



**POSSESSORY TITLE
APPLICATIONS
SECTION 146
FINANCE ACT,
1994**

Practitioners are referred to the copy letter dated 25 July, 1994 circulated with this Gazette and received by the Taxation Committee from Mr. Pat Burke, Principal Officer of Capital Taxes Branch of the Revenue Commissioners following a joint meeting with members of the Conveyancing and Taxation Committees to consider the tax implications of section 146 Finance Act, 1994. The purpose of the section is to ensure that there is no tax related incentive to avoid taking out representation, with particular reference to probate tax and inheritance tax. The section requires that all applications for registration based on possession, the most common of which are usually referred to as s. 49 applications, made on or after 11 April 1994, will require a tax clearance certificate to be produced to the Registrar of Titles. Although the section does not impose any new charge to gift/inheritance tax, the effect of the requirement will be to bring into the charge deemed dispositions on abandonment of rights which may heretofore have been overlooked. The definition of "disposition" in section 2 Capital Acquisitions Tax Act, 1976 includes at paragraph (h) *"the release, forfeiture, surrender or abandonment of any debt or benefit or the failure to exercise a right; and for the purpose of this paragraph a debt or benefit shall be deemed to have been released when it has become unenforceable by action through lapse of time..."*.

Having regard to the lower exemption threshold applying to collaterals, consideration should be given to disclaimers in appropriate cases. The Taxation Committee is liaising with the Revenue Commissioners with a view to resolving difficulties concerning disclaimers on intestacy.

The examples in the letter from the Revenue Commissioners illustrate the tax problems which can arise on even the most routine possessory title applications to the Land Registry. When taking instructions in relation to such applications or when considering whether to extract representation on the death of a person on the title, solicitors should therefore consider and advise their clients on the taxation implications.

The Taxation Committee would welcome hearing from practitioners in the event of difficulties being encountered in the operation of the section.

TAXATION COMMITTEE