

# **Notes for Guidance - Taxes Consolidation Act 1997**

## **Finance Act 2024 edition**

### **Part 42 Collection and Recovery**

**December 2024**



The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

**Notes for Guidance - Taxes Consolidation Act 1997**

**Finance Act 2024 edition**

Part 42 Collection and Recovery

CHAPTER 1 *Income Tax*

- 960 Date for payment of income tax other than under self assessment
- 961 Issue of demand notes and receipts
- 962 Recovery by sheriff or county registrar
- 963 Power of Collector-General and authorised officer to sue in Circuit Court or District Court
- 964 Continuance of pending proceedings
- 965 Evidence in proceedings in Circuit Court or District Court for recovery of income tax
- 966 High Court proceedings
- 967 Evidence of electronic transmission of particulars of income tax to be collected in proceedings for recovery of tax
- 968 Judgments for recovery of income tax
- 969 Duration of imprisonment for non-payment of income tax
- 970 Recovery of income tax charged on profits not distrainable
- 971 Priority of income tax debts over other debts
- 972 Duty of employer as to income tax payable by employees

CHAPTER 1A *Interpretation*

- 960A Interpretation
- 960B Discharge of Collector-General's functions

CHAPTER 1B *Collection of tax, etc.*

- 960C Tax to be due and payable to Revenue Commissioners
- 960D Tax to be debt due to Minister for Finance
- 960E Collection of tax, issue of demands, etc.
- 960EA Payment of tax by relevant payment methods
- 960F Moneys received for capital acquisitions tax and stamp duties and not appropriated to be recoverable
- 960G Duty of taxpayer to identify liability against which payment to be set, etc.
- 960GA Repayment or refund of payment made in excess of liability to tax assessed by taxpayer
- 960H Offset between taxes

CHAPTER 1C *Recovery provisions, evidential rules, etc.*

- 960I Recovery of tax by way of civil proceedings
- 960J Evidential and procedural rules
- 960K Judgments for recovery of tax
- 960L Recovery by sheriff or county registrar
- 960M Taking by Collector-General of proceedings in bankruptcy
- 960N Continuance of pending proceedings and evidence in proceedings
- 960O Winding-up of companies: priority for taxes

960P Bankruptcy: priority for taxes

960Q Recovery of amounts received by a person following the lodgement of an incorrect account, etc.

CHAPTER 1D *Power to require statement of affairs, security, etc.*

960R Power of Collector-General to require certain persons to provide return of property

960S Security for certain taxes

CHAPTER 2 *Corporation tax*

973 Collection of corporation tax

974 Priority for corporation tax

975 Application of *sections 964(2), 980(8) and 981* for purposes of corporation tax

CHAPTER 3 *Capital gains tax*

976 Collection of capital gains tax

977 Recovery of capital gains tax from shareholder

978 Gifts: recovery of capital gains tax from donee

979 Time for payment of capital gains tax assessed under *section 977(3) or 978(2) and (3)*

980 Deduction from consideration on disposal of certain assets

981 Payment by instalments where consideration due after time of disposal

982 Preferential payment

CHAPTER 4 *Collection and recovery of income tax on certain emoluments (PAYE System)*

983 Interpretation (Chapter 4)

984 Application

984A Electronic system

984B Liability for payment of deduction

985 Method of collection

985A Application of *section 985* to certain perquisites etc.

985B PAYE Settlement agreements

985C PAYE Payment by Intermediary

985D PAYE Non-resident employer

985E PAYE Employment not wholly exercised in the State

985F PAYE Mobile workers

985G Return by employer

985H Exceptional circumstances

986 Regulations

986A Payment made without deduction of income tax

987 Penalties for breach of regulations

988 Registration of certain persons as employers and requirement to send certain notifications

988A Register of employees

989 Estimation of tax due for income tax months

990 Assessment of tax due

990A Generation of estimates by electronic, photographic or other process

991 Interest

991A Payment of tax by direct debit

991B Covid-19: Special warehousing and interest provisions

992 Appeals against estimates under *section 989* or *990*

993 Recovery of tax

994 Priority in bankruptcy, etc of certain amounts

995 Priority in winding up of certain amounts

996 Treatment for tax purposes of certain unpaid remuneration

997 Supplementary provisions (*Chapter 4*)

997A Credit in respect of tax deducted from emoluments of certain directors

#### CHAPTER 5 *Miscellaneous provisions*

998 Recovery of moneys due

999 Taking by Collector-General of proceedings in bankruptcy

1000 Priority in bankruptcy, winding up, etc. for sums recovered or deducted under *section 531*, *989* or *990*

1001 Liability to tax, etc of holder of fixed charge on book debts of company

1002 Deduction from payments due to defaulters of amounts due in relation to tax

1003 Payment of tax by means of donation of heritage items

1003A Payment of tax by means of donation of heritage property to an Irish heritage trust or the Commissioners of Public Works in Ireland

1004 Unremittable income

1005 Unremittable gains

1006 Poundage and certain other fees due to sheriffs or county registrars

1006A Offset between taxes

1006B Appropriation of payments

## PART 42 COLLECTION AND RECOVERY

### CHAPTER 1 *Income Tax*

#### **Overview**

This Chapter contains provisions dealing with the collection and recovery of income tax. It sets out the date for the payment of income tax other than that payable under self-assessment.

#### **960 Date for payment of income tax other than under self-assessment**

From 1 January 2011 and subsequent years, income tax contained in an assessment for any year of assessment, other than an assessment under Self-Assessment (see **Part 41A**), is payable on or before 30 September in that year. However, where such an assessment is made after 30 September in that year, the tax is due and payable not later than one month from the date on which the assessment is made. (1)

For all years up to and including the year ended 31 December 2010 the due date for payment of income tax contained in an assessment, other than an assessment under Self-Assessment (see **Part 41A**) is 31 October, for any year of assessment where the assessment is made prior to 31 October in that year. However, where such an assessment is made after 31 October in that year, the tax is due and payable not later than one month from the date on which the assessment is made.

Where, for a year of assessment, any claim for exemption or for any allowance, credit, deduction, relief or repayment was granted on the basis of an incorrect account, declaration, information, particulars, return or statement or any other form of claim, and such incorrect account gives rise to a repayment of tax then interest applies from the date the repayment was made to the date on which it is recouped. (2)(a),(b) & (c)

Income tax contained in an assessment or PAYE Balancing Statement (other than an assessment made under **Part 41A**) shall be due and payable as follows:

Where the benefit of a relief, credit, etc. is granted in ‘real time’, for example, in an individual’s PAYE certificate of tax credits, interest will apply-

- from 1 July in the year in which the certificate of tax credits issued if the certificate issued prior to that date, and
- from the subsequent 1 January where the certificate of tax credits issued after 1 July,

until the proceeds of the incorrect account are fully recouped.

Where the benefit of a relief, credit, etc. is granted after the end of the year of assessment, for example by way of a repayment through a PAYE Balancing Statement, interest will apply from the date the repayment was received by the individual until the proceeds of the incorrect account are fully recouped.

The rate of interest to be applied is the rate set out in **section 1080(2)(c)**.

#### **961 Issue of demand notes and receipts**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

**962 Recovery by sheriff or county registrar**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

**963 Power of Collector-General and authorised officer to sue in Circuit Court or District Court**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

**964 Continuance of pending proceedings**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

**965 Evidence in proceedings in Circuit Court or District Court for recovery of income tax**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

**966 High Court proceedings**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

**967 Evidence of electronic transmission of particulars of income tax to be collected in proceedings for recovery of tax**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

**968 Judgments for recovery of income tax**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

**969 Duration of imprisonment for non-payment of income tax**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

**970 Recovery of income tax charged on profits not distrainable**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

**971 Priority of income tax debts over other debts**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

**972 Duty of employer as to income tax payable by employees**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

CHAPTER 1A  
*Interpretation*

**Overview**

This Chapter defines terms used in *Chapters 1A, 1B, 1C and 1D* of this Part. It also provides that the Revenue Commissioners may nominate any of its officials to perform any acts and to perform any functions authorised by *Chapter 1B* to be performed or discharged by the Collector-General other than acts and functions referred to in section *960N(1) to (4)*.

## 960A Interpretation

For the purposes of *Chapters 1A, 1B, 1C and 1D*, “Acts” mean the Tax Acts (i.e. the Income Tax Acts and the Corporation Tax Acts), the Capital Gains Tax Acts, the Value-Added Tax Consolidation Act 2010, as amended or extended, the statutes relating to excise duties and the management of those duties as amended or extended, the Stamp Duties Consolidation Act 1999 as amended or extended, the Capital Acquisitions Tax Consolidation Act 2003 as amended or extended, Part 4A (which relates to IIR top-up tax, UTPR top-up tax or domestic top-up tax), *Parts 18A and 18B* (which relate to the income levy and the levy on parking in urban areas respectively), *Part 18C* (which relates to the domicile levy), Part 18D (which relates to the universal social charge), *Part 18E* (which relates to the Defective Concrete Products Levy), *Part 22A* (which relates to residential zoned land tax), *Part 22B* (which relates to the vacant homes tax), the Energy (Windfall Gains in the Energy Sector), (Temporary Solidarity Contribution) Act 2023 (which relates to the Temporary Solidarity Contribution), the Finance (Local Property Tax) Act 2012 and *section 101 of the Finance Act 2022* (which relates to the Temporary Business Energy Support Scheme) and includes any instruments made under any of those Acts.

Other terms defined in the section are “assessment”, “emoluments”, “income tax month”, “PAYE Regulations”, “RCT Regulations”, “Revenue officer” and “tax”. It should be noted that the term “tax”, in addition to all taxes and duties, levies and charges currently under the care and management of the Revenue Commissioners, also includes any interest, surcharge or penalty relating to such tax, duty, levy or charge and any clawback of a relief or an exemption relating to such tax, duty, levy or charge.

## 960B Discharge of Collector-General’s functions

The Revenue Commissioners may nominate in writing any Revenue officer to perform any acts and to discharge any functions authorised by *Chapters 1B, 1C and 1D* to be performed or discharged by the Collector-General other than acts and functions referred to in section *960N(1) to (4)*.

## CHAPTER 1B *Collection of tax, etc.*

### Overview

This Chapter contains provisions relating to the collection of tax, the issue of demands, the method of payment of tax and miscellaneous provisions such as provisions relating to the duty imposed on a taxpayer to identify the liability against which a payment is to be set and provisions relating to offset of a repayment against a tax liability.

### 960C Tax to be due and payable to Revenue Commissioners

Tax due and payable under the Acts shall be due and payable to the Revenue Commissioners.

### 960D Tax to be debt due to Minister for Finance

Tax due and payable to the Revenue Commissioners shall be a debt due to the Minister for Finance for the benefit of the Central Fund.

## 960E Collection of tax, issue of demands, etc.

### Summary

This section relates to the collection of tax. It provides that tax is to be paid to the Collector-General. He/she is obliged to demand payment of outstanding tax and to collect such tax. He/she may give a receipt in respect of any tax paid. He/she is not, however, obliged to issue a receipt.

### Details

Tax due and payable to the Revenue Commissioners by virtue of *section 960B* shall be paid to and collected by the Collector-General, including all tax charged in assessments, the particulars of which have been sent to him or her under *section 959G*. (1)

The Collector-General shall demand payment of tax that is due and payable but remaining unpaid by the person from whom that tax is payable. (2)

The Collector-General may issue a demand by electronic means to a person who is registered to deliver a return and pay tax under the Revenue Online System (ROS) and a person who is required to deliver a return and pay tax via ROS in accordance with regulations made by the Revenue Commissioners under *section 917EA*. (2A)

The Collector-General shall collect and levy the tax that is due and payable but not paid by the person from whom that tax is payable. (3)

On payment of tax, the Collector-General may give a receipt to the person who paid the tax in respect of that payment. He/she is not, however, obliged to issue a receipt. Such receipt is to consist of whichever of the following the Collector-General considers appropriate: (4)

- a separate receipt in respect of each payment, or
- a receipt for all payments that have been made within the period specified in the receipt.

## 960EA Payment of tax by relevant payment methods

### Summary

This section provides that tax may be paid to the Revenue Commissioners by credit card, debit card or any other method or methods of payment which is or are approved by them. The section enables the Revenue Commissioners to make regulations relating to these payment methods.

### Details

The following definitions apply: (1)

“prescribed” means prescribed by the Revenue Commissioners in regulations made under *subsection (3)*;

“relevant payment method” means each of the following methods of payment:

- credit card,
- debit card,
- any other prescribed method or methods of payment;

“relevant person” means the Revenue Commissioners, the Collector-General or a Revenue officer, as the case may be;



Where a person makes a payment of tax to a relevant person using a relevant payment method, the relevant person may refuse to accept payment where the Revenue Commissioners would incur fees or charges in connection with any amount paid using the relevant payment method concerned to the relevant person unless, at the time of making the payment, the person making the payment agrees to the payment of such additional charge(s) as may be prescribed arising from the person making payment by that payment method. (2)

The Revenue Commissioners may make regulations —

- prescribing a relevant payment method or relevant payment methods or class or classes of relevant payment methods for the purposes of the section, (3)(a)
- prescribing the additional charge or additional charges payable in respect of each relevant payment method or each class of relevant payment method or relevant payment method or relevant payment methods. Different additional charges may be prescribed for different payment methods or class of relevant payment methods, and (3)(b)
- specifying the period of time within which or the time by which, and the manner in which any such additional charge or charges prescribed under *paragraph (b)* are to be paid. (3)(c) (i),(ii)

### **960F Moneys received for capital acquisitions tax and stamp duties and not appropriated to be recoverable**

Any person who received a sum of money in respect of gift tax, inheritance tax or stamp duties and does not pay that sum to the Collector-General, and improperly withholds or detains the same, is accountable to the Revenue Commissioners for the payment of that sum to the extent of the amount received by that person. (1)

The sum of money referred to in *subsection (1)* shall be treated as a debt due to the Minister for Finance for the benefit of the Central Fund. (2)

### **960G Duty of taxpayer to identify liability against which payment to be set, etc.**

Subject to *subsection (2)*, every person who makes a payment of tax to the Revenue Commissioners shall identify the liability to tax against which he or she wishes the payment to be set. (1)

Where a payment is received by the Revenue Commissioners or the Collector-General and the payment is accompanied by a pay slip, a tax return, a demand or other document issued by the Collector-General, the payment shall be treated as relating to the tax referred to in the relevant document. This rule takes priority over the rule in *subsection (1)*. (2)

Where a payment is received by the Revenue Commissioners or the Collector-General and it cannot reasonably be determined by the Revenue Commissioners or the Collector-General from the instructions, if any, which accompanied the payment which liabilities the person wishes the payment to be set against, the Revenue Commissioners or the Collector-General may set the payment against any liability due by the person under the Acts. (3)

### **960GA Repayment or refund of payment made in excess of liability to tax assessed by taxpayer**

#### **Summary**

This section provides that where any person appeals an assessment, makes a payment to Revenue in connection with that appealed assessment and is subsequently entitled

to a refund of that payment, either because the person settles with Revenue, is successful at appeal, or the assessment is determined in her/his favour by a court, repayment of that amount will not attract interest.

### Details

Section 960GA TCA will, in certain circumstances, disapply any provisions of tax legislation that provide for payment of interest on a repayment of tax. These circumstances are where a taxpayer:

- appeals an assessment to the Tax Appeals Commission (or requests judicial review of a decision of the Appeal Commissioner);
- makes a payment (either directly or otherwise) to Revenue indicating that it is to be allocated against the appealed assessment; and (a)
- is entitled to repayment of the amount paid in relation to the appeal assessment because: (b)
  - the taxpayer settles with Revenue;
  - an Appeal Commissioner determines the appeal in favour of the taxpayer, or a higher court affirms the decision of the Appeal Commissioner; or (c)
  - a court of legal proceedings issues a final determination in the taxpayer's favour.

In these circumstances, any such repayment will not carry interest.

This section will ensure that where a taxpayer makes a payment to Revenue in respect of an appealed assessment, without accepting the liability as assessed by Revenue, and is ultimately successful at appeal or a court finds in the taxpayer's favour, the taxpayer will not be entitled to receive interest on that repayment. This provision allows Revenue to accept a payment from a taxpayer in respect of a "disputed" assessment without prejudging the case by bringing the payment to account against the taxhead in question.

### 960H Offset between taxes

#### Summary

This section authorises the Revenue Commissioners to offset a repayment of tax and interest due to a person in respect of such a repayment against any outstanding tax liability of the person before making a repayment. Repayment can also be withheld pending the submission of any outstanding tax returns. Where a repayment is so withheld, interest is not payable for the period that such repayments have been withheld. The section also contains an anti-avoidance provision relating to the assignment of a repayment to another person.

#### Details

Terms used in the section are defined, viz. (1)

"claim" means a claim, or part of a claim, that results in either or both a repayment of tax and a payment of interest payable in respect of such a repayment.

"liability" means any tax (including interest) due or estimated to be due for any period or in respect of any event, as appropriate.

"overpayment" means a payment or remittance, which exceeds the amount of the liability against which it is credited.

Where either a payment of any liability of a person is outstanding or tax returns are outstanding, or both, then where a repayment is due to the person in respect of a claim or overpayment — (2)

- where there is tax outstanding, or where both returns and tax are outstanding, the Revenue Commissioners can set the amount of the claim against the tax outstanding, and
- where there are only returns outstanding, they can withhold the repayment until such time as the outstanding returns have been delivered.

Where a person has assigned, transferred or sold a right to a claim or overpayment and tax is due and payable by that person, the assignment, transfer or sale of that right is ignored. In other words, Revenue can offset the repayment against any tax liability owed by the person who assigned, transferred or sold his or her right to a claim or overpayment. This counters the avoidance opportunity that arises as a result of a decision, in 2008, of the Court of Appeal in the UK (Commissioners of Revenue and Customs v Midlands Co-operative Society), where it was held that a right to make a claim for VAT that had been overpaid can be assigned to another person. The avoidance opportunity arises where, for example, a company assigns a right to an overpayment of tax to a company connected to it in order to avoid the provisions of **subsection (2)**. (3)(a)

Where the first-mentioned person and the second-mentioned person referred to in **subsection (3)(a)** are connected persons (within the meaning of **section 10**), any balance due to the first-mentioned person is offset against tax due and payable by the second-mentioned person. (3)(b)

Where the Revenue Commissioners have either withheld or set off a repayment by virtue of **subsection (2)** or **(3)**, a notice in writing shall be given to the person concerned and, in circumstances where only a return is outstanding, interest will not be payable by the Revenue Commissioners from the date the notice is given. (4)

The Revenue Commissioners are required to make regulations to give effect to the section. Such regulations are to set the order of priority of outstanding liabilities against which any claim or overpayment is to be set. (5)

Regulations made under the section are required to be laid before Dáil Éireann and may be annulled by the Dáil within 21 days by a resolution. This is, however, without prejudice to anything already done under the regulations. (6)

The Taxes (Offset of Repayments) Regulations 2002 (S.I. No. 471 of 2002) have effect as if they were made under **subsection (6)**. (7)

## CHAPTER 1C

### *Recovery provisions, evidential rules, etc.*

#### **Overview**

This Chapter deals with the recovery of tax. It also contains provisions relating to the priority given to certain taxes in the event of a company being put into liquidation or receivership and an individual becoming bankrupt.

#### **960I Recovery of tax by way of civil proceedings**

##### **Summary**

This section deals with civil proceedings taken by the Collector-General in any court to recover outstanding tax.

### Details

Without prejudice to any other means by which payment of tax may be enforced, any tax due and payable may be sued for and recovered by proceedings taken by the Collector-General in any court of competent jurisdiction. (1)

All or any of the amounts due from any one person may be included in the same summons. (2)

The rules of court applicable to civil proceedings commenced by summary summons, in so far as they relate to the recovery of tax, will apply to proceedings under this section. (3)

The acceptance of a part payment or a payment on account in respect of tax referred to in a summons shall not prejudice proceedings for the recovery of the balance of the tax due and the summons may be amended accordingly. (4)

Proceedings under the section may be brought for the recovery of the total amount which an employer is liable, under **Chapter 4** and the Income Tax Regulations, to pay to the Collector-General for any income tax month without distinguishing the amounts for which the employer is liable to pay by reference to each employee and specifying the employees in question. (5)(a)

For the purposes of the proceedings referred to in **paragraph (a)**, the total amount shall be one single cause of action or one matter of complaint. (5)(b)

Nothing in the subsection will prevent the bringing of separate proceedings for the recovery of each of the several amounts, which the employer is liable to pay by reference to any income tax month and to the employer's several employees. (5)(c)

Any amount being an assessment of tax referred to in **section 990** and any amount being an assessment of tax referred to in **section 990** (or any balance of tax assessed under the section but remaining unpaid) will be deemed to be an amount of tax which any person paying emoluments was liable, under **Chapter 4** and the Income Tax Regulations, to pay to the Collector-General. (6)

### 960J Evidential and procedural rules

#### Summary

This section sets out rules of evidence and procedure in relation to proceedings taken by the Collector-General for the recovery of tax.

#### Details

In any proceedings for the recovery of tax, a certificate signed by the Collector-General stating the following matters is to be evidence of those matters until the contrary is proved — (1)

- that an assessment for the tax has been made,
- that the assessment is final and conclusive,
- that the tax or any part of the tax is due and outstanding,
- that a demand for the payment of the tax has been made.

**Subsection (1)** will not apply in the case of tax to which **Chapter 4** applies, i.e. in the case of PAYE tax. (2)(a)

In proceedings for the recovery of PAYE tax, a certificate signed by the Collector-General that a stated amount of income tax under Schedule E is due and outstanding will be evidence unless the contrary is proved. (2)(b)

In proceedings for the recovery of tax, a certificate signed by the Collector-General certifying the facts or any of the facts referred to in *subsection (1)* or *(2)* may be given in evidence without proof. Such certificate will be treated as having been signed by the person holding the position or office of the person signing at the time of signature unless the contrary is proved. (3)

If a dispute arises in relation to a certificate referred to in *subsection (1)*, *(2)* or *(3)* during the course of the proceedings for the recovery of tax, the judge has power to adjourn the proceedings to allow the Collector-General or the Revenue officer concerned to attend the hearing and give oral evidence and for any register, file or other record to be produced. (4)

### **960K Judgments for recovery of tax**

Where, in any proceedings for the recovery of tax against a person, a judgment is obtained, the acceptance of a sum on account or part payment of the amount for which the judgment was given will not prevent or prejudice the recovery of the balance due under the judgment. All rights that attached to the original amount due will attach to the balance outstanding. A certificate signed by the Collector-General stating the amount of the balance will be evidence of the amount of the balance unless the contrary is proved.

### **960L Recovery by sheriff or county registrar**

#### **Summary**

This section deals with the situation where the Collector-General issues a certificate to the sheriff or county registrar in relation to the collection of outstanding tax.

#### **Details**

Where any person does not pay any sum in respect of tax, the Collector-General may issue a certificate to the sheriff or county registrar in which the defaulter resides or has a place of business certifying the amount in default and the person from whom the that amount is due. (1)

A certificate to be issued by the Collector-General under this section may be issued in an electronic or other format. Where the certificate is issued in non-paper format, it may be reproduced in a paper format by the county registrar or sheriff or by persons authorised by the county registrar or sheriff to do so. A certificate issued in non-paper format will be treated as a valid certificate for the purposes of this section. Where a certificate issued by the Collector-General is reproduced in non-paper format and the reproduction states or there is a note attached to it that it is a copy of the original certificate and the note contains the signature of the county registrar or sheriff or a person authorised by him, the copy of the certificate with the note will have the same effect as if it was the certificate itself. (2)

On receipt of the certificate, the sheriff or county registrar must proceed immediately to collect the sum in default by seizing goods, animals or other chattels within his or her bailiwick belonging to the defaulter. In addition to the rights, powers or duties conferred by this section, the sheriff or county registrar has the rights, powers and duties vested in him or her by law in relation to the execution of a writ of *fiery facias* in so far (3)

as those rights, powers or duties are not inconsistent with the additional rights, powers or duties conferred by this section.

A sheriff or county registrar executing a certificate is entitled to charge fees and expenses depending on the amount of tax due and calculated according to the scales of fees laid down by the High Court, Circuit Court and District Court. (4)

### **960M Taking by Collector-General of proceedings in bankruptcy**

The Collector-General may take bankruptcy proceedings in respect of the taxes and duties to which this legislation applies with the exception of corporation tax. (1)

The rules of court and the enactments relating to bankruptcy (e.g. the Bankruptcy Act 1988) will apply to proceedings under this section. (2)

### **960N Continuance of pending proceedings and evidence in proceedings**

#### **Summary**

This section deals with the continuance of proceedings relating to the recovery of tax where there is a change of Collector-General or other Revenue personnel. It also contains rules of evidence relating to those proceedings.

#### **Details**

Where proceedings for the recovery of tax have been instituted under *section 960I(1)* (1) or *960M(1)* and there is a change of Collector-General, the new Collector-General can become party to these proceedings in place of the former Collector-General and can continue with the proceedings.

The new Collector-General will inform the person or persons against whom the proceedings are being continued. On service of such notice, it will not be necessary for the new Collector-General to obtain an order of court substituting him or her for the original Collector-General who instituted or continued proceedings, notwithstanding any rule of court to the contrary. (2)

Any affidavit or oath to be made by a Collector-General for the purposes of the Land and Conveyancing Law Reform Act 2009 may be made by a successor to the Collector-General. (3)

Where the new Collector-General institutes or continues proceedings taken under *section 960I(1)* or *960M(1)*, the previous Collector-General is deemed for the purposes of the proceedings to have ceased to be the Collector-General. (4)

If, during the course of proceedings for the recovery of tax, the officer who commenced the proceedings dies or ceases for any reason to be a Revenue officer, another officer can be substituted in his or her place. (5)

A certificate signed by the Collector-General that a person is a Revenue officer and has been authorised by them for the purposes of the proceedings is evidence of those matters until the contrary is proved. (6)

Where there has been a substitution of a Revenue officer as plaintiff in the proceedings, a certificate by the Collector-General is evidence of the substitution until the contrary is proved. (7)

## 960O Winding-up of companies: priority for taxes

### Summary

This section deals with the priority attached to certain taxes owed to Revenue where a company goes into liquidation or receivership.

### Details

Terms used in the section (i.e. “Act of 2014”, “Act of 2010”, “relevant date”, “relevant period” and “relevant subsection”) are defined. (1)

Corporation tax and capital gains tax are deemed to be included among the taxes that have priority on the winding up of a company. Capital gains tax is included as companies pay capital gains tax for gains realised on the disposal of development land. (Companies pay corporation tax rather than capital gains tax in respect of gains realised on the disposal of other chargeable assets.) (2)

VAT (and interest charged on that tax under section 114 of the Value-Added Tax Consolidation Act 2010) for which a company is liable for taxable periods (as defined in that Act) are to be paid in priority to all other debts on a winding up of a company. (3)(a)

For the purposes of section 440 of the Companies Act 2014 (which relates to the preference attaching to certain payments when a receiver is appointed under a floating charge), *paragraph (a)* is deemed to be included in section 621 of the Act, which refers to the preferential status of PAYE debts. (3)(b)

Unpaid amounts of an authorised employer’s PAYE liability have preferential status on the winding up of a company. (4)(a)(i)

Where a company goes into liquidation or receivership, arrears of relevant contracts (i.e. subcontractors) withholding tax under *Chapter 2 of Part 18* and regulations made under that Chapter and arrears of tax due under PAYE assessments made under *section 990* for the 12-month period ending on the date the company went into liquidation or receivership are deemed to be preferential PAYE arrears and, therefore, rank along with other tax debts for priority payment. (4)(a)(ii) to (v)

Where arrears referred to in *paragraph (a)(ii) to (v)* are for a period that straddles the 12-month preferential period, only the amount of the tax apportioned on a time basis falling within that 12-month preferential period is to be treated as preferential. (4)(b)

The employer’s liability for a period of 12 months includes all tax which the employer is obliged to deduct from emoluments paid to the employees during that period (including any amounts of PAYE and interest on such amounts which would have been due to be remitted by the employer if that employer had been sending in remittances on the normal basis), reduced by any repayments which the employer is required to make under the PAYE system in that period, together with any interest payable in respect of that tax. (4)(c)

## 960P Bankruptcy: priority for taxes

### Summary

This section deals with the priority attached to certain taxes owed to the Revenue Commissioners where an individual becomes bankrupt.

### Details

Terms used in the section (i.e. “Act of 2010”, “Act of 1988” and “relevant period”) are defined. (1)

Capital gains tax, local property tax and vacant homes tax are deemed to be included for the purposes of section 81(1)(a) of the Bankruptcy Act 1988, which gives priority over all other debts to income tax assessed on a bankrupt. (2)

The priority attaching to the taxes to which section 81 of the Bankruptcy Act 1988 applies also applies to VAT (and interest on that tax), arrears of PAYE owed by an employer, arrears of relevant contracts (i.e. subcontractors) withholding tax under **Chapter 2 of Part 18** and regulations made under that Chapter and arrears of tax due under PAYE assessments made under **section 990** for the 12-month period ending before the date on which the order for adjudication of the person as a bankrupt was made, the petition of the arrangement of the person as a debtor was filed or the person died insolvent. (3)

Where arrears (other than arrears of VAT and interest and arrears of PAYE owed by an employer) are for a period that straddles the relevant 12-month period, only the amount of the tax apportioned on a time basis falling within that 12-month period is to be treated as preferential. (4)

The employer’s liability for a period of 12 months includes all tax which the employer is obliged to deduct under the PAYE system from emoluments paid to employees during that period, reduced by any repayments which the employer is required to make under the PAYE system in that period, together with any interest payable in respect of that tax. (5)

### **960Q Recovery of amounts received by a person following the lodgement of an incorrect account, etc.**

#### Summary

This section is predominantly aimed at PAYE individuals who make or deliver for any purpose of the Acts an incorrect account, declaration, information, particulars, return or statement, in connection with any claim for exemption or for any allowance, credit, deduction, relief or repayment. However it also accommodates collection of monies received on the basis of any incorrect account for such relief as mortgage interest relief (i.e. tax relief at source, whether or not the recipient is in the tax net).

#### Details

All amounts received by an individual on the basis of an incorrect account, declaration etc, shall be refunded to the Revenue Commissioners. (1)

All amounts (i.e. proceeds of an incorrect account, declaration, etc.) to be refunded to the Revenue Commissioners shall be determined by a Revenue officer and the amounts contained in such a determination shall be collected and recovered as if they were an amount of tax. (2)

The determination under **subsection (2)** may be made at any time. (i.e. there is no time limit). (3)

An individual who is aggrieved by the determination made under **subsection (2)** may appeal the determination by notice in writing to the Appeal Commissioners. An appeal must be made within 30 days after the date of the notice of that determination. The (4) (a)



appeal is heard and determined by the Appeal Commissioners in the manner provided for in Part 40A of TCA 1997.

Where a determination under *subsection (2)* is appealed, a taxpayer may not **(b)** subsequently appeal their assessment on the same grounds.

A Revenue officer or Inspector may raise an assessment to collect tax due arising from the proceeds of an incorrect account, declaration etc. **(5)(a) & (b)**

The assessment need only set out the amount of tax due arising from the proceeds of an incorrect account, declaration etc. No other particulars need be included in the assessment.

An assessment under *subsection (5)* may be made at any time. (i.e. there is no time **(6)** limit for the raising of an assessment).

## CHAPTER 1D

*Power to require statement of affairs, security, etc.*

### Overview

This Chapter enables the Collector-General to require a statement of affairs (*section 960R*) or a security for certain taxes (*section 960S*) from a person in certain circumstances.

### **960R Power of Collector-General to require certain persons to provide return of property**

This section enables the Collector-General or a nominated Revenue officer to require a statement of affairs to be delivered within 30 days of the date of the notice from persons who are not engaging with the Collector-General's Office in relation to their tax affairs. A statement of affairs is a statement of the assets and liabilities of a person.

A statement of affairs can be sought from the spouse or civil partner of an individual where that individual and his or her spouse or civil partner are jointly assessed to income tax under *section 1017* or *section 1031C*.

The statement of affairs must contain details relating to the market value of all assets (including details of any charges or encumbrances on those assets) and liabilities of the persons concerned on the specified date and their income and outgoings and must contain in respect of each liability and each item of income or outgoings such information as the Collector-General may specify in the prescribed form. The property of minor children and minor children of a civil partner must be included in the statement of affairs where those assets have previously been disposed of by that person, whether to the minor child or not, or where the assets were acquired for the minor child with funds provided directly or indirectly by the individual concerned. Guidelines for calculating the cost of acquisition of an asset are included.

Trustees may be asked to provide a statement of affairs in respect of the assets and liabilities of a trust.

The person completing the statement of affairs must also sign it and include a statutory declaration that the statement is correct to the best of that person's knowledge and belief.

## **960S Security for certain taxes**

### **Summary**

The Revenue Commissioners may, where it appears requisite to them to do so for the protection of the revenue, require a person in business to give a security or a further security in relation to fiduciary taxes. It shall be an offence for a person, who is required to provide a security, to engage in business without providing the security. A person who is dissatisfied with a requirement to provide a security has a right of appeal to the Appeal Commissioners against such requirement.

### **Details**

Definitions of “business” and “tax” are provided for this section. The taxes concerned (1) are fiduciary taxes are tax deducted by employers under the PAYE System, Relevant Contracts Tax (sub-contractors, etc.), universal social charge, Value Added Tax and local property tax.

The Revenue Commissioners may require a security where it is considered necessary (2) to protect fiduciary taxes due to the Exchequer. This will only apply where there is a perceived risk that the fiduciary taxes may not be remitted.

A written notice must issue to a person where a decision to require a security has been made. (3)

It is an offence for person, who has been served with a written notice under *subsection* (4) (2) requiring a security, to engage in business until the required security is in place.

A right of appeal is available to a person against a decision to require that person to provide a security. (5)

Where a decision to require a security has been appealed, the prohibition on engaging in business under *subsection* (4) (6) will not apply until the matter is determined by the Appeal Commissioners.

## CHAPTER 2 *Corporation tax*

### **973 Collection of corporation tax**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

### **974 Priority for corporation tax**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

### **975 Application of sections 964(2), 980(8) and 981 for purposes of corporation tax**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

## CHAPTER 3 *Capital gains tax*

### **Overview**

This Chapter contains provisions dealing with the recovery of capital gains tax from shareholders (*section 977*) and from recipients of gifts (*section 978*). It also includes a withholding tax on the disposal of certain assets (*section 980*) and makes special arrangements for the payment of capital gains tax where an asset is acquired by instalments (*section 981*).

Reference should also be made to those provisions of *Chapter 5* of this Part, which can apply to the collection of capital gains tax (in particular, the power of attachment in *section 1002*).

### **976 Collection of capital gains tax**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

### **977 Recovery of capital gains tax from shareholder**

#### **Summary**

This section authorises the recovery from shareholders of the capital gains tax charged on a company in respect of the disposal of assets. The section applies where the company has made a capital distribution out of the proceeds of the disposal and has not paid the capital gains tax charged in respect of the gain on the disposal.

*Section 614* provides for a similar provision to this in the case of a company chargeable to corporation tax in respect of a chargeable gain.

#### **Details**

##### ***Definition***

“capital distribution” has the meaning set out in *section 583*. (1)

##### ***Application***

This section applies where a person connected with an Irish resident company receives (2) or is entitled to receive a capital distribution deriving from, or consisting of, a disposal on which a chargeable gain arises to a company. The section does not apply where the capital distribution represents a reduction in share capital.

##### ***Recovery of tax from shareholder***

Where the capital gains tax due by a company is not paid within 6 months of it becoming due, the connected person may be assessed, in the name of the company, within 2 years (3) of that date to an amount of tax not exceeding —

- the capital distribution which that person has received or became entitled to receive, and
- that person’s proportionate share of the tax on the gain, at the rate in force when the gain accrued.

##### ***Shareholder’s subsequent recovery of tax and own liability to tax***

The connected person assessed to tax under this section may recover the tax paid from (4) the company.

This section does not affect the connected person’s own liability to tax in respect of the capital distribution (*section 583*), in so far as it represents a disposal of shares. (5)

## 978 Gifts: recovery of capital gains tax from donee

### Summary

This section is designed to deal with the situation where a person who has given away assets in gifts or given away in gifts the proceeds from the sale of an asset and has left capital gains tax unpaid. The manner in which the tax is to be recouped is by charging the amount of capital gains tax left unpaid on the donee in the name of the donor. The charge is, therefore, separate and distinct from any charge on the donee in respect of his/her own capital gains and the donee is given the right to recover from the donor any amount of capital gains tax which he/she has to pay on behalf of the donor. Where the gift is subject to the payment of the tax, the donee is debarred from recovering the tax from the donor.

### Details

#### Definitions

“Old assets/new assets” have the meanings set out in *section 597*. (1)

“donor” is the person transferring the gift and, in the case of an individual who has died, includes his/her personal representatives.

“donee” is the person(s) in receipt of the gift.

“gift” refers to any transaction, other than a bargain at arm’s length, whereby an asset is transferred (from a donor to a donee(s)) for less than full consideration (that is, less than its full value).

#### Charge arising on the donee

Where a person —

- who is chargeable to capital gains tax on chargeable gains accruing on the disposal of an asset by gift, and
- leaves any amount of capital gains tax unpaid 12 months after the tax is due,

then, the donee may be assessed (not later than 2 years after the tax charged on the donor becomes due and payable) and charged for the tax in the name of the donor. The donee cannot be charged any more than the lesser of —

- the tax on the amount of the gain on the disposal by gift, and
- the amount of tax remaining unpaid.

#### Gift of an asset “rolled-over”

Where a gift consists of an asset which replaces another asset and which was purchased out of the proceeds of the asset replaced, then the donee may be charged to capital gains tax in respect of the gain “rolled-over” under *section 597* (that is, the deferred charged on the “old asset”), as well as the gain on the asset given by gift (that is, the charge on the new asset). (3)

#### Amount of tax to be charged

Where the gift in question relates to the whole of the proceeds of the disposal of an asset or, in the case of a replacement asset, the whole of the disposal of the sale of the “new asset”, then the amount of capital gains tax assessed and charged is to be the amount assessed and charged on the donor but left unpaid by him/her. (4)(a)

If, however, only part of the proceeds are transferred by way of gift then the amount of capital gains tax assessed and charged on the donee is to be the appropriate proportion of the total charge on the donor. (4)(b)

***Recovery of tax paid by donee***

Where a donee has paid capital gains tax under this section, the donee has the right to recover that tax from the donor in a court of competent jurisdiction. Where a condition of the transfer of an asset (or proceeds from the sale of an asset) by gift is that the donee pay the appropriate capital gains tax, then the donee cannot recover the tax. (5)

***Where two or more donees are involved***

Where gifts are made to 2 or more donees separate charges may be made on each donee in respect of the tax left unpaid by the donor. For this purpose the tax attaching to the asset is to be apportioned between the donees on the basis of his/her proportion of the gift. (6)

**979 Time for payment of capital gains tax assessed under section 977(3) or 978(2) and (3)**

Capital gains tax assessed and charged on —

- a shareholder under *section 977*, and
- a donee under *section 978*,

is payable —

- within 2 months of the notice of assessment, or
  - 3 months after the end of the year of assessment in which the gain accrued,
- whichever is the later.

**980 Deduction from consideration on disposal of certain assets**

**Summary**

This section provides for the deduction of an amount in respect of capital gains tax from the purchase price of certain specified assets by the purchaser (referred to as “withholding tax”) where a tax clearance certificate is not provided. The amount to be deducted is equal to 15 per cent of the purchase price. The purchaser is required to pay the amount deducted to the Collector-General and is also required to forward information relating to the acquisition of the asset to the Revenue Commissioners. The vendor of the asset is entitled to set off the amount deducted against any capital gains tax due on the disposal. Where a deduction cannot be made from the purchase price because the consideration is in non-monetary form, the purchaser is still required to pay a 15 per cent withholding tax to the Revenue Commissioners which is recoverable by the purchaser from the vendor under this section. Where the vendor produces a tax clearance certificate from an inspector, the vendor is entitled to obtain payment in full. Either the vendor or his/her agent may apply to the inspector for a tax clearance certificate.

The enforcement of a debt security by the National Asset Management Agency (NAMA) or by a 75% subsidiary of NAMA does not constitute consideration for the purposes of the section nor will it be treated as a disposal of an asset.

The production of a current tax clearance certificate already issued to a builder of a new house is sufficient authority to remove the requirement to withhold tax under the section

on payment to the builder for the land on which the new house is being, or has been, built.

This section also applies where a capital sum derives from an asset. Even though the person paying the capital sum does not acquire the asset, for the purposes of this section they are treated as purchasing the asset for a price equal to the capital sum.

This section does not apply where the value of the asset disposed of does not exceed €500,000 or €1,000,000 in the case of a house or apartment, where a capital sum derives from a settlement under an insurance policy, or where the vendor is a body specified in **Schedule 15**. Neither does it apply to a disposal by NAMA or by a 51% subsidiary of NAMA.

The person making the disposal shall provide certain details relating to an asset acquired by way of gift or inheritance if the form on which the application so requires.

### Details

#### Definitions

“designated area” is an area designated by an order under section 2 of the Continental Shelf Act, 1968. (1)

“exploration or exploitation rights” is a right to assets generated from activities relating to exploration or exploitation of the sea bed and its natural resources in designated areas.

“shares” include stock and any security.

“house” includes any building/part of a building used or suitable for use as a dwelling, and any out office, yard, garden or other land pertaining to or usually enjoyed with that building/part of a building. (4)(c)

“new house” means a house which has been developed/is being developed by or on behalf of the vendor but which has not been used at any time before its disposal.

#### Application

This section applies to assets which are — (2)

- land in the State,
- minerals in the State or any mineral or mining rights,
- exploration or exploitation rights in a designated area,
- unquoted shares deriving their value from any of the above assets - artificial arrangements involving the transfer of money or other assets so that the value of the shares is derived from those assets are ignored for the purposes of valuing the shares, where the motive for the transfer of assets is the avoidance of tax. (3B)
- unquoted shares deriving their value from the above assets acquired on a share-for-share basis on a reorganisation or reduction of share capital, and
- goodwill of a trade carried on in the State.

The section does not apply where the value of the asset disposed of does not exceed €500,000 or €1,000,000 in the case of a house or apartment. If, however, in order to avoid the application of the section, an asset exceeding this value is sold in parts (to the same person or connected persons), then those disposals are to be treated as one disposal. (3)

Neither does the section apply where the asset vendor is a body specified in **Schedule 15**, as those bodies are exempt from capital gains tax by virtue of **section 610**. (3A)

### ***Withholding tax***

Where an asset to which this section applies is being acquired — (4)(a)

- the purchaser must deduct an amount equal to 15 per cent of the payment for capital gains tax,
- the vendor must allow this deduction, and
- the purchaser, on proof of payment of the deduction to the Revenue Commissioners, is treated as having paid over the total of the sum actually paid over and the amount so deducted in consideration for the asset.

The production by the vendor of a certificate issued under **subsection (8)** or, where the asset being sold is land on which a new house has been built or is in the course of being built, the production of either that certificate or one of the certificates listed in **subsection (8A)** is sufficient authority to remove the obligation on the purchaser to withhold tax from the consideration. Where one of these certificates is to be used it must have been issued to the vendor or, in the case of a certificate issued under **subsection (8)**, to either the vendor or his/her agent. (4)(b)

### ***Assessment***

Where the purchaser has made a payment to the vendor for the acquisition of an asset to which this section applies and in respect of which the withholding tax has been applied, he/she has 30 days from the date of the payment to — (5)

- deliver to the Revenue Commissioners an account of the payment and of the amount deducted and retained from the payment, and
- pay to the Collector-General an amount of capital gains tax equal to 15 per cent of the amount paid to the vendor for the acquisition of the asset.

An amount of capital gains tax which has become payable to the Collector-General as a result of **subsection (5)** shall be — (5A)

- payable by the purchaser in addition to any other capital gains tax for which he/she is liable,
- due within 30 days of the time the purchaser pays the vendor for the acquisition of the asset, and
- payable by the purchaser without the making of an assessment.

However, tax which has become due may be assessed on the purchaser if that tax or any part of that tax is not paid on or before the due date.

Where the purchaser fails to deliver an account or where the inspector feels that the account is unsatisfactory the inspector may make an estimated assessment to the best of his/her judgement on the purchaser. (6)

### ***Credit for withholding tax***

In computing the total capital gains tax liability of the vendor in respect of a disposal under this section, where an amount of capital gains tax which has become payable by the purchaser to the Collector-General has been paid, the vendor will be credited with that amount of tax on making a claim for such credit. (7)

### ***Tax clearance certificate***

A vendor or another person acting under their authority (in this section referred to as an “agent” (e.g. a solicitor or a tax practitioner)) may apply to the inspector for a tax clearance certificate. Where the inspector is satisfied that the person making the application is either the vendor or the vendor’s agent and that any one of the following conditions are satisfied — (8)

- that the vendor is resident in the State,
- that no capital gains tax is due on the disposal, or
- that the vendor has already paid the capital gains tax due on the disposal of the asset and any previous disposals of the asset,

the inspector will issue a certificate to the vendor or agent and a copy of the certificate to the purchaser. This enables the purchaser to be relieved of his/her obligation to deduct the withholding tax. If the application is made by an agent, it must include the name and address of the vendor and, if the vendor is resident in the State, the vendor's tax reference number (within the meaning of *section 885*).

The certificates referred to in *subsection (4)(b)* (other than a certificate issued under *subsection (8)*) (see also notes below on *subsection (8A)(c)*) are:

- A valid certificate of authorisation issued under *section 531*,
- A valid tax clearance certificate issued under *section 1094*,
- A valid tax clearance certificate issued under *section 1095*, or
- If a person has none of these certificates, the certificate provided for in *paragraph (b)* of this subsection.

A tax clearance certificate may be issued specifically where the asset being disposed of is land on which a new house has been built or is in the course of being built and where the vendor does not already have either a certificate of authorisation under *section 531* or a tax clearance certificate under *section 1094* or *1095*. This tax clearance certificate is issued on the same basis as a tax clearance certificate is issued for the purposes of *section 1095*. (8A)(b)

A notification issued, within the previous 12 months, by the Revenue Commissioners under *section 530I* that the named person is a person to whom *section 530G* (i.e. a zero rate subcontractor) applies shall be treated as a certificate for the purposes of this subsection. (8A)(c)

#### *Application of subsection (8) to corporation tax*

*Subsection (8)* applies to corporation tax as it applies to capital gains tax and references to capital gains tax in that subsection apply as if they included references to corporation tax. (8B)

#### *Procedure where consideration is in a non-monetary form*

Special procedures apply in the case of an asset acquired after the 2nd of June 1995, which is an asset to which this section applies (and *section 978* does not apply), where the consideration for the asset is such that a deduction cannot be made from it (for example an asset swap or a purchase with shares), and where the vendor does not produce a clearance certificate. Where these circumstances obtain the purchaser must, within 7 days of the acquisition — (9)(a)

- notify the Revenue Commissioners of the acquisition, setting out the asset acquired, the consideration paid, the estimated market value of the asset and the name and address of the vendor, and
- pay the Collector-General 15 per cent of the estimated market value.

Where, by virtue of these requirements capital gains tax is payable by the purchaser, that capital gains tax — (9)(b)

- is payable in addition to any other capital gains tax liabilities that person may have,
- is due within 7 days of the acquisition, and
- is payable without an assessment being made.



Where such payment is not made it may be assessed on the purchaser.

Where a purchaser has so paid an amount of capital gains tax, he/she is entitled to recover a sum of that amount from the vendor as a simple contract debt from a court of competent jurisdiction. However, if the vendor (or his/her agent) has now obtained a clearance certificate issued under **subsection (8)**, the purchaser is not entitled to recover the sum from the vendor but is entitled to be repaid the tax so paid. (9)(c)

Where an asset is acquired by 2 or more persons, then each person is to be assessed and charged in proportion to the amount of the asset they acquired. (9)(d)

Where a purchaser has so paid an amount of capital gains tax and recovered a sum of that amount from the vendor, the Revenue Commissioners will, on receiving proof to that effect, allow a credit to the vendor for the tax paid by the purchaser in determining the total capital gains tax liability of the vendor in respect of the disposal. (9)(e)

### ***Due date for tax***

*This subsection, which provided that an assessment to withholding tax was due and payable the day after the assessment is made, has been repealed by section 56 of the Finance Act 2007.* (10)

### ***Capital sums deriving their value from an asset***

Certain disposals of assets do not necessarily involve the acquisition of assets (for example, the redemption of loan notes by the issuing company involves the disposal, but not the acquisition, of assets). In order to ensure that this section applies to the disposal rather than the acquisition of assets provision is made such that where a capital sum derives from an asset, the person paying that capital sum is deemed to have acquired the asset for a consideration equal to the capital sum. (11)

This does not apply to a capital sum which is a settlement under an insurance policy.

The enforcement of a debt security by NAMA or by a company which is a 75% subsidiary of NAMA does not constitute consideration for the purposes of this section. (12)

**Subsection (9)** does not apply to NAMA or to a 75% subsidiary of NAMA. (13)

This section does not apply to a disposal by a company that would be a company to which **section 616(1)(g)** relates if the reference in that section to a 75% subsidiary were a reference to a 51% subsidiary. (14)

For the purposes of this section, the enforcement of a debt security by NAMA or by a 75% subsidiary of NAMA will not be treated as a disposal of an asset. (15)

In the case of a disposal to which this section applies, the person who is making the disposal shall provide details (if applicable) on an application being made for a clearance certificate if the form on which the application is made so requires for a certificate referred to in **subsection (8)** relating to — (16)

- whether or not the asset being disposed of was acquired by way of gift or inheritance,
- the market value of the asset at the date it was so acquired, and
- whether or not gift tax or inheritance tax was paid in respect of the asset.

### **981 Payment by instalments where consideration due after time of disposal**

Where the whole or part of the consideration taken into account in computing a chargeable gain is payable by instalments over a period which exceeds 18 months, the Revenue Commissioners may allow payment of the tax charged on the gain to be spread over a period not exceeding 5 years and not later than the date when the last instalment is due. The taxpayer must satisfy the Revenue Commissioners that payment of the tax in the normal way would cause undue hardship.

### **982 Preferential payment**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

## CHAPTER 4

### *Collection and recovery of income tax on certain emoluments (PAYE System)*

#### **Overview**

This Chapter provides for the collection and recovery of income tax under the PAYE system.

Reference should also be made to *section 903* which provides authorised officers of the Revenue Commissioners with powers of inspection (including entry and search of premises) in connection with the PAYE system.

#### **983 Interpretation (Chapter 4)**

This section defines a number of terms which are used throughout this Chapter and apply from 1 January 2019 —

“due date” in relation to an income tax month means,

- (a) 15\* days from the last day of the income tax month (i.e. 14th of the following month),
- (b) 24\* days from the last day of the income tax month (i.e. 23rd of the following month), where –
  - the return and the remittance are made by electronic means, and
  - the return and the remittance are made on or before the 23rd of the month.

“emoluments” is defined comprehensively so as to include anything which is assessable under Schedule E and, since references to payments of emoluments include references to payments on account of emoluments, salaries or wages advances are also included.

“employee” is any person who receives emoluments.

“employer” is any person who pays emoluments.

“income tax month” means a calendar month.

“reliefs from income tax” means allowances, deductions and tax credits.

“tax credits” means personal tax credits and general tax credits.

\* Under the Interpretation Act 2005, the last day of the month is included in the count meaning that the due date is either the 14<sup>th</sup> or the 23<sup>rd</sup> day of the month.

“electronic means” has the same meaning as in section 917EA(1).

“reportable benefit” has the same meaning as it has in section 897C.

“return date” in relation to an income tax month means 15 days from the last day of the income tax month. As this includes the last day of the previous month, the return date is actually the 14<sup>th</sup> of the month. See Section 985G for Return by Employer.

“revenue payroll notification” means a notification issued by Revenue to an employer setting out information necessary to calculate any income tax due for an employee. It replaces the Tax Credit Certificate from 1 January 2019.

“technology systems failure” means circumstances in which:

- (a) Revenue’s electronic system is not functioning properly and resulting in an employer being unable to comply with his or her obligations to deduct and remit income tax due, or,
- (b) a person is unable to use Revenue’s electronic system because of a systems failure of an internet service provider, or of an electricity service provider occurring in the general locality of, or affecting the person’s place of business.

### **984 Application**

This section applies the PAYE provisions to all emoluments except emoluments where the operation of PAYE is impracticable and in respect of which the inspector has issued an exclusion order to the employer. (1)

Following the commencement of a Ministerial Order, Sections 984A, 985G(2)(d), 986 and 987 of Chapter 4 shall apply to require reporting through the PAYE system of reportable benefits. These sections will not apply for reportable benefits to an employee for whom a PAYE Exclusion Order has been issued. (1A)

The inspector may cancel the exclusion order if a change of circumstances arises in the office or employment. (2)

Exclusion orders issued before 6 April, 1986 are ineffective for the year 1997–98 and subsequent years of assessment. (3)

### **984A Electronic system**

#### **Introduction**

This section provides that with effect from 1 January 2019, any data required under the PAYE system of tax deduction, from Revenue or from an employer, must be made by electronic means. However, there are certain exceptions to this rule.

#### **Details**

Any return, statement, notification, instruction, information, declaration or claim, required under the PAYE system of tax deduction shall be made by electronic means, but not where the following apply:- (1)

an employer that has been excluded by Revenue under Section 917EA from the obligation to use electronic means, (2)(a)

a PAYE exclusion order exists, or (2)(b)

a direction has issued under Sections 985E or 985F (2)(c)

### **984B Liability for payment of deduction**

This section provides that any employer, who is required to operate PAYE, is liable to pay the tax to Revenue regardless of whether or not the tax was deducted from the employee. In addition, where a repayment of income tax has been made to an employee, the employer is entitled to repayment of that tax by Revenue (subject to time limits specified in subsections (6A) and (6B) of section 985G).

### **985 Method of collection**

This section provides that when paying emoluments which are subject to the PAYE system an employer must, in accordance with the regulations made under this Chapter, deduct or repay income tax, as appropriate, even though no assessment has been made in respect of the emoluments and the emoluments may be for some year of assessment other than the year in which they are paid.

### **985A Application of *section 985* to certain perquisites etc.**

#### **Summary**

This section provides for the direct application of PAYE to emoluments in the form of benefits such as perquisites and profits whatever chargeable to tax under *section 112*, expenses incurred in the provision of benefits which are treated as perquisites (i.e. BIKs), the benefit arising from a preferential loan, the benefit of the private use of company cars and vans, and gains realised by an employee or director on or after 1 January 2024 from the exercise, assignment or release of rights chargeable to tax under *section 128*.

Employers are to deduct the appropriate income tax in respect of those benefits from cash remuneration being paid to the employee at the same time the benefit is provided. Where the cash remuneration of an employee is insufficient to meet the tax liability, the employer will be responsible for any shortfall in the amount of tax due. Where an employee does not make good the shortfall to the employer by the end of the tax year, the tax borne by the employer will be treated as a taxable benefit of the employee in the following tax year and subject to PAYE in the same way as the original benefit.

#### **Details**

#### ***Application***

The section applies to emoluments in the form of— (1)

- perquisites and profits whatever chargeable to tax under *section 112* including —
  - an expense incurred by an employer in the provision of a benefit for an employee which is treated as a perquisite for the purposes of *section 112* by virtue of *section 118*,
  - the benefit arising from a preferential loan chargeable to tax by virtue of *section 122*,
  - a perquisite to which *section 112A or 112AA* applies.
- the benefit of the private use of a car chargeable to tax by virtue of *section 121*,
- the benefit of the private use of a van chargeable to tax by virtue of *section 121A*.
- a gain realised by an employee or director from the exercise, the assignment or the release of a right to acquire shares or other assets which is chargeable to tax by virtue of *section 128*.

***Exclusion (this provision applies from 25 March 2004)***

Subject to ***subsection (1B)***, the section does not apply to emoluments in the form of shares (including stock) received by employees, being shares in the employer company or in a company controlling the employer company. Employees in receipt of shares accounted for income tax under self-assessment instead of PAYE. All other shares given by employers to employees are liable to PAYE. **(1A)**

The section applies to emoluments in the form of shares (including stock) received by employees, being shares in the employer company or in a company controlling the employer company, where those shares are received on or after 1 January 2011. Emoluments in the form of shares are now dealt with on the same basis as other types of perquisites and benefits-in-kind. **(1B)**

For the purposes of this Chapter and regulations under it the employer is to be treated as having made a “notional payment” (as determined under ***subsection (3)***) in respect of the emoluments to which this section applies. **(2)**

The “notional payment” is the amount which, on the basis of the best estimate that can reasonably be made, is the amount of income likely to be chargeable to tax under Schedule E in respect of the emolument. In the case of gains realised on or after 1 January 2024 which are chargeable to tax under ***section 128***, the “notional payment” amount is calculated by reference to the provisions of ***section 128(4)***. **(3)**

Where by reason of an insufficiency of payments actually made to an employee, the employer is unable to deduct the amount of income tax due, the employer will be liable to remit to the Collector-General the amount of tax that the employer is required but unable to deduct. **(4)**

Where an employer pays the BIK tax charge in respect of a benefit provided to an employee (because the employee has insufficient income from which the tax could be deducted) the tax paid is credited to the employee. **(4A)**

Where an employer makes notional payments to employees in the form of shares, he or she is obliged to account for income tax on the value of those shares or, in the case of notional payments chargeable to tax under section 128, on the gain realised and calculated as per ***section 128(4)***. An employer is entitled to withhold sufficient shares to fund that income tax liability where the employee does not otherwise provide the employer with sufficient means to do so. Even though the employee has not actually received the shares, he or she is treated as if the value of the shares had been paid by the employer. **(4B)**

In any case where — **(5)**

- (a) an employee receives an emolument of this section,
- (b) the employer is required to remit the tax due in respect of the emolument, and
- (c) the employee does not, before the end of the year of assessment, make good the due amount to the employer,

the due amount shall be treated as an emolument of this section and charged to tax in the next following year of assessment.

The Revenue Commissioners may make regulations to make provision with respect to the deduction, collection and recovery of amounts to be accounted for in respect of notional payments and for applying any specified provisions of existing regulations to deductions from actual payments to amounts to be accounted for in respect of any notional payments. Such regulations may, without prejudice be cancelled within 21 sitting days of Dáil Éireann. **(6) & (7)**

## 985B PAYE Settlement agreements

### Summary

This section provides that the Revenue Commissioners may make arrangements with employers whereby the employers will themselves pay to the Revenue Commissioners, the tax payable in respect of benefits provided to employees which are minor and irregular rather than deducting the tax from the earnings of the employees and accounting for it through the normal PAYE system. Where the employer so accounts for the tax, the benefits will not form part of the total income of the employees and they will not be entitled to credit for or repayment of the tax accounted for.

### Details

#### Definitions

“qualifying emoluments” means emoluments other than emoluments in the form of a payment of money, which are — (1)

- (a) minor, as regards the amount or type of emolument involved, and
- (b) irregular, as to the frequency in which or the times at which, the emoluments are provided.

On application by an employer, the Revenue Commissioners may enter into an agreement with the employer to account directly to them in respect of income tax on qualifying emoluments of one or more employees of the employer which would otherwise have to be accounted for through the normal PAYE system. (2)

Where the employer accounts for the tax under such an agreement —

- the employer shall not be liable to account for tax under the PAYE system, 3(a)
- qualifying emoluments will not be treated as income of any employee, 3(b)
- the tax accounted for shall not be treated as deducted under the PAYE system 3(c)
- an employee will not be treated as having paid any part of the income tax and shall not be entitled to a credit or claim repayment of any part of the tax, and 3(d)
- qualifying emoluments shall not be included by the employee in the annual return. 3(e)

The amount of tax to be accounted for by the employer — (4) & (5)

- (a) is to be determined by reference to —
  - the aggregate amount of the benefits in the agreement on which income tax is payable,
  - the total number of employees in receipt of the benefits,
  - the number of employees liable to tax at —
    - the standard rate for the tax year to which the agreement relates, and
    - both standard and higher rates for that year, and
  - any other relevant details in relation to the agreement.

And

- (b) is to be comprised of —
  - the amount of tax on the aggregate of taxable benefits, calculated by taking account of the number of employees on the standard rate and those on both the standard and higher rates for the tax year, and

- a further amount to reflect the tax which would have been payable by the employee had he or she not received a tax-free benefit from the employer.

An application by an employer to enter into a PAYE settlement agreement must be received by the Revenue Commissioners on or before 31 December in the tax year to which the agreement applies. (6)

If the tax due under an agreement is not paid to the Collector-General within 23 days of the end of the tax year to which the agreement applies, the agreement becomes null and void and the remaining provisions of the Chapter (PAYE system) and regulations thereunder shall apply. (7)

Any officer acting under the authority of the Revenue Commissioners may perform or discharge any action authorised by this section. (8)

### **985C PAYE Payment by Intermediary**

#### **Summary**

*Section 985C* provides that, where payments of emoluments are made by an intermediary on behalf of an employer, the employer is to be treated for the purposes of the PAYE regulations as having made the payment if the intermediary does not operate PAYE. If the employee is entitled to a net sum free of tax, the liability to be accounted for by the employer is to be calculated by reference to the grossed-up amount.

#### **Details**

Where an intermediary of the employer makes any payment of emoluments of an employee, the employer is to be treated, for the purposes of the PAYE scheme, as making a payment of emoluments of an amount equal to the amount referred to below. (1)

The section does not apply, however, if the intermediary deducts income tax from the payment to the employee and accounts for it in accordance with the PAYE scheme. (2)

The amount on which the employer is to operate PAYE is the amount paid by the intermediary to the employee, grossed up if the payment is an “after tax” payment (3)

A payment of emoluments of an employee is made by an intermediary of the employer if it is made — (4)

- by a person acting on behalf of the employer and at the expense of the employer or a person connected (within the meaning of *section 10*) with the employer, or
- by trustees holding property for any persons who include, or class of persons which includes, the employee.

### **985D PAYE Non-resident employer**

#### **Summary**

Where PAYE is not operated by or on behalf of a non-resident employer in respect of an employee who works in the State for another person, the person in the State will be responsible for the operation of PAYE.

#### **Details**

For the purposes of section and *sections 985E* and *985F*, “work”, in relation to an employee, means the performance of any duties of the office or employment of the employee and any reference to the employee working is to be construed accordingly. (1)

The section applies where — (2)

- an employee, during any period, works for a person (the “relevant person”) who is not the employee’s employer,
- any payment of emoluments of the employee in respect of work done in that period is made by a person who is the employer or an intermediary of the employer or of the relevant person,
- the person making the payment or, if that person makes the payment as an intermediary of the employer or of the relevant person, the employer is not resident in the State, and
- income tax is not deducted or accounted for under PAYE, by the person making the payment or, if that person makes the payment as an intermediary of the employer or of the relevant person, the employer.

Where the circumstances set out above apply, the relevant person is to be treated, for the purposes of PAYE, as making a payment of emoluments of the employee of an amount equal to the amount referred to below. (3)

The amount on which the relevant person is to operate PAYE is the amount paid by the intermediary to the employee, grossed-up if the payment is an “after tax” payment (4)

The section applies to notional payments that an employer is treated as having made under *section 985A*. (5)

A payment of emoluments of an employee is made by an intermediary of the employer if it is made — (6)

- by a person acting on behalf of the employer and at the expense of the employer or a person connected (within the meaning of *section 10*) with the employer, or
- by trustees holding property for any persons who include, or class of persons which includes, the employee.

## **985E PAYE Employment not wholly exercised in the State**

### **Summary**

*Section 985E* deals with the case where —

- an employee carries out his or her duties both in the State and outside the State, and
- only part of the employee’s earnings is chargeable to under Sch. E, being emoluments in respect of the performance in the State of duties of the employment.

In such a case, where the amount of the employee’s pay which is not chargeable under Schedule E is unknown, an officer of the Revenue Commissioners may, on application by, or on behalf of, the employer, give a direction as to the proportion of pay on which PAYE is to be operated. In the absence of a direction, the employer must operate PAYE on the whole amount.

### **Details**

“appropriate person” means the person designated by the employer for the purposes of this section, and if no person is so designated, the employer. (1)(a)

Any reference to a payment made by the employer includes a reference to a payment made by a person acting on behalf of the employer and at the expense of the employer or a person connected (within the meaning of *section 10*) with the employer. (1)(b)

The section applies in relation to an employee in a year of assessment only if the employee works or will work in the State and also works or is likely to work outside the State. (2)



Where in relation to any year of assessment it appears to an officer of the Revenue Commissioners that — (3)

- some of the income of an employee to whom the section applies is assessable to income tax under Schedule E, but
- an as yet unascertainable proportion of the income may prove not to be so assessable

then the officer may, on an application made by the appropriate person, give a direction for determining a proportion of any payment made in that year of, or on account of, income of the employee, which is to be treated for the purposes of PAYE as a payment of emoluments of the employee.

An application for a direction is to provide such information as is available and is relevant to the giving of the direction. (4)

A direction is — (5)

- to specify the employee to whom and the year of assessment to which it relates,
- to be given by notice to the appropriate person, and
- may be withdrawn by notice to the appropriate person from a date specified in the notice.

A direction may not be withdrawn earlier than 30 days from the date of issue of the notice of withdrawal (6)

Where a direction has effect then the proportion of the payment determined in accordance with the direction is to be treated for the purposes of PAYE as a payment of emoluments of the employee. (7)

Where in any year of assessment no direction has effect in relation to an employee to whom this section applies then the entirety of any payment made of, or on account of, the income of the employee is to be treated for the purposes of PAYE as a payment of emoluments of the employee. (8)

The provisions of the section are without prejudice to — (9)

- any assessment in respect of the income of the employee in question, and
- any right to repayment of income tax overpaid and any obligation to pay income tax underpaid.

Where *section 985D* applies — (10)

- references to the employer in this section include references to the relevant person (within the meaning of that section), and
- any reference to a payment made by the employer includes a reference to a payment treated, for the purposes of PAYE, as made by the relevant person.

## 985F PAYE Mobile workers

### Summary

*Section 985E* enables the Revenue Commissioners to issue a direction that any payment made by a third party to an employer, for the work done for the third party by employees of the employer, is to be paid under deduction of tax if it is likely that the employer will not operate PAYE in respect of emoluments paid to the employees.

### Details

The section applies where it appears to the Revenue Commissioners that — (1)

- a person the “relevant person”) has entered into or is likely to enter into an agreement that employees of another person (the “contractor”) will in any period work for, but not as employees of, the relevant person,
- payments of emoluments of the employees in respect of work done in that period are likely to be made by or on behalf of the contractor, and
- PAYE applies to such payments but it is likely that it will not be applied.

Where this section applies, the Revenue Commissioners may give a direction that if — (2)

- any employees of the contractor work in any period for, but not as employees of, the relevant person, and
- any payment is made by the relevant person in respect of work done by the employees in that period,

income tax is to be deducted in accordance with this section by the relevant person on making that payment.

A direction — (3)

- is to specify the relevant person and the contractor to whom it relates,
- is to be given by notice to the relevant person, and
- may at any time be withdrawn by notice to the relevant person.

The Revenue Commissioners are to take such steps as are reasonably practicable to ensure that the contractor is supplied with a copy of any notice given which relates to the contractor. (4)

Where a direction has effect and any employees of the contractor specified in the direction work for, but not as employees of, the relevant person so specified, income tax is to be deducted under PAYE by the relevant person on making any payment in respect of that work as if so much of the payment as is attributable to work done by each employee were a payment of emoluments. (5)

## **985G Return by employer**

### **Summary**

This section provides that with effect from 1 January 2019, all employers are required to submit payroll data to Revenue on or before the making of a payment of emoluments to an employee. The data is to be submitted through a payroll submission. This payroll data will be used by Revenue to generate a monthly statement of the tax due by the employer. If the statement is correct, the employer may accept it at any time prior to the return filing date (14<sup>th</sup> of the following month), and it will become his or her return for the month. If the employer does nothing, the statement will be deemed to be a return on the return filing date.

If the statement does not reflect the correct position, the employer must correct the payroll submission data to ensure that the statement reflects the correct liability by the return filing date.

If there are no payroll submissions from an employer for a month, and a statement is not issued by Revenue, the employer still has an obligation to make a return i.e. a NIL return, regardless of the fact that there may have been no payment of emoluments for the month.

If the employer makes corrections for a month after the 14<sup>th</sup> of the following month, an amended statement will issue from Revenue and the amended statement will be deemed a return when issued

A return includes a return deemed to have been made under subsection (4). (1)

Either before or at the time of the payment of any emoluments or the provision of any reportable benefits, the employer must provide Revenue with the following information for each employee: (2)

- (a) amount of the emoluments,
- (b) date of payment of the emoluments,
- (c) amount of income tax deductible or repayable, and
- (d) other information required by the PAYE regulations.

The requirement in regard to the provision of any reportable benefits is subject to the commencement of a Ministerial Order.

On or before the return date (i.e. the 14<sup>th</sup> of the month), an employer must make a return to Revenue specifying the total PAYE deducted or repaid for the month and, (3)(a)

on or before the due date (i.e. either the 14<sup>th</sup> or the 23<sup>rd</sup> of the month), an employer must pay the Collector General the tax due for that month. (3)(b)

Where an employer receives a statement from Revenue setting out the total amount of tax deducted or repaid by the employer for an income tax month, this statement will be deemed to be a return made by the employer on the return date, or on the date of issue of the statement if the statement is issued after the return date. (4)

Where an employer receives a statement from Revenue setting out the total amount of tax deducted or repaid by the employer for an income tax month, but the statement is not correct, i.e. it does not accurately reflect all payments of emoluments by the employee of the full liability of the employer, such statement will not be deemed to be a return made by the employer on the return date, or on the date of issue of the statement if this is later than the return date. (5)

Where an employer receives a statement from Revenue setting out the total amount of tax deducted or repaid by the employer for an income tax month, but the statement is not correct, the employer must ensure that his or her return for the month accurately reflects the tax liability for that month. (6)

The Collector General may, by notice to an employer, vary the due date for a month e.g. allowing certain employers to make payments quarterly rather than monthly. (7)

The Collector-General may withdraw a notice under subsection (7) at any time prior to the due date. (8)

## **985H Exceptional circumstances**

### **Summary**

This section applies for the year 1 January 2019 and subsequent years.

This section sets out how an employer should proceed with deduction of tax from payroll where he or she is unable to send or receive data from Revenue due to a persistent technology systems failure. “Technology Systems failure is defined in section 983”.

An employer is obliged to deduct tax by using the most recent revenue payroll notification (RPN) available from Revenue for the employee. As soon as the technology systems failure is corrected, he or she must sent Revenue full details of the emoluments paid and tax deducted.

Where an employer is legally obliged to pay emoluments to an employee, but due to a persistent technology systems failure, is unable to access Revenue’s electronic system (1)(a) &(b)

(see section 984A), or to obtain the employees most recent RPN from Revenue, the employer must:-

deduct tax using the latest RPN that the employer holds, or by applying the emergency basis where the employer does not have a RPN for the employee, and (i)

as soon as the technology systems failure is rectified, send Revenue full details of the emoluments paid to the employee and tax deducted. (ii)

Where there is a persistent technology systems failure and the employer complies with requirements in subsection (1), the employer will be deemed to have used a valid RPN, and deemed to have provided full details of the emoluments paid and tax deducted from the employee in the month in which the emoluments were paid. (2)

Revenue may request the employer to provide information as to the circumstances and details of a persistent technology systems failure. (3)

## 986 Regulations

### Summary

This section empowers the Revenue Commissioners to make regulations in respect of the assessment, charge, collection and recovery of income tax under the PAYE system. The Income Tax (Employments) (Consolidated) Regulations, 2018 (S.I. No. 345 of 2018), are currently in force.

### Details

Regulations are to be made by the Revenue Commissioners in regard to the assessment, collection and recovery of income tax under the PAYE system. The regulations may include provision — (1)

- for requiring an employer on making any payment of emoluments to deduct or repay tax based on the rate(s) of tax, allowances, deductions and reliefs which are set out on the revenue payroll notification;
- for the inspection by the Revenue Commissioners of wages sheets and other documents to ensure that the PAYE system is properly operated;
- for the collection and recovery of tax which has not been recovered during the year;
- for appeals against matters in the regulations and for which there is no other appeal procedure;
- for the deduction of tax at the standard rate and higher rate, as appropriate;
- for the reduction of emoluments by any occupational pension scheme contributions, qualifying premiums under an approved annuity contract (RAC), contributions to a personal retirement savings account (PRSA), contributions to a Pan-European Personal Pension Product (PEPP) or contributions to permanent health benefit schemes before making a deduction or repayment of tax;
- for treating some persons, who are not employers, as employers as required.
- for the collection and recovery of tax on non-PAYE income through the PAYE system;
- for the collection of tax from the employee rather than the employer in certain circumstances, where the employer has failed to deduct tax;
- requiring an employer to submit details of emoluments paid and tax deducted and other relevant information to the Revenue Commissioners in such manner and form as they may approve or prescribe;
- for requiring an employer who makes a payment to which this Chapter applies to an employee to notify the Revenue Commissioners within a period of time specified in the regulations.

Regulations under this section may also contain supplementary provisions deemed necessary by the Revenue Commissioners to enable persons to fulfil their obligations made under this section or to fulfil the proper implementation of the provisions of this Chapter or regulations made under this section. (1A)

Subject to Ministerial Order this section is extended to provide for the making of regulations that prescribe the reporting period, the form, and other particulars that will apply in regard to reportable benefits. (1B)

The regulations made under this section apply regardless of anything in the Income Tax Acts but taxpayers' other rights of appeal are not affected. (2)

Revenue payroll notifications should be prepared by the Revenue Commissioners with a view to securing that in so far as is practicable the total estimated tax payable in respect of emoluments for the year of assessment (after allowing a provisional deduction for allowances and reliefs and taking into account any overcharge or undercharge for previous years) is deducted from emoluments paid in the year. (3)

The amounts in respect of reliefs from income tax to be stated on a revenue payroll notification may be rounded up to a convenient greater amount. Any tax which is not deducted for a year of assessment as a result of such rounding up may be recovered in the following year of assessment. (4)

The registration limits are relaxed for an employer who has only one domestic employee employed in his/her own home. The threshold in such a case is increased to €40 a week. (6)

If the Revenue Commissioners are satisfied that it is unnecessary or not appropriate for an employer to comply with any of the PAYE regulations a notification to that effect may be issued to the employer in such circumstances. (6A)

Locum cover payments made by the Department of Finance to members of the Disabled Drivers Medical Board of Appeal after 1 November 2023 are outside the scope of collection and recovery provisions contained in Chapter 4 Part 42. (6B)

The regulations made under this section must be laid before Dáil Éireann. (7)

### **986A Payment made without deduction of income tax**

#### **Summary**

This section provides for re-grossing of emoluments where an employer either does not operate PAYE on the payment of any emoluments made to an employee or disguises the payment of emoluments to an employee.

In such cases, the employer is liable for the tax that would have been deductible from the employee, on the basis that the amount paid to the employee was the net amount of emoluments after deduction of tax i.e. income tax is calculated on a re-grossed figure.

This section applies where an employer makes a payment of emoluments to an employee but fails to operate PAYE on any of the emoluments, or where the employer has disguised or omitted the emoluments in its books or records. But the section does not apply to - (1)(i)&(ii)

- vouchers paid by the employer to an employee under Section 112B, and (1)(a)
- emoluments which are the subject to a PAYE settlement agreement between Revenue and the employer under Section 985B (1)(b)

Where an employee receives emoluments without the deduction of tax and the foregoing provisions apply, the employer is liable for the tax that would have been deductible from the employee. The amount paid to the employee is treated as the net amount of emoluments after deduction of tax. This amount is re-grossed, and tax is calculated on the re-grossed figure. (2)&(3)

## 987 Penalties for breach of regulations

### Summary

This section provides for penalties for failure to comply with the regulations governing the operation of the PAYE system.

### Details

Where a person fails to comply with the following requirements:- (1)(a) to (d)

- send a return, statement, notification or certificate, or
- remit tax to the Collector-General, or
- make deduction or repayment, or
- keep and maintain a register of employees,

the person is liable to a penalty of €4,000.

Where the person who fails to comply with subsection (1) is a body of persons, the secretary of that body is liable to a separate penalty of €3,000. (2)

In proceedings for the recovery of a penalty, a certificate signed by an officer of the Revenue Commissioners stating that, on the basis of inspection of the relevant records of the Revenue Commissioners — (4)

- a return, statement, notification or certificate was not received from the defendant,
- wages sheets or other records or documents were not produced by the defendant,
- the defendant had not remitted tax to the Collector-General,
- the defendant did not make a deduction or repayment of tax, or
- the defendant was an employer,

is evidence of those facts until the contrary is proved. Any such certificate may be tendered in evidence without proof and is deemed to have been signed by the officer of the Revenue Commissioners until the contrary is proved.

## 988 Registration of certain persons as employers and requirement to send certain notifications

### Summary

The Revenue Commissioners may register a person as an employer if they have reason to believe that the person is an employer and has not registered as such. The Revenue Commissioners must notify the person of the registration. The person has the right to appeal to the Appeal Commissioners against the registration and their decision on the matter is final and conclusive.

### Details

The Revenue Commissioners may register a person as an employer where they have reason to believe that the person is an employer but has not sent the required notification (1)

to the Revenue Commissioners. They must issue a notice to the person informing the person of the registration.

The person has a right to appeal against the registration to the Appeal Commissioners within 14 days after the date of the notification. The decision of the Appeal Commissioners on the matter is final and conclusive. (2)(a)

If no appeal is made the person is regarded as an employer. (2)(b)

If the Appeal Commissioners find in favour of the person, the Revenue Commissioners must delete the person's name from the register of employers. (2)(c)

If an employer is not liable to remit tax to the Collector-General at the end of a tax month, the employer must, within 9 days of the end of that month, forward a nil return to the Collector-General. (3)(a)

If a person ceases to pay emoluments to which this Chapter applies, the person must notify the Revenue Commissioners to that effect within 14 days of ceasing to pay such emoluments. (3)(b)

The provisions of *section 987* (penalties for breaches of regulations) apply to failures to comply with the provisions of *subsection (3)* in the same way they apply to breaches of the regulations made under this Chapter. Thus, a penalty of €1,520 applies in relation to such a failure while, in the case of such a failure by a body of persons, a separate penalty of €950 applies to the secretary of the body. (4)

### 988A Register of employees

#### Summary

This section provides that an employer who makes a payment of emoluments to an employee(s) must keep and maintain an employee register for that year.

#### Details

An employer, who in any year, makes a payment of emoluments to an employee(s) must keep and maintain a register. This is known as 'Register of Employees'. (1)

The register must include, for each employee, the employee's name, address, PPSN, and date of commencement/cessation of the employment. (2)

An employer must keep and maintain the register (or a copy of it), either at the normal place of employment of the employee(s), or at the main business of the employer, and (3)(a)

produce the register, or an extract therefrom (or a certified copy) to a Revenue officer if requested to do so. (3)(b)

The Register of Employees can be kept in electronic format. (4)

### 989 Estimation of tax due for income tax months

#### Summary

The Revenue Commissioners may serve a notice on an employer of the estimated tax due under PAYE where the employer has not made any payment for an income tax month. An employer who claims to be not liable to remit any tax for the income tax month referred to in the notice may appeal to the Appeal Commissioners whose decision on the matter is final and conclusive. Where an estimated amount is paid and a return showing the correct liability is not submitted, or if the Revenue Commissioners

have reason to believe that the original estimate was too low, an additional estimate can be raised on the employer.

### Details

In this section and in *sections 990* and *991* the regulations referred to are the PAYE (1) Regulations made under *section 986*.

The Revenue Commissioners may estimate the amount of tax due by an employer (2) whom they believe is liable to remit income tax for an income tax month and who has failed to do so and they may serve a notice of this estimated tax on the employer.

Where a notice of the estimated tax due is served on an employer who claims to be not (3)(a) liable to remit any tax for the income tax month referred to in the notice, the employer may, within 14 days after the date of the notice, appeal to the Appeal Commissioners whose decision on the matter is final and conclusive.

If no appeal is made or if the Appeal Commissioners find against the employer, the (3)(b) estimated tax is properly due and payable.

If an employer, after the service of a notice of an estimate of the tax due, forwards a (3)(c) declaration of the tax due for the income tax month and pays that tax together with any interest and costs incurred, the notice of the estimated tax is to be cancelled and any excess tax paid will be refunded.

However, if an action for recovery of the tax specified in the notice has started (namely, (3)(d) by court proceedings or by referral to the sheriff or county registrar), then, unless the Revenue Commissioners direct otherwise, the notice of the estimated tax is not to be cancelled until the recovery action is completed.

Where the tax estimated in the notice is paid and a return showing the actual liability is (3)(e) not submitted, or where the Revenue Commissioners have information to indicate that the original estimate was too low, an increased estimate may be made and served on the employer and the new estimate will supersede any previous one.

A notice of the estimated tax due by an employer issued under this section may cover 2 (4) or more consecutive income tax months.

The Revenue Commissioners may nominate any of their officers to carry out the (5) functions and duties of the Revenue Commissioners authorised under this section.

## 990 Assessment of tax due

### Summary

This section provides that where an inspector or other officer of the Revenue Commissioner has reason to believe that an employer has overpaid or underpaid the tax due to be paid by the employer under the PAYE system for any month, the inspector or other officer may make an assessment of the total amount of the tax so due by the employer. Other than in specific circumstances including fraud or neglect, assessments must be raised or amended within 4 years commencing at the end of the year following the year of assessment in which the employer return for that income tax month is made. An appeal to the Appeal Commissioners against any such assessment may be made by the employer. Where an amount is paid by the employer and the inspector or other officer of the Revenue Commissioners has reason to believe that the original assessment is less than or greater than the amount of tax that the employer is liable to remit, the inspector can increase or decrease the assessment to reflect the correct amount of tax due to be remitted by the employer for that month.



## Details

**Subsection (1)** provides that where an inspector or other officer of the Revenue Commissioners has reason to believe that a return made by an employer does not include the total amount of tax due for a month, or, where a return is due but has not been submitted by an employer, then, the inspector or other officer may make an assessment of the amount which should have been paid by the employer, and may serve a notice on the employer setting out:

- the amount so assessed,
- the amount paid by the employer in respect of the income tax month, and
- the balance of tax outstanding.

**Subsection (2)** provides that where the inspector or other officer is of the view that the amount of their assessment is less than or greater than the amount of tax that the employer is due to remit, then the inspector can increase or decrease the assessment to reflect the correct amount of tax due to be remitted by the employer for that month. Revenue will issue a revised notice to the employer, and this notice will supersede the previous notice.

**Subsection (3)** provides that where Revenue serve a notice on the employer under subsections (a) or (b), the employer may appeal the notice to the Appeal Commissioner within 30 days after the date of the notice.

If no appeal is made or if on appeal the Appeal Commissioners decide against the employer, the balance of tax outstanding (amended as necessary as a result of the Appeal Commissioners' decision) becomes due and recoverable as if it was an amount of income tax charged on the employer under Schedule E.

**Subsection (4)** provides that a notice given by an inspector or other officer under this section may cover 2 or more income tax months.

**Subsection (5)** provides a time limit of 4 years commencing at the end of the year following the year of assessment in which the employer return for an income tax month is made, for the making or amending of assessments by a Revenue officer. This time limit is effective for all income tax month returns from 1 January 2025 onwards.

A number of exceptions are included in subsection (6) to the time limit on making or amending assessments by a Revenue officer. This includes to give effect to a determination of an appeal against an assessment, correct an error in calculation of the assessment, to correct a mistake of fact which is not properly reflected in the assessment and take account of any fact or matter arising by reason of an event occurring after the return is made.

Notwithstanding subsection (5), the 4-year time limit will not be applicable to give effect to a mutual agreement reached between Revenue and a competent tax authority in another jurisdiction.

An inspector or officer, notwithstanding subsection (5), may make or amend an assessment in cases in which fraud or neglect is believed to have occurred. A definition of neglect is included for the purposes of this subsection.

## **990A Generation of estimates by electronic, photographic or other process**

This section provides that where a computer generated PAYE employer notice of estimation of tax, monthly (under *section 989*) or annual (under *section 990*), is issued and served, it will be deemed to have been made by the inspector or nominated officer, as appropriate, whose name appears on the notice in circumstances where due to the computer generation of such estimate it will not have been made personally by such inspector or nominated officer. (a)

The section also applies the provisions of *section 959G* to PAYE annual estimates providing that details of the sums charged in the estimates must be transmitted to the Collector-General and that such transmission may be done electronically. (b)

## **991 Interest**

### **Summary**

This section provides for the charging of simple interest per day or part of a day where an employer has failed to pay tax due under the PAYE system. Interest is chargeable from the “due date”- see section 983 for definition of due date.

### **Details**

Where an employer fails to pay over to the Revenue Commissioners the tax due under this Chapter and the associated regulations, for each day or part of a day for which the tax remains unpaid, simple interest is to be charged on the unpaid tax as follows: (1)

- before 1 August 1978 at a rate of 0.0492 per cent,
- between 1 August 1978 and 31 March 1998, at a rate of 0.0410 per cent,
- between 1 April 1998 and 30 June 2009, at a rate of 0.0322 per cent, and
- on or after 1 July 2009 at a rate of 0.0274 per cent.

## **991A Payment of tax by direct debit**

### **Summary**

An employer may, by agreement, be permitted by the Collector General to pay income tax due by direct debit. The amount of tax paid each month is based on the employer’s best estimate. Any balance of tax outstanding at the end of the year of assessment is due and payable by the “due date”.

Where the total amount of monthly direct debits paid by the employer in a year of assessment is less than 90% of the actual tax due, then the agreement is deemed not to have effect, and the amount of tax due for each month is due and payable by the “due date” for the month.

See *section 983* for the definition of “due date”

### **Details**

#### **Definitions**

The Collector General may enter into an agreement with an employer permitting the employer to pay the income tax due for each income tax month in a tax year by direct debit where- (1)

- based on the employer’s best estimate, the total amount paid for the year represents the total amount of tax due for those months, (a)

- each payment is due on the due date for the month e.g. payment for the month of April 2019 is due and payable by 14 May 2019 or 23 May 2019 where: (b)
  - the return and the remittance are made by electronic means, and
  - the return and the remittance are made on or before the 23 of the month.
- the employer has complied with all requirements of the Chapter (c)

Subject to subsection (3), where the actual liability in respect of the income tax months contained in the year is greater than the amounts payable under the agreement, the balance is to be included in the payment for December, i.e. payment due by the 14 or 23 January. (2)

Where the total amount of monthly direct debits paid by the employer in a year is less than 90% of the actual tax due, then the agreement is deemed not to have effect, and the amount of tax due for each month is due and payable on the due date for that month. (3)

The Collector General or the employer can terminate the agreement. Where this happens the agreement is deemed not to have taken place. (4)

### **991B Covid-19: Special warehousing and interest provisions**

#### **Summary**

This section provides for “warehousing” or suspension of collection of PAYE (Employer) liabilities incurred while trading was restricted during the Covid-19 Pandemic (“Covid-19 liabilities”).

The provision applies to businesses who, as a consequence of Covid-19 related trading restrictions, are unable to pay their “Covid-19 liabilities” and who have filed all required returns.

All “small and medium enterprises” (SMEs) whose tax affairs are dealt with in Revenue’s Business Division or Personal Division qualify automatically. Other taxpayers will qualify if they can show their business has been adversely affected by Covid-19.

#### **Details**

Subsection (1) defines various terms used in the section. (1)

“the Acts” outlines the provisions an employer must comply with to qualify for debt warehousing, including the legislation relating to the Domicile Levy and USC, Stamp Duties Consolidation Act 1999, Capital Acquisitions Tax Consolidation Act 2003 and the Value-Added Tax Consolidation Act 2010 amongst others;

“Covid-19” takes its meaning from the Emergency Measures in the Public Interest (Covid-19) Act 2020;

“Covid-19 entitlement” means an entitlement to payment under one of a number of Covid-19 support schemes listed in the section including the Covid Restrictions Support Scheme, the Employment Wage Subsidy Scheme, various schemes administered by the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, the Department of Transport, Fáilte Ireland and Enterprise Ireland, as well as schemes with a similar objective that may be approved by the Revenue Commissioners;

“Covid-19 liabilities” means the PAYE (Employer) liabilities that an employer was due to pay during Period 1 and which may be warehoused.

The three periods of the scheme are:

- Period 1, which runs from the date the business of the employer was adversely affected by Covid-19 (beginning no earlier than February 2020 until 31 December 2021),
- Period 2, which runs from 1 January 2022 until 31 December 2022, and
- Period 3, which runs from 1 January 2023 until the employer has paid the liabilities.

Where an employer has an entitlement to payment under one of the Covid-19 support schemes listed above, Period 1 for that employer is extended by four months until 30 April 2022. Period 2 is amended to run from 1 May 2022 to April 2023 and Period 3 is amended to run from 1 May 2023 until the warehoused liabilities have been repaid in full. (1A)

The business of an employer will be treated as “adversely affected” by Covid-19 on the date on which the Revenue Commissioners agreed to temporarily suspend the collection of Covid-19 liabilities because of the effect on the employer’s business of Covid-19 trading restrictions. (2)

Debt warehousing will only apply to employers who, because of Covid-19, are unable to pay their Covid-19 liabilities and who have filed all required PAYE (Employer) returns. All “small and medium enterprises” (SMEs) whose tax affairs are dealt with in Revenue’s Business Division or Personal Division will qualify automatically. Other employers must notify Revenue that they have formed the opinion that they are unable to pay their Covid-19 liabilities. (3)

Whether or not an employer is dealt with by Revenue’s Personal Division or Business Division will be determined by the most recent correspondence received by the employer from Revenue. (4)

An inspector or other officer nominated under section 990 TCA may carry out enquiries to satisfy herself/himself that an employer is unable to pay their Covid-19 liabilities and to verify an employer’s entitlement to payment under one of the specified Covid-19 support schemes. (5)

Provided the conditions set out in section 991B are met, interest under section 991 TCA (c. 10% per annum) will not apply to the late payment of Covid-19 liabilities. (6)

Where— (8)

- this section applies to an employer,
- the employer complies with their obligations under the Acts,
- before 1 May 2024, the employer engages with the Collector General to agree a payment arrangement for their Covid-19 liabilities and either before or after 1 May 2024 enters into such an arrangement, and
- the employer complies with this arrangement entered into in respect of their Covid-19 liabilities,

no interest will apply to the employer’s Covid-19 liabilities during Period 1, Period 2 and Period 3.

Subsection (10) sets out the circumstances that will result in an employer being removed from the debt warehouse and how interest will be calculated in these scenarios. (10)

Where, at any point between day 1 of Period 1 and 30 April 2024, an employer fails to comply with their obligations under the Acts, the employer will be removed from the warehouse and interest will be applied to the amount of their Covid-19 liabilities

remaining unpaid on the date of the event that resulted in non-compliance, calculated at a rate of c. 10% per annum (or 0.0274% per day) from that date until the outstanding Covid-19 liabilities are paid in full.

Where an employer has not, before 1 May 2024, engaged with the Collector General to agree a payment arrangement to discharge their Covid-19 liabilities, and has not, either before or after 1 May 2024 entered into such an agreement, they are removed from the warehouse with effect from day 1 of Period 3. Interest in this case applied to the amount of Covid-19 liabilities outstanding on 1 May 2024, calculated at c. 10% per annum from day 1 of Period 3.

Where an employer fails to comply with their obligations under the Acts on or after 1 May 2024 or fails to comply with the terms of the payment arrangement entered into in respect of their Covid-19 liabilities, they are removed from the warehouse with effect from the date of the happening of the event which gave rise to non-compliance. Interest at a rate of c. 10% per annum or 0.0274% per day applies calculated from 1 May 2024 until the Covid-19 liabilities have been paid in full.

Warehousing of Covid-19 liabilities will not prevent an employer obtaining tax clearance under either section 1094 or 1095 TCA provided the employer complies with the requirement to file returns under this Chapter. (12)

The Collector General will not issue demands in respect of Covid-19 liabilities provided the employer complies with the obligation to file returns required under this Chapter. (13)

Provision has been made for warehousing of Covid-19 liabilities where an employer files PAYE returns on a quarterly or annual basis. For such employers, their “Covid-19 liabilities” – that is, the tax debt which will be warehoused - will include liabilities of income tax months which are paid at the same time as income tax months within Period 1 in the normal definition. For example, if an employer pays its PAYE (Employer) liabilities quarterly and pays its January 2020 liability at the same time as its February and March 2020 liabilities, the liabilities for January 2020 will be warehoused. (14)

### **992 Appeals against estimates under section 989 or 990**

Deleted by the Finance (Tax Appeals) Act 2015

### **993 Recovery of tax**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

### **994 Priority in bankruptcy, etc of certain amounts**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

### **995 Priority in winding up of certain amounts**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

### **996 Treatment for tax purposes of certain unpaid remuneration**

#### **Summary**

This section provides that remuneration, which is deductible as an expense in the computation of the profits or income of a trade or profession for a particular accounting period or period of account but which remains unpaid at the end of the period, is deemed to have been paid at a particular date in relation to that period. The PAYE provisions apply to the payment as if it has been paid at that particular date.

## Details

### *Definitions*

“accounting period” is the period of 12 months ending on the date up to which the accounts are usually made up or such period not exceeding 12 months as the Revenue Commissioners may determine. (1)

“date of cessation” is the date on which a person ceases to hold the office or employment.

“date of commencement” is the date on which a person starts to hold the office or employment.

“period of account” is, apart from an accounting period, the period for which the accounts of the trade or profession are made up.

“period of accrual” for remuneration paid for an office or employment in a trade or profession is the period starting on the later of the 1st day of the accounting period or period of account or the date of starting in the office or employment and ending on the earlier of the last day of the accounting period or period of account or the date of ceasing in the office or employment.

“relevant date” is —

- in relation to an accounting period, the last day of that period,
- in relation to a period of account which is less than 12 months, the last day of that period, and
- in relation to a period of account which is more than 12 months, each 31st day of December within that period and the last day of that period.

“remuneration” includes all payments of whatever type from an office or employment.

### *Tax treatment of unpaid remuneration*

Remuneration which is allowed as an expense in the computation of the profits or income of a trade or profession but which remains unpaid at a relevant date is deemed to be emoluments to which the PAYE system applies and to have been paid in accordance with **subsection (3)**, and all the provisions relating to PAYE apply to that remuneration as if it had been so paid. (2)

The unpaid remuneration is deemed to accrue on a day to day basis throughout the period of accrual and there is deemed to have been paid on each relevant date the total remuneration which has accrued up to that date or, if earlier, the date of cessation of the office or employment from the beginning of the period or, if later, the date of commencement of the office or employment. (3)

### *Exceptions*

The provisions of the section do not apply to unpaid remuneration which is paid before the end of 6 months from the relevant date or within 18 months from the 1st day of the period of account where that period exceeds 12 months. (4)

## 997 Supplementary provisions (*Chapter 4*)

### Summary

This section provides that assessments to tax need not be made in respect of PAYE emoluments except in a small number of cases. Where an inspector issues a statement

of liability under the Income Tax Regulations, that statement may, if the inspector so directs at the time, be treated as if it were an assessment.

### Details

No assessment need be made on an employee under Schedule E in respect of emoluments within the PAYE system except where – (1)

- the employee, by written notice, requests an assessment,
- the emoluments paid to the employee in the year of assessment are not the same amount as those earned in the year (for example, extra remuneration paid in the year for work done in the previous tax year), or
- the emoluments should be assessed at the higher rate of tax.

Where an assessment is made, credit is to be given for tax deducted from the emoluments through the PAYE system.

For years of assessment 2003 onwards, there is a 4 year time limit on the making of an assessment irrespective of whether it was requested by the taxpayer or is being made by the inspector except in the case of fraud or neglect or, where a chargeable persons fails to file a return or files an incomplete return, no limit applies. For earlier years there is a 5 year time limit on taxpayer requests. [In the case of assessments made by an inspector there is a 10 year time limit under *section 924* for years earlier than 2003, except in the case of fraud or neglect where no limit applies]. (1A)

An employer who deducts tax under PAYE from an employee's emoluments and pays it over to the Revenue Commissioners is acquitted and discharged of the amount so paid as if it had actually been paid to the employee. (2)

Where the inspector, in accordance with the provisions of Regulation 28 of the Income Tax (Employments) Regulations 2018 (S.I. 345 of 2018) sends a statement of liability to an employee, that statement, if the inspector so directs and gives notice accordingly in the statement sent to the employee, is to be treated in all respects as if it were an assessment made on the employee, and all the provisions of the Income Tax Acts relating to the collection and recovery of tax charged in an assessment accordingly apply to the statement. (3)

An employee aggrieved by a statement of liability issued under *subsection (3)* may appeal the statement to the Appeal Commissioners, in accordance with *section 949I*, within the period of 30 days after the date of the statement. (4)

## CHAPTER 5

### *Miscellaneous provisions*

### Overview

This Chapter provides for various miscellaneous provisions in relation to the collection and recovery of tax. The Revenue Commissioners may collect certain tax debts from certain third parties (*sections 1001* and *1002*). It also provides for payment of certain taxes by donation of certain heritage items (*section 1003*) and by donation of heritage property to an Irish heritage trust or the Commissioners of Public Works in Ireland (*section 1003A*). There is also provision for the postponement of tax on certain foreign

income/gains (*sections 1004 and 1005*). Finally, the Chapter also provides for the entitlement of sheriffs to poundage (*section 1006*).

### **998 Recovery of moneys due**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

### **999 Taking by Collector-General of proceedings in bankruptcy**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

### **1000 Priority in bankruptcy, winding up, etc. for sums recovered or deducted under section 531, 989 or 990**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*

### **1001 Liability to tax, etc of holder of fixed charge on book debts of company**

#### **Summary**

Where a person holds a fixed charge on the book debts of a company and that company fails to pay PAYE, VAT or local property tax for which it is liable, the holder of the fixed charge is, on notification in writing from the Revenue Commissioners, liable for that tax. The fixed charge holder's liability is limited to amounts received (while the fixed charge is in existence) from the company in respect of all debts due to the holder by the company. However, where the fixed charge holder notifies the Revenue Commissioners of the existence of the fixed charge, the fixed charge holder's liability is confined to the amount which the company fails to pay after the fixed charged holder has been notified by the Revenue Commissioners of any potential liability under this section.

#### **Details**

##### ***Definition***

The term "relevant amount" means any amount which the company is liable to remit (1) under *Chapter 4* of this Part (PAYE), the Value-Added Tax Consolidation Act 2010 and the Finance (Local Property Tax) Act 2012, that is, amounts which the company has collected from other parties on behalf of Revenue.

##### ***Liability of fixed charge holder***

Where a person holds a fixed charge (created on or after 27 May, 1986) on the book debts of a company and the company fails to pay any relevant amount for which it is liable, the fixed charge holder becomes liable to pay that amount on demand and on neglect or refusal to pay may be proceeded against in the same manner as any other tax defaulter. (2)

The holder of the fixed charge will not become liable for unpaid debts of the company who gave the fixed charge unless the Revenue Commissioners has been notified in writing by that a company has defaulted on PAYE/VAT/local property tax and that the fixed charge holder may become liable for any future default and, if subsection (3A) does not apply, has also become liable for the amount then in default. (3)



Where, within 21 days of the creation of the fixed charge or, where the fixed charge has been transferred on or before 31 January 2020 or within 21 days of the date of transfer of the fixed charge (whichever is the later), the holder of the fixed charge furnishes in writing to the Revenue Commissioners the following details in relation to the charge: (3A)

- (i) the name of the company on whose book debts the charge has been created;
- (ii) the registration number of the company as issued by the Companies Registration Office to that company;
- (ii) the registration number of the company as issued by the Companies Registration Office to that company;
- (iii) the tax registration number of the company as issued by the Revenue Commissioners to that company;
- (iv) the date the fixed charge was created or transferred, as the case may be; and
- (v) the name and address of the holder of the fixed charge;

the liability of the fixed charge holder is confined to amounts which become due for payment by the company after the fixed charge holder has been notified of the fixed charge holder's liability.

The fixed charge holder will not be required to pay more than the amount received from the company on foot of the fixed charge. 4(a)

The liability of a fixed charge holder in accordance with this section is confined to amounts which become due for payment by the company after the fixed charge holder has been notified of the liability by Revenue. 4(b)

#### ***Withdrawal of notification of liability***

The Revenue Commissioners may withdraw a notice of liability issued under this section, but this does not affect any liability of the fixed charge holder arising before the withdrawal nor the right of the Revenue Commissioners to issue a subsequent notice to the fixed charge holder. (5)

#### ***Delegation***

The Revenue Commissioners may delegate their powers and functions under this section to nominated officers. (6)

### **1002 Deduction from payments due to defaulters of amounts due in relation to tax**

#### **Summary**

This section authorises the Revenue Commissioners to attach amounts owed by a third party to a taxpayer who has defaulted in paying income tax (including employer's PAYE), corporation tax, capital gains tax, capital acquisitions tax, stamp duties, customs duties, excise duties, local property tax, temporary solidarity contribution or value-added tax. The power of attachment also extends, by virtue of the general application of income tax collection procedures to the collection of various other contributions to the State, to amounts owed by taxpayers in respect of PRSI

(employment) contributions, self-employed PRSI contributions, health levies and employment and training levies.

Essentially, the section provides that where the Revenue Commissioners have reason to believe that a third party, including a financial institution, has an amount of money due to a defaulting taxpayer, they may direct the third party to pay to them the lesser of —

- the amount due to the defaulting taxpayer, and
- an amount equal to the tax due by the taxpayer.

Notices of attachment can be issued electronically by the Revenue Commissioners.

## Details

### Definitions

“the Acts” are the Customs Acts, the statutes relating to the duties of excise, the Tax Acts (that is the Income Tax Acts and the Corporation Tax Acts), the Capital Gains Tax Acts, the Value-Added Tax Consolidation Act 2010, the Capital Acquisitions Tax Consolidation Act 2003, the Stamp Duties Consolidation Act 1999, Finance (Local Property Tax) Act 2012, Part 4A (IIR top-up tax, UTPR top-up tax or domestic top-up tax), Part 18A (income levy), Part 18B (parking levy in urban areas), Part 18C (domicile levy), Part 18D (universal social charge), Part 18E (defective concrete products levy), Part 22A (residential zoned land tax), and Part 22B (vacant homes tax) and the Energy (Windfall Gains in the Energy Sector)(Temporary Solidarity Contribution) Act 2023 (which relates to the Temporary Solidarity Contribution). Also included are the various enactments extending or amending the Value-Added Tax Consolidation Act 2010, the Capital Acquisitions Tax Consolidation Act 2003 and the Stamp Duties Consolidation Act 1999. In addition, any instrument (for example, an order or a regulation) made under any of the preceding Acts is included in the definition. (1)(a)

“additional debt” is any amount which, at any time after a relevant person (essentially the debtor of the defaulting taxpayer) has received a notice of attachment but before the end of the relevant period relating to the notice (that is, the period for which the notice of attachment remains in force), would be a debt due by the relevant person to the taxpayer if the notice were received by the relevant person at that time. The purpose here is to ensure that debts which accrue to the taxpayer after a notice of attachment is served but before the notice expires are capable of being attached.

“debt” is the amount or aggregate amount of any money which, at the time the notice of attachment is received by the relevant person, is due by the relevant person (either directly or indirectly) to the taxpayer.

Where the relevant person is a financial institution, any amount held on deposit for the taxpayer’s sole benefit or held jointly with another person is regarded as a debt due to the taxpayer. In the case of joint deposits, unless contrary evidence is produced within 10 days of the giving of a notice by the financial institution to all parties to the joint deposit, the deposit is deemed to be held equally by all such parties. Only so much of a joint deposit which is either shown to be held for the benefit of the taxpayer or is deemed to be so held is regarded as a debt due by the financial institution to the taxpayer. (1)(b) & (e)

Any amount due by the relevant person to the taxpayer as emoluments, after statutory deductions, under a contract of service may be subject to a notice of attachment. In the situation, the notice of attachment may specify that the debt is to be recovered over a period specified in the notice. (1)(c)

Where there is a dispute as to the amount due by the relevant person to the taxpayer, the amount in dispute is disregarded for the purposes of determining the size of the debt. (1)(d)

“deposit” is a sum of money paid to a financial institution on terms under which it is to be repaid with or without interest and either on demand or at a time or in circumstances agreed by, or on behalf of, the person making the payment and the financial institution to whom the payment is made. (1)(a)

“emoluments” are anything assessable to income tax under Schedule E.

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement.

“EEA state” means a state which is a contracting party to the EEA Agreement.

“financial institution” means a person who holds or has held a licence granted by the Central Bank, or a person who holds or has held a corresponding licence under the law of another EEA state, authorising them to carry on banking business in the State, or a person who is exempt under section 7(4) of the Central Bank Act 1971 from the requirement to hold a licence (this reference encompasses, for example, the Post Office Savings Bank, Building Societies, Industrial and Provident Societies and Credit Unions), and a branch of a financial institution which records deposits in its books as liabilities of the branch.

“further return” is a further return of an additional debt due by the relevant person to the taxpayer. The further return is to be made where an additional debt accrues to the taxpayer after receipt of a notice of attachment by a debtor of the taxpayer (see *subsection (4)*).

“interest on unpaid tax” is the interest that has accrued to the date on which a notice of attachment is given under any provision of the Acts providing for the charging of interest in respect of the unpaid tax or taxes specified in the notice of attachment, and includes interest on an undercharge of tax which is attributable to fraud or neglect.

“notice of attachment” is defined in *subsection (2)*.

“notice of revocation” is defined in *subsection (10)*.

“penalty” is a monetary penalty imposed on a taxpayer under a provision of the Acts.

“relevant period” is the period for which the notice of attachment remains in force. It starts when the notice is received by the relevant person and ends on the earliest of —

- the date the full amount of the taxpayer’s default is paid over by the relevant person to Revenue,
- the date the relevant person receives a notice of revocation of the notice of attachment,
- the date the relevant person or taxpayer is declared bankrupt, and
- where the relevant person or taxpayer is a company, the date it commences to be wound up.

“relevant person” is a person whom the Revenue Commissioners believe may have, at the time the notice of attachment is received by that person, a debt due to the taxpayer.

“return” is a return to the Revenue Commissioners of a debt due by the relevant person to the taxpayer under *subsection (2)(a)(iii)*.

“specified amount” is defined in *subsection (2)*.

“tax” means any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

“taxpayer” is a person who is liable to pay, remit or account for tax to the Revenue Commissioners. (1)(f)

A notice of attachment, notice of revocation and any other notice provided for by this section may be given to a taxpayer or a relevant person electronically.

***Obligations of relevant persons on receipt of notice of attachment***

Where a taxpayer is in default in the payment of tax (including interest and penalties – (2)(a), (b) in the remainder of this note the phrase “tax” is used to denote unpaid tax, interest and & (d) penalties) the Revenue Commissioners may issue a notice of attachment to a relevant person containing details of the taxpayer’s name and address and the total amount or, in a case where more than one notice of attachment is issued to relevant persons, a portion of the total amount of tax in default. The option is available to the Revenue Commissioners to issue more than one notice of attachment in respect of the one taxpayer. Where this is done, the aggregate of the amounts set out in such notices of attachment cannot exceed the aggregate amount of tax actually in default.

The notice of attachment must also contain a direction to the relevant person requiring a return to be made, within 10 days from the receipt of the notice, specifying whether or not a debt or debts is due to the taxpayer and, if so, the amount of such debts. The amount of the debts due up to the amount specified in the notice of attachment must be paid to the Revenue Commissioners within 10 days of the receipt of the notice. The relevant person is obliged to comply with the direction contained in the notice of attachment.

Where the relevant person is a financial institution and the debt owed to the taxpayer is part of a joint account, the financial institution must on receipt of a notice of attachment issue a notice to the joint account holders stating — (2)(c) & (e)

- the taxpayer’s name and address,
- the name and address of the joint account holder to whom the notice is issued,
- the name and address of the financial institution, and
- the amount of unpaid tax specified in the notice of attachment.

This notice must inform the parties to the account that a notice of attachment in respect of the taxpayer has been received and that, unless evidence to the contrary is produced within 10 days of the issue of the notice, the joint deposit is deemed to be held for the benefit of each party equally and an amount equal to the amount of the taxpayer’s share of the deposit up to the amount specified in the attachment notice or the amount of the taxpayer’s share of the deposit (whichever is the lesser) will be paid to the Revenue Commissioners.

***Notification to taxpayer that notice of attachment has issued***

Before a notice of attachment may issue, the amount of tax in default must be in default for at least 14 days and the Revenue Commissioners must have given the taxpayer a written notice not later than 7 days before the issue of the notice of attachment to the effect that if the amount of tax in default is not paid it may be subject to attachment. (3)

***Other obligations of relevant persons***

Where a relevant person receives a notice of attachment in respect of a taxpayer and at that time the debt due to the taxpayer is less than the amount of the taxpayer’s default of tax as entered in the notice, or there is no such debt due, and subsequent to this but before the end of the relevant period in relation to the notice an additional debt becomes due to the taxpayer, the relevant person must within 10 days of that additional debt becoming due make a further return to the Revenue Commissioners and pay over the amount of the additional debt. This procedure is to be applied in respect of every such additional debt becoming so due until the amount paid over by the relevant person (4)

equals the amount specified in the notice of attachment. If the amount of the latest debt so due exceeds the difference between the amount specified in the notice of attachment and the aggregate of the debts already paid over to the Revenue, the relevant person need only pay over so much of that debt as makes the aggregate of all the amounts paid over equal to the amount specified in the notice of attachment.

Where a relevant person makes, either fraudulently or negligently, an incorrect return, **section 1078** which provides for criminal penalties applies. (5)

A relevant person issued with a notice of attachment is prohibited from reducing the amount of the debt due to the taxpayer unless such reduction does not reduce the debt to an amount less than the amount of the taxpayer's default, or unless the reduction is made pursuant to a court order. If the debt is otherwise reduced, it is treated as not having been reduced and the full amount is accordingly available for attachment and must be paid over by the relevant person. (6)

**Sections 1052 and 1054** which provide for the imposition of monetary penalties for failure to make returns apply to a relevant person who fails to make a return required by a notice of attachment. A certificate by an officer of the Revenue Commissioners that a particular return was not received from a person will be accepted as evidence to that effect until the contrary is proved. (7)

Where a relevant person fails to pay to the Revenue Commissioners the amount specified in the return, the amount may, if a notice of revocation has not been issued, be sued for through the courts by way of civil proceedings by the Revenue Commissioners. (8)

A failure by a relevant person to make a return required by this section or pay the amount shown on the return to the Revenue Commissioners is not to be treated as a failure to which **section 1078** applies. (9)

#### ***Revocation of notices of attachment***

The Revenue Commissioners may revoke a notice of attachment at any time by notice in writing to the relevant person. Such a revocation is to be made without delay if the taxpayer has paid the amount in default to the Revenue Commissioners. Where a relevant person pays an amount to the Revenue Commissioners and at that time the taxpayer has already paid the amount in default, the amount paid by the relevant person is to be refunded without delay to the taxpayer by the Revenue Commissioners. (10)

#### ***Notifications***

The Revenue Commissioners must provide the taxpayer with a copy of a notice of attachment or a notice of revocation issued to a relevant person without delay. (11)

A relevant person is to notify the taxpayer in writing and without delay of the fact of the payment of an amount to the Revenue Commissioners, and the reason for the payment. The Revenue Commissioners must without delay notify the relevant person and the taxpayer of the receipt of such a payment. (12)

#### ***Discharge of debt by relevant persons***

Where a relevant person pays to the Revenue Commissioners the whole or part of any debt or additional debt due to the taxpayer, the relevant person is acquitted and discharged of the amount paid as if it had been paid to the taxpayer. (13)

#### ***Protection for relevant persons against court action***

Where a relevant person is prohibited from making any disbursement out of a debt or additional debt due to a taxpayer, no action lies against that person in any court by reason of a failure to make such a disbursement. (14)

### ***Secrecy***

The secrecy obligations imposed on the Revenue Commissioners do not apply in relation to information contained in a notice of attachment. (15)

### ***Bankruptcy and winding-ups***

A notice of attachment in respect of a taxpayer is not to be given to a relevant person at any time when the taxpayer or relevant person is an undischarged bankrupt or a company being wound up. (16)

### ***Delegation***

The Revenue Commissioners may delegate to any of their officers any of the functions and acts authorised by the section to be performed or discharged by the Revenue Commissioners. (17)

## **1003 Payment of tax by means of donation of heritage items**

### **Summary**

Certain tax liabilities may be discharged by way of a donation of an important heritage item to a specified national collection provided certain conditions are met.

The scheme takes the form of a non-refundable payment on account of tax of an amount equal to 80 per cent of the market value of the heritage item donated. The heritage item must be valued at a minimum of €150,000 and, in the case of a collection, at least one item in the collection must have a minimum value of €50,000. There is a ceiling on the aggregate of items approved for donation in any one year of €8 million.

### **Details**

#### ***Definitions***

“the Acts” are the Tax Acts (that is, the Income Tax Acts and the Corporation Tax Acts, other than those provisions which provide for tax collected under the PAYE tax deduction system and relevant contracts tax), the Capital Gains Tax Acts, and the Capital Acquisitions Tax Consolidation Act 2003 (including enactments amending or extending that Act). In addition any instrument (for example, a regulation or order) made under any of these Acts is included in the definition. (1)

“approved body” is one of the institutions eligible to receive a donation. These institutions are —

- the National Archives,
- the National Gallery of Ireland,
- the National Library of Ireland,
- the National Museum of Ireland,
- the Crawford Art Gallery Cork Limited,
- the Irish Museum of Modern Art, and
- any other State owned or funded body approved by the Minister for Arts, Heritage, Gaeltacht and the Islands (now Minister for Arts, Sport and Tourism), with the consent of the Minister for Finance.

“arrears of tax” is tax (including interest and penalties) which at the time the gift is made is unpaid —

- in the case of income tax, corporation tax and capital gains tax, for the relevant period, and

- in the case of gift tax and inheritance tax, before the calendar year in which the relevant gift is made.

“current liability” for income tax and capital gains tax refers to tax due in the year of assessment in which the gift is made. For corporation tax it refers to tax liability arising in the accounting period in which the gift is made. In the case of gift or inheritance tax it means tax owed for the calendar year in which the gift was made.

“designated officer” is either the member of the selection committee representing the body to which the gift is made or, if that body is not so represented, a person nominated by the Minister for Arts, Heritage, Gaeltacht and the Islands (now Minister for Arts, Sport and Tourism).

“heritage item” is defined in *subsection (2)(a)*.

“market value” is defined in *subsection (3)*.

“relevant gift” is the gift of a heritage item to an approved body provided no consideration (other than the tax credit given by the section) is received.

“relevant period” for income tax and capital gains tax is any year of assessment before the year in which the relevant gift is made. In the case of corporation tax it is any accounting period before the accounting period in which the relevant gift is made.

“selection committee”: this committee comprises —

- an officer of the Minister for Arts, Sport and Tourism, who is to act as Chairperson of the committee,
- the Chief Executive of the Heritage Council,
- the Director of the Arts Council,
- the Director of the National Archives,
- the Director of the National Gallery of Ireland,
- the Director of the National Library of Ireland,
- the Director of the Crawford Art Gallery Cork Limited,
- the Director of the National Museum of Ireland,
- the Director and Chief Executive of the Irish Museum of Modern Art.

In addition, it includes a person acting in the capacity of any of the above persons where that person cannot attend due to illness, absence or other cause.

“tax” is income tax, corporation tax, capital gains tax, gift tax or inheritance tax.

“valuation date” is the date on which an application is made to the selection committee for a determination that an item is a heritage item.

The selection committee may act even if there are one or more vacancies and may regulate its own procedures. The member of the selection committee representing an approved body which is intended to receive the donated item cannot be involved in deciding on its selection (but may, however, partake in a discussion of the application before the decision is made).

### ***Heritage items***

A heritage item is any kind of cultural item (including any archaeological item, archive, book, estate record, manuscript and painting), any collection of cultural items and any collection of cultural items in their setting. Before any such item can be a heritage item, the selection committee, following an application to them by the person who owns the item, must make a determination that the item is an outstanding example of its type (pre-eminent in its class) whose export from the State would constitute a diminution of the accumulated cultural heritage of Ireland or whose import into the State would

**(2)(a)**

significantly enhance that heritage and also that the item is suitable for acquisition by one of the bodies approved for accepting such items.

The selection committee, in considering an application that an item is a heritage item, (2)(aa) is required to —

- (i) consider the supporting evidence submitted by the applicant, and
- (ii) request and consider a written opinion relating to the application from —
  - (I) the approved body which is the intended recipient of the donation, and
  - (II) the Heritage Council, the Arts Council or such other person or body which is considered appropriate by the selection committee.

Where an application is in respect of a collection of items, the selection committee is (2)(ab) precluded from making a determination in relation to the collection unless, in addition to making a determination relating to the collection as a whole, the committee is satisfied that – based on its consideration of the application under *paragraph (aa)* – it could also make a determination in relation to at least one item in the collection, if that was to be required.

The restriction imposed by *subsection (2)(ab)* – that in any collection of items there is (2)(ac) at least one item of significant importance in its own right – does not apply in relation to collections consisting wholly of manuscripts or archival material. Such collections can be those created by one individual, family or organisation, or assembled by an individual, family or organisation. However, it is conditional on the collection being in existence for at least 30 years, with each item being part of the collection for that term, as well as there being merit in the items being maintained as a collection.

When it receives an application for a determination that an item is a heritage item, the (2)(b) selection committee must make a written request to the Revenue Commissioners for a valuation.

The selection committee is limited to selecting items valued at a minimum of €150,000. (2)(c) Where the determination is sought in respect of a collection of items, at least one item in the collection must have a minimum value of €50,000. There is a ceiling on the aggregate value of the items in respect of which determinations are made and not revoked in any one year of €8 million. Where a determination is made and subsequently revoked, the value of the item concerned is not to be aggregated with the value of the other heritage items in respect of which a determination has been made in that year for the purposes of calculating the €8 million cap.

An item ceases to be a heritage item — (2)(d)(i)

- where the item is sold or otherwise disposed of to a person other than an approved body,
- where the owner notifies the committee in writing that it is not intended to make the gift of the item to the approved body, or
- where the gift of the item is not made to an approved body within the calendar year following the year in which the determination is made to the effect that it is a heritage item.

Where the selection committee becomes aware within the calendar year in which the (2)(d)(ii) determination is made of the occurrence of either of the first two above events, it may revoke the determination.

The selection committee may make a determination in respect of an item of archival (2A) material or a manuscript, or a collection consisting wholly of archival material or manuscripts, without the item, or any individual item in the collection, having the



minimum value of €50,000 as set out in **subsection (2)(c)**. However, the general valuation of €150,000 on the overall collection is retained.

### **Valuation rules**

The market value of any item is (subject to **subsection (3)(d)**) the lesser of — **(3)(a)**

- (i) the price which, in the opinion of the Revenue Commissioners, the item would realise if sold on the open market on the valuation date (that is, the date of application to the selection committee for a determination), and
- (ii) (I) the price which, in the opinion of the prospective donor, the item would fetch if sold on that date, or  
(II) at the election of that person, the amount paid for the item by that person.

The Revenue Commissioners may ascertain the value in such manner and by such means as they think fit and for this purpose they may engage a person to inspect and value the item for them. **(3)(b)**

Any cost incurred in the valuation process is to be defrayed by the Revenue Commissioners. **(3)(c)**

The value of heritage items that are acquired for donation at auction is deemed to include the auctioneers fees and also — **(3)(d)**

- (i) any VAT in connection with those fees, or
- (ii) any tax corresponding to VAT in the case of auctions held abroad.

### **Certificate of receipt of gift**

Once a relevant gift is made to an approved body the designated officer of that body must issue a certificate to the person who made the gift certifying the receipt of the relevant gift and the transfer of ownership of the item to that body. A duplicate of the certificate must be transmitted by the designated officer to the Revenue Commissioners. **(4)**

### **Tax credit**

Where a person makes a relevant gift, the person is, on submission to the Revenue Commissioners of the certificate given by the designated officer of the body to which the gift was made, treated as having made on the date of the submission a payment on account of tax of an amount equal to 80 per cent of the market value of the relevant gift on the valuation date. This restriction in the amount of tax credit available applies to determinations made on or after 1 January 2009. **(5)**

The payment on account of tax is to be set so far as it is possible — **(6)**

- firstly, against arrears of tax (including interest and penalties) and for an earlier period in priority to a later period, and
- then, against any current liability to tax which the person nominates.

For the purpose of determining whether a period is an earlier or later period, the date on which an arrear of tax became due decides whether it is for an earlier or later period.

Any remaining balance is set off against such future liabilities to tax of the person who is treated as having made the payment as that person nominates. **(7)**

A person who has the power to sell a heritage item in order to pay capital acquisitions tax may make a relevant gift of that item in or towards satisfaction of that tax. **(8)**

### **Prohibition on refunds**

There is no entitlement to a refund of tax in respect of a payment on account of tax made under this section. **(9)**

### ***Prohibition on interest***

Interest is not payable should it be due, whether directly or indirectly, because of any set-off which arises in respect of a payment on account of tax. (10)

### ***Bar on double relief***

A person discharging tax by virtue of this section is not entitled to any other relief in respect of the gift. (11)

### ***Publication***

The Revenue Commissioners are to include the details of all gifts made in a calendar year under this section in the publication of their annual report to the Minister for Finance. (12)

## **1003A Payment of tax by means of donation of heritage property to an Irish heritage trust or the Commissioners of Public Works in Ireland**

### **Summary**

Certain tax liabilities may be discharged by means of a donation of heritage property to the Irish Heritage Trust or the Commissioners of Public Works in Ireland provided certain conditions are met. “Heritage property” includes buildings, gardens and contents of buildings in so far as they are historically associated with the buildings.

The scheme takes the form of a non-refundable payment on account of tax of an amount equal to 50 per cent of the market value of the heritage property donated. On the introduction of the scheme relief was available on the full market value of the heritage property donated. Under section 94 of the Finance (No. 2) Act 2008 the relief was restricted to 80 per cent in relation to determinations made on or after 1 January 2009. The relief at 50 per cent applies to determinations made on or after 27 March 2013. There is a ceiling of €6 million on the aggregate value of heritage properties that may be approved in any one year.

### **Details**

#### ***Definitions***

“the Acts” are the Tax Acts (that is, the Income Tax Acts and the Corporation Tax Acts, other than those provisions which provide for tax collected under the PAYE tax deduction system, relevant contracts tax and advance corporation tax), the Capital Gains Tax Acts, and the Capital Acquisitions Tax Consolidation Act 2003 (including enactments amending or extending that Act). In addition, any instrument (for example, a regulation or order) made under any of these Acts is included in the definition. (1)

“arrears of tax” is tax (including interest and penalties) which at the time the gift is made is unpaid —

- in the case of income tax, corporation tax and capital gains tax, for the relevant period, and
- in the case of gift tax and inheritance tax, before the start of the calendar year in which the relevant gift is made.

“contents of the building” means house contents where these are historically associated with the building and are contents which the Minister for Arts, Heritage and the Gaeltacht or, as appropriate the Commissioners of Public Works in Ireland, are satisfied are important to establishing the historic or aesthetic context of the building.

“current liability” for income tax and capital gains tax refers to tax due in the year of assessment in which the gift is made. For corporation tax it refers to tax liability arising in the accounting period in which the gift is made. In the case of gift tax or inheritance tax it means tax owed for the calendar year in which the gift was made.

“heritage property” is defined in *subsection (2)(a)*.

“market value” is defined in *subsection (3)*.

“Minister” means the Minister for Arts, Heritage and the Gaeltacht.

“relevant gift” is a gift of heritage property to the Trust or, as appropriate to the Commissioners of Public Works in Ireland provided no consideration (other than the tax credit given by the section) is received by the person making the gift.

“relevant period” fixes the various periods which will apply for the purposes of determining arrears of tax. For income tax and capital gains tax, it is any year of assessment before the year in which the relevant gift is made. In the case of corporation tax, it is any accounting period before the accounting period in which the relevant gift is made.

“tax” is income tax, corporation tax, capital gains tax, gift tax or inheritance tax.

“Trust” is the company designated by the Minister for Finance for the purposes of this section in the order referred to in section 122(2) of the Finance Act 2006.

“valuation date” is the date on which an application is made to the Minister for Arts, Heritage and the Gaeltacht for a determination under *subsection (2)(a)*.

### ***Heritage property***

“Heritage property” is a building or a garden which, following a written application by its owner, is determined by the Minister or, as appropriate the Commissioners of Public Works in Ireland to be a building or a garden which is an outstanding example of its type, pre-eminent in its class, which is intrinsically of significant scientific, historical, horticultural, national, architectural or aesthetic interest and is suitable for acquisition by the Trust. (2)(a)

For the purposes of the section, “building” includes any associated outbuilding, yard and also land which is occupied or enjoyed with the building as part of its garden or designed landscape and which contributes to the appreciation of the building in its setting. It also includes the contents of the building and any land necessary for the provision of access to the building or for the provision of parking facilities for visitors to the building. (2)(aa)

For the purposes of the section, “garden” includes any associated building, outbuilding or yard and also land which is occupied or enjoyed with the garden and which contributes to the appreciation of the garden in its setting. It also includes any land necessary for the provision of access to the garden or for the provision of parking facilities for visitors to the garden.

This section also provides that, where a heritage property is donated and the Trust or Commissioners of Public Works deem that lands outside of the ownership of the donor of the property are necessary for the provision of access to the property or for the provision of parking facilities, such lands may be donated for such purpose under the terms of the section and those lands shall be deemed to be a heritage property. (2)(ab)

This section requires that an application for a determination from a potential donor must be directed to either the Minister for Arts, Heritage and the Gaeltacht or the (2)(b)

Commissioners of Public Works in Ireland, depending on whether the intended gift will be made to the Irish Heritage Trust or the Commissioners of Public Works in Ireland.

The Minister or, as appropriate the Commissioners of Public Works in Ireland, in considering an application for a determination, is required to consider any supporting evidence provided to the Minister or, as appropriate the Commissioners of Public Works in Ireland by the applicant. (2)(c)

On receipt of an application for a determination, the Minister or, as appropriate the Commissioners of Public Works in Ireland must make a written request to the Revenue Commissioners for a valuation. (2)(d)

There is a ceiling on the aggregate value of the heritage properties in respect of which determinations are made by the Minister or, as appropriate the Commissioners of Public Works in Ireland and not revoked in any one year of €6 million. Where a determination is made and subsequently revoked, the value of the property concerned will not be aggregated with the value of the other heritage properties in respect of which a determination has been made in that year for the purpose of calculating the €6 million cap. (2)(e)

The Commissioners of Public Works in Ireland shall not make a determination without the consent in writing of the Minister for Public Expenditure and Reform and the Minister may specify conditions, which will apply to such a determination. (2)(f)

This paragraph requires appropriate consultation between the Minister for Arts, Heritage and the Gaeltacht and the Commissioners of Public Works in Ireland in the operation of this scheme. (2)(g)

A property ceases to be a heritage property where — (2)(h)

- the property is sold or otherwise disposed of to a person other than the Trust or, as appropriate, the Commissioners of Public Works in Ireland,
- the owner notifies the Trust or as appropriate the Commissioners of Public Works in Ireland in writing that it is not intended to make a gift of the property to the Trust or, as appropriate, those Commissioners, or
- the gift of the property is not made to the Trust or, as appropriate, the Commissioners of Public Works in Ireland within the calendar year following the year in which the determination is made to the effect that it is a heritage property.

Where the Minister becomes aware or, as appropriate, the Commissioners of Public Works in Ireland become aware, within the calendar year in which the determination is made of the occurrence of either of the first two above events, the Minister or as appropriate the Commissioners of Public Works in Ireland may formally revoke the determination.

### ***Valuation rules***

The market value of any property is the lesser of — (3)(a)

- (i) the price which, in the opinion of the Revenue Commissioners, the property would realise if sold on the open market on the valuation date (that is, the date of application to the Minister for a determination), and
- (ii) (I) the price which, in the opinion of the prospective donor, the property would fetch if sold on that date, or  
(II) at the election of that person, the amount paid for the property by that person.

The Revenue Commissioners may ascertain the market value in such manner and by such means as they think fit and for this purpose they may engage a person to inspect and value the property for them. (3)(b)

Any cost incurred in the valuation process is to be defrayed by the Revenue Commissioners. (3)(c)

***Certificate of receipt of gift***

Once a relevant gift is made to the Trust or as appropriate to the Commissioners of Public Works in Ireland a certificate must issue to the person who made the gift certifying the receipt of the relevant gift and the transfer of ownership of the property to the Trust, or as appropriate the Commissioners of Public Works in Ireland. A duplicate of the certificate must be transmitted by the Trust or as appropriate the Commissioners of Public Works in Ireland to the Revenue Commissioners. (4)

***Tax credit***

Where a person makes a relevant gift, the person is, on submission to the Revenue Commissioners of the certificate given by the Trust or as appropriate the Commissioners of Public Works in Ireland under **subsection (4)**, treated as having made on the date of the submission a payment on account of tax of an amount equal to 50 per cent of the market value of the relevant gift on the valuation date. This restriction in the amount of tax credit available applies to determinations made on or after 27 March 2013. From 1 January 2009 to 26 March 2013 the restriction in the amount of the tax credit available was 80 per cent of the market value of the relevant gift on the valuation date. Prior to this date the credit available was 100%. (5)

The payment on account of tax is to be set, so far as it is possible, against any liability to tax of the person who is treated as having made the payment in the following order: (6)

- firstly, against arrears of tax (including interest and penalties) and for an earlier period in priority to a later period, and
- then, against any current liability to tax which the person nominates.

For the purpose of determining whether a period is an earlier or later period, the date on which an arrear of tax became due decides whether it is for an earlier or later period. (7)

Any balance remaining is to be set off against such future liability of the person who is treated as having made the payment as that person nominates. (8)

A person who has the power to sell a heritage property in order to pay capital acquisitions tax may make a relevant gift of that property in or towards satisfaction of that tax. (9)

***Prohibition on refunds***

There is no entitlement to a refund of tax in respect of a payment on account of tax made under this section. (10)

***Prohibition on interest***

Interest is not payable should it be due, whether directly or indirectly, because of any set-off which arises in respect of a payment on account of tax made under this section. (11)

***Bar on double relief***

A person discharging tax by virtue of this section is not entitled to any other relief in respect of a relevant gift. (12)

### ***Fota House***

In the event that Fota House in Co. Cork is acquired by the Irish Heritage Trust and the particular collection described in **paragraph (b)** is gifted to the Trust, relief under this section will – subject to **paragraphs (c) and (d)** – be granted as if Fota House was acquired by way of a relevant gift and the collection was part of the House’s contents. (11A)(a)

This collection is one of (either or both) Irish paintings and furniture which had been on show in Fota House between 1983 and 1990 and is to be housed there again by the Irish Heritage Trust. The Minister for Arts, Heritage and the Gaeltacht must be satisfied that the collection is important in establishing the aesthetic context of Fota House. (11A)(b)

This subsection will not apply unless the collection is gifted to the Irish Heritage Trust in 2008. (11A)(c)

Relief under this section will be granted to the donor of the collection to the Trust even though that person is not the donor of Fota House. (11A)(d)

### ***Publication***

The Revenue Commissioners are to include the details of all donations of heritage properties made in a calendar year under this section in their annual report for that year to the Minister for Finance. (12)

## **1004 Unremittable income**

### **Summary**

This section provides that the Revenue Commissioners may postpone payment of income tax or corporation tax in respect of income arising abroad where the income cannot be remitted to the State due to restrictions in force in the country where the income arises.

### **Details**

#### ***Definition***

“particular income” is income arising from outside the State which is, or which is included in, the amount on which income tax or corporation tax is computed. (1)

#### ***Application***

This section applies where income tax or corporation tax is charged by assessment for any period and the tax has not been paid. (2)

#### ***Postponement of payment***

The Revenue Commissioners may allow the postponement of payment of income tax or corporation tax in respect of particular income if the taxpayer shows to the satisfaction of the Commissioners that the income cannot be remitted to the State owing to legislation or governmental action in the country in which the income arises. (3)

#### ***Information***

The Revenue Commissioners may call for any information they consider necessary for the purposes of the administration of this section. (4)

#### ***Appeals***

A person who is dissatisfied with a decision of the Revenue Commissioners as to whether they are satisfied that particular income cannot be remitted to the State has a right to appeal to the Appeal Commissioners by way of notice in writing. An appeal must be made within 30 days after the date of the notice the decision. (5)

## **1005 Unremittable gains**

### **Summary**

This section provides that the Revenue Commissioners may postpone payment of capital gains tax in respect of gains arising abroad where the gains cannot be remitted to the State due to restrictions in force in the country where the gains accrued.

### **Details**

#### ***Definition***

“particular gains” are chargeable gains accruing from the disposal of assets situated (1) outside the State which are the gains or part of the gains on which tax is computed.

#### ***Application***

The section applies where the particular gains are included in an assessment for a year (2) of assessment in which those gains accrued and the tax has not been paid.

#### ***Postponement of payment***

The Revenue Commissioners may allow the postponement of payment of the tax (3) applicable to the particular gains if the taxpayer shows to the satisfaction of the Commissioners that the gains cannot be remitted to the State owing to legislation or governmental action in the country in which the gains accrued.

#### ***Information***

The Revenue Commissioners may call for any information they consider necessary for (4) the purposes of the administration of this section.

#### ***Appeals***

A person who is dissatisfied with a decision of the Revenue Commissioners as to (5) whether they are satisfied that particular gains cannot be remitted to the State has a right to appeal to the Appeal Commissioners by way of notice in writing. An appeal must be made within 30 days after the date of the notice notification of the decision.

## **1006 Poundage and certain other fees due to sheriffs or county registrars**

### **Summary**

This section confirms the entitlement of sheriffs and county registrars to fees or commission (known as poundage) in the execution of warrants for tax debts without having to resort to seizure of property when enforcing those debts.

### **Details**

#### ***Definitions***

“the Acts” means the Tax Acts (Income Tax Acts and Corporation Tax Acts), the (1) Capital Gains Tax Acts, the Value-Added Tax Consolidation Act 2010 and the enactments amending or extending that Act, the Capital Acquisitions Tax Consolidation Act 2003 and the enactments amending or extending that Act, Part VI of the Finance Act 1983 (which deals with residential property tax) and the enactments amending or extending that Part, the Finance (Local Property Tax) Act 2012, Part 4A (which relates to IIR top-up tax, UTPR top-up tax or domestic top-up tax), Part 18A (which relates to the income levy), Part 18B (which relates to the parking levy in urban areas), Part 18C (which relates to the domicile levy), Part 18D (which relates to the universal social charge), Part 18E (which relates to defective concrete products levy), Part 22A (which relates to residential zoned land tax), Part 22B (which relates to vacant homes tax), the Energy (Windfall Gains in the Energy Sector)(Temporary Solidarity Contribution) Act

2023 (which relates to the Temporary Solidarity Contribution), and also any instruments made under those Acts.

“certificate”: under *section 960L* the Collector-General may issue a certificate to a county registrar or sheriff in respect of a tax defaulter. Such a certificate has the same status as an execution order issued by a court.

“county registrar” is a person appointed to be a county registrar under section 35 of the Court Officers Act, 1926.

“defaulter” is the person specified or certified in an execution order or certificate on whom an amount of tax or interest on unpaid tax is leviable.

“execution order” is defined in the Enforcement of Court Orders Act, 1926. It means and includes any writ, decree, warrant, or other document by whatever name called issued by a court in a civil matter directing or authorising the execution of a court order by the seizure and sale of a person’s property or by putting a person in possession of lands or premises or delivering to him/her specific property.

“fees” refers to the poundage fees which are payable under section 14(1) of the Enforcement of Court Orders Act, 1926 and orders made under that provision for executing an execution order. It also means the fees corresponding to poundage fees payable under *section 960L* for executing a certificate issued by the Collector-General under that section.

“interest on unpaid tax” is the interest arising under any provision of the Acts providing for the charging of interest on unpaid tax, including interest on an undercharge of tax due to fraud or neglect.

“relevant amount” is an amount of tax or interest on unpaid tax.

“tax” means any tax, duty, levy or charge placed under the care and management of the Revenue Commissioners.

References, as respects an execution order, to a relevant amount include references to any amount of costs specified in the order.

### ***Poundage fees***

For the section to operate the following conditions must be fulfilled — (2)

- an execution order or certificate must be lodged with the sheriff or county registrar,
- the sheriff or county registrar must have given notice to the defaulter of his/her intention to execute the execution order or certificate by seizing the defaulter’s property, or have demanded payment by the defaulter of the relevant amount, and
- the defaulter must have paid the sheriff, county registrar or Collector-General all or part of the amount in default, plus costs where appropriate, after the notice has been given or demand made by the sheriff or county registrar.

Where these conditions are fulfilled, then, for the purposes of the liability of the defaulter to poundage, the sheriff or county registrar is deemed to have seized the defaulter’s property and to have levied the amount paid by the defaulter. In these circumstances poundage fees are payable by the defaulter to the sheriff or county registrar in respect of the payment made by the defaulter.

### **1006A Offset between taxes**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*



**1006B Appropriation of payments**

*This section has been repealed by Schedule 4 to the Finance (No. 2) Act 2008.*