowances or "section 23" relief for purchasers in Proposal 2 have implications for receivers/lenders in attempting to sell property in such circumstances? If so, please provide details and possible solutions to any difficulties.

Question 8 Do receivers/lenders envisage any difficulties with the requirement under Proposal 3 that they provide a borrower with all relevant information for completion of returns etc? If so, please provide details.

6.2 VAT

Question 9 A receiver/lender is obliged to remit the VAT on services supplied/rents received in the course of carrying on the business or from the assets of the borrower. What difficulties are receivers/lenders having in complying currently? Do you foresee difficulties with the proposed legislation change?

Question 10 What difficulties, if any, are foreseen with the provision to make receivers/lenders responsible for the obligations of the capital goods owner for the period of receivership?

Question 11 What difficulties, if any, are foreseen with the provision to make receivers/lenders responsible for the obligations of the borrower in relation to waiver cancellation adjustments?

Question 12 What difficulties, if any, arise with the anti-avoidance measure that prohibits the receiver from opting to tax a sale to a person connected with the borrower.