Domicile Levy (Part 18C)

Part 18C-00-01

This document should be read in conjunction with Part 18C of the Taxes Consolidation Act 1997

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1 Introduction

Part 18C Taxes Consolidation Act 1997 (“TCA 1997”) provides that a levy, known as the “domicile levy”, shall be paid annually by every “relevant individual”. The amount of the levy is €200,000.

2 Operation of the levy

2.1 Application

The levy applies to a “relevant individual”, which means an individual:

- who is domiciled in Ireland in the tax year;
- whose world-wide income in the tax year exceeds €1m;
- whose liability to Irish income tax in the tax year is less than €200,000; and
- who owns Irish property on 31 December in the tax year where the market value of that property is greater in value than €5m.

It should be noted that an individual’s residence or ordinary residence status is not a factor in determining whether he/she is considered to be a “relevant individual” for domicile levy purposes. The meaning of “relevant individual” is outlined in section 3.

2.2 The amount of the levy

The amount of the levy is €200,000 and is payable annually.

Irish income tax (IT) paid by an individual in a tax year is allowed as a credit in calculating the amount of the domicile levy chargeable for that year, but only to the extent that such income tax has been paid at the same time as, or before, the domicile levy for that year is paid (per section 531AC TCA 1997).

In this context, the following should be noted in relation to what constitutes “income tax” for this purpose.

(i) Universal Social Charge (USC) / PRSI

While the USC is a separate and distinct tax in respect of income, it is not considered to be “income tax” within the meaning of section 531AC and as such, it is not allowable as a credit in arriving at the amount of the domicile levy which is chargeable for any year.

Similarly, PRSI is not considered to be “income tax” within the meaning of section 531AC, as it is an amount payable by an individual towards the social insurance fund of the State, which is used to fund social insurance payments. As such, the payment of PRSI is not allowable as a credit in arriving the amount of the domicile levy which is chargeable for any year.

(ii) Foreign tax paid in a double taxation agreement (DTA) territory

In certain circumstances, an Irish resident taxpayer may have an Irish income tax or capital gains tax liability on income/gains which are also subject to tax in a territory with which a DTA is in force. For the avoidance of double tax, the DTA may allow the taxpayer to claim a credit for the foreign tax liability against the Irish tax computed on the same income or gains. This raises a question as to whether a relevant individual for domicile levy purposes may claim a foreign tax credit, under the terms of a DTA, against the amount of the domicile levy which is chargeable for a year.

It should be noted that a DTA will apply to “taxes” which are generally specified in the text of agreement, e.g., Irish income tax. The DTA may also include a clause stating that it may also apply to any identical or substantially similar “taxes” which are imposed by either Contracting State after the DTA comes into force.

The domicile levy differentiates itself from being a tax as the amount of the Levy is not calculated by reference to the taxpayer’s income, profits, gains, property or capital, which are key components in assessing a taxpayer’s liability to income tax or other taxes. Instead, it is a fixed levy which is charged on a taxpayer who meets the qualifying criteria. On this basis, the provisions of a DTA which apply to “taxes” will not apply to the domicile levy. As such, a relevant individual for domicile levy purposes is not in a position, under a DTA, to claim a foreign tax credit against their liability to the domicile levy for a year.

(iii) Residential zoned land tax (RZLT)

Section 653AK(2) TCA 1997 (as inserted by Finance Act 2022) provides that RZLT is not allowable as a deduction from the amount of domicile levy which is chargeable for any year.

2.3 When is the levy payable?

The levy is payable, and a return is required to be filed, on a self-assessment basis each year on or before 31 October in the year following the valuation date. The valuation date is 31 December each year. ROS registered customers and agents can file the return and pay the levy on ROS.

However, in order to facilitate individuals who are paying the balance of the IT due for the year to which domicile levy relates using the Revenue On-Line Service (ROS) and who wish to avail of the credit for IT payable against the domicile levy, the Pay and File deadline for the domicile levy is extended to coincide with the Pay and File deadline for the payment of the balance of IT due using ROS.

Alternatively, for those who cannot avail of the option to file the Form DL1 through ROS and/or make the payment through ROS, the following applies:

1. print the Form DL1 using the link provided and complete
2. post the completed form to the Collector-General's Office and
3. pay through myAccount (mainly for PAYE Customers) or by Electronic Fund Transfer (EFT) (for Non-Resident Customers).

3 Meaning of "relevant individual"

The levy to a person who comes within the definition of "relevant individual", which means an individual:

1. who is domiciled in Ireland in the tax year;

2. whose world-wide income in the tax year exceeds €1m;

3. whose liability to Irish income tax in the tax year is less than €200,000; and

4. who owns Irish property on 31 December in the tax year where the market value of that property is greater in value than €5m.

Each of these conditions must be met to qualify as a "relevant individual". Further guidance on each of these conditions is outlined below.

3.1 Meaning of "domicile"

Domicile is a concept of general law. It broadly means living in a country with the intention of living there permanently. More detailed guidance on the concept of domicile for Irish tax purposes is included in Part 7 of Tax and Duty Manual Part 34-00-01 – Provisions Relating to Residence of Individuals.

3.2 Meaning of "world-wide income"

Section 531 AA(1) defines "world-wide income" for domicile levy purposes (the full text of the definition is outlined in Appendix I).

In summary, this is the individual's income from all sources as estimated in accordance with the Tax Acts without regard to any amount deductible from or deductible in computing total income and subject to certain express exclusions and allowances. The figure is determined on the basis that the individual is resident in the State for the year, regardless of their actual tax residence status for that year.

To come within the definition of "relevant individual", an individual must have "world-wide income" in excess of €1,000,000 for a tax year. This gives rise to the issue as to whether, when calculating this amount, an individual may claim a deduction or allowance for certain items which would bring the "world-wide income" figure below the €1,000,000 threshold (e.g., capital allowances or losses).

To determine the issue, it is necessary to split the definition into two parts, namely:

(1) what is "income …. from all sources as estimated in accordance with the Tax Acts"?;
and
(2) what is the meaning of "without regard to any amount deductible from or deductible in computing total income"?

These are described below.

(1) What is a taxpayer's income from all sources as estimated in accordance with the Tax Acts?

The first aspect of the definition requires a taxpayer to determine their income from all sources as estimated in accordance with the Tax Acts.

Under the schedular approach or source principle, income tax is charged by reference to the Schedules of the Tax Acts (e.g., trading income is charged to tax under Schedule D, Case 1, rental income under Case V, etc.). In arriving at the profits or gains which are assessed to tax under each schedule, deductions may be allowed in respect of certain outgoings and expenses.

Please see example 1 in Appendix II for an example illustrating deductible expenses under Schedule D, Case 1 (trading income) and how such expenses are taken into account for the purposes of the calculation of world-wide income.

Please see example 2 in Appendix II for an example illustrating deductible expenses under Schedule D, Case V (rental income) and how such expenses are taken into account for the purposes of the calculation of world-wide income.

(2) The meaning of “deductible from or deductible in computing total income”

“Total income” is defined by s.3(1) TCA 1997 as “*…total income from all sources as estimated in accordance with the Income Tax Acts”.*

The determination of total income is done by subtracting from the amount of the “income from all sources” (as determined under 3.2.1) all deductions and allowances which are deducted in arriving at total income. These deductions and allowances include, but are not limited to, capital allowances, certain losses, certain maintenance payments, etc.

The computation of “world-wide income” for domicile levy purposes broadly requires a taxpayer to disregard such deductions/allowances when computing this amount for domicile levy purposes. However, the calculation allows a deduction for certain maintenance payments if listed among the items included in part (b) of the definition of world-wide income in section 531AA.

Deductibility of capital allowances and losses

With respect to the deductibility of capital allowances and losses, section 531AA(1A) confirms that these are not allowed as a deduction in computing an individual’s world-wide income. This measure was inserted by Finance Act 2017 to expressly prohibit the use of these deductions.

Please see examples 3 & 4 in Appendix II.

3.3 Liability to Irish income tax in the tax year of less than €200,000

To come within the definition of a “relevant individual”, an individual must have an income tax liability of less than €200,000 for the year. The means the tax charged pursuant to section 12 TCA 1997 (“The charge to income tax”) in respect of all property, profits or gains described in the Schedules mentioned in that section.

As the definition refers to a “liability to income tax”, this means that an individual cannot take account of their liability to the Universal Social Charge (USC) and/or PRSI when determining if this condition is met. In effect, the USC and/or PRSI liability of an individual is ignored for the purpose of this test.

With respect to income which is subject to income tax in a jurisdiction with which Ireland has a DTA, the term “liability to income tax in the State” means the amount of the Irish income tax liability before a foreign tax credit is claimed in respect of this income.

Please see example 5 in Appendix II.

3.4 Market value of whose Irish property in excess of €5m

To come within the definition of “relevant individual”, the market value of Irish property to which the individual is beneficially entitled in possession on 31 December in the tax year must exceed €5,000,000.

3.4.1 Meaning of “market value”

In relation to property, “market value” means the best price which the property would obtain if, on the valuation date, the property was sold to a third party under open market principles. Section 531AA(5) provides that in estimating the market value of any property, no deduction shall be made from the market value for any debts or encumbrances. This includes, for example, the value of a mortgage.

If the Revenue Commissioners are not satisfied with the market value of property which is estimated in a return, or if it is considered necessary to do so, they may estimate the market value of the property for this purpose. This might involve the appointment of a suitably qualified individual to carry out a valuation exercise.

3.4.2 Meaning of “Irish property”

The term “Irish property” means all property located in the State, including rights and interests of every description, to which an individual is beneficially entitled in possession, but does not include:

- shares in a company which exists wholly or mainly for the purpose of carrying on a trade or trades; or
- shares in a holding company which derive their value from subsidiaries which wholly or mainly carry on a trade or trades. “Subsidiary” has the same meaning as in section 7 of the Companies Act 2014.

Shares deriving the whole or the greater part of their value directly or indirectly from property located in the State are treated as Irish property for the purpose of the domicile levy.

3.4.3 Approved Retirement Fund (ARF)

ARFs were introduced by Finance Act 1999 and are intended as an alternative to annuities. Essentially, they permit an individual to transfer pension benefits into a fund and to manage it on a draw-down basis. The assets in the ARF are held on behalf of the beneficial owner by a qualifying fund manager (QFM).

Funds in an ARF remain the property of the individual who is the beneficial owner and the value of these assets are these are therefore included when ascertaining if the market value of Irish property on 31 December is greater in value than €5m.

3.4.4 Interest in a partnership

An individual’s interest in a partnership which is situated in the State is considered “Irish property” for the purposes of the levy. In a partnership, a partner is not entitled to the assets of the partnership, but a portion of the partnership profit after the liabilities of the partnership are met. As such, where the asset is a partnership share, the market value of the share is the partnership profit.

If an individual has personal borrowings or debts secured on the partnership share, then these borrowings or debts are not taken into account when valuing the market share.

4 Anti-avoidance provisions

4.1 Transfer of assets for less than market value

The legislation contains anti-avoidance provisions which treats property which was transferred by an individual on or after 18 February 2010 for less than market value to that individual’s spouse, civil partner, minor children, or to the minor children of their civil partner, discretionary trust or foundation as the transferor’s property on each relevant valuation date.

4.2 Shares in non-Irish incorporated companies

Shares in non-Irish incorporated companies, even if they own Irish incorporated subsidiaries or other Irish assets, do not constitute Irish property, as defined. However, where the whole or greater part of the market value of the shares in such companies is attributable, directly or indirectly to property situate in the State, then those shares will be deemed to be Irish properties. This anti-avoidance measure only applies if the non-Irish incorporated company would be a close company if it were incorporated in the State.

5 Appeals, penalties and interest

The following provisions apply to the levy:

- Section 531AF TCA 1997 enables the Revenue Commissioners to issue a notice requesting an individual to deliver a return in respect of domicile levy, together with a payment of the levy, within 30 days of the date of the notice, where they have reason to believe that an individual is liable to the levy for any year.

- Section 531AH TCA 1997 enables the Revenue Commissioners to make an assessment or an amending assessment on an individual who they have reason to believe is chargeable to domicile levy in cases where a return has not been delivered to them or they are dissatisfied with the return delivered to them. A person may appeal the assessment to the Appeal Commissioners within 30 days after the date of the assessment.

- Section 531AI TCA 1997 provides that the Revenue Commissioners shall have all such powers as those provided under section 959Z (as applying to income tax) in relation to making enquiries for the purposes of determining the accuracy of a domicile levy return.

- Under Section 531AJ TCA 1997, the provisions of the TCA 1997 relating to penalties and interest charged on outstanding tax apply to domicile levy as they apply to IT.

  Failure to pay the levy, or failure to pay it on time, can result in enforced collection through the normal procedures or Attachment. Interest will be charged on outstanding domicile levy at the rate of 0.0219% per day or part of a day.

Appendix I - Definition of "world-wide income"

Section 531AA provides the following definition:

"world-wide income*"*, in relation to an individual, means the individual's income, without regard to any amount deductible from or deductible in computing total income, from all sources as estimated in accordance with the Tax Acts and as if any provision of those Acts providing for any income, profits or gains to be exempt from income tax or to be disregarded or not reckoned for the purposes of income tax or of those Acts were never enacted, and—

(*a*) without regard to any deduction—

(i) in respect of double rent allowance under section 324(2), 333(2), 345(3) or 354(3),

(ii) under section 372AP, in computing the amount of a surplus or deficiency in respect of rent from any premises,

(iii) under section 372AU, in computing the amount of a surplus or deficiency in respect of rent from any premises,

(iv) under section 847A, in respect of a relevant donation (within the meaning of that section),

(v) under section 848A, in respect of a relevant donation (within the meaning of that section),

and

(b) having regard to a deduction for—

(i) any payment to which section 1025 applies made by an individual pursuant to a maintenance arrangement (within the meaning of that section) relating to the marriage for the benefit of the other party to the marriage, unless section 1026 applies in respect of such payment,

(ii) a payment of a similar nature to a payment referred to in subparagraph

(i) pursuant to a maintenance arrangement (within the meaning of section 1025) relating to the marriage for the benefit of the other party to the marriage which attracts substantially the same tax treatment as such a payment,

(iii) any payment to which section 1031J applies made by an individual pursuant to a maintenance arrangement (within the meaning of that section) relating to the civil partnership for the benefit of the other party to the civil partnership, unless section 1031K applies in respect of such payment,

(iv) a payment of a similar nature to a payment referred to in subparagraph

(iii) pursuant to an order of a court under the law of another territory that, had it been made by a court in the State, would be a maintenance arrangement (within the meaning of section 1031J), relating to the civil partnership for the benefit of the other party to the civil partnership which attracts substantially the same tax treatment as such a payment, or

(v) any payment to which section 1031Q applies made by an individual pursuant to a maintenance arrangement (within the meaning of that section) where a relationship between cohabitants ends,

determined on the basis that the individual, if not otherwise resident in the State for the year, was resident in the State for the tax year.

Appendix II – Worked examples

Example 1

Adam is a self-employed individual with trading income which is chargeable to income tax under Case I of Schedule D. Under the basis of assessment rules that apply under Case I of Schedule D, income tax is charged on the full amount of the profits or gains of the year of assessment. When computing the amount of profits or gains to be charged under Case I of Schedule D, Adam may claim a deduction under section 81 TCA 1997 for any expenses wholly and exclusively expended for the purpose of the trade.

Adam's trading receipts for 2023 are €1,050,000, however, he also incurred the following expenses during the course of his trading activities for the year.

Accountancy fees	€5,000
Advertising costs	€5,000
Employee remuneration	€60,000
Rental costs of a business premises	€36,000
Total	€106,000

These expenses were expended wholly and exclusively for the purpose of the trade carried on by Adam in 2023. On this basis, it follows that, when computing the amount of profits or gains for the purposes of Case I or II of Schedule D, Adam may claim a deduction for these amounts. His trading profit for 2023 for the purposes of Case I of Schedule D is therefore **€944,000** (€1,050,000 less €106,000). This is the amount of his "worldwide-income" for domicile levy purposes for 2023.

It follows that as Adam does not have "world-wide income" in excess of €1,000,000 for 2023, he is not a "relevant individual" for domicile levy purposes for the year.

Example 2

Betty is the owner of four rental properties, from which she is paid rental income in 2023. Betty also has the following sources of income for the year.

Directorship fees	€200,000
Dividend income	€50,000

Total rental receipts for 2023 are €800,000, however, Betty also incurred the following expenses in respect of the rental properties.

Maintenance costs	€25,000
Insurance	€30,000
Interest on bank loans*	€150,000
Total	€205,000

*interest is incurred on money borrowed to purchase the rental properties.

These expenses are allowable expenses under section 97(2)(d) of the TCA 1997 which may be deducted by Betty in computing the profits or gains arising or accruing in respect of the rents received from the rental properties. The rental profit or gain to be charged to tax under Case V of Schedule D is **€595,000** (€800,000 less €205,000).

Total income from all sources for 2023 is as follows:

Directorship fees	€200,000
Dividend income	€50,000
Rental profit	€595,000
Total	€845,000

This is the amount of her "worldwide-income" for domicile levy purposes for 2023.

As Betty does not have "world-wide income" in excess of €1,000,000 for 2023, Betty is not a "relevant individual" for domicile levy purposes for the year.

Example 3

Clive is a self-employed individual who is not resident in Ireland for tax purposes in 2023. Clive is, however, domiciled in Ireland and he owns Irish property. The value of this property exceeds €5m on 31 December 2023.

To be considered a "relevant individual" for domicile levy purposes for 2023, Clive's world-wide income for 2023 must exceed €1m and his Irish income tax liability for the year must be lower than €200,000. Clive's only source of income arises from his trading activities which he carries on outside Ireland. As such, this income is not within the charge to Irish tax and Clive does not have an Irish income tax liability for 2023.

Notwithstanding that Clive is not resident in Ireland for tax purposes for 2023, the calculation of his world-wide income for domicile levy purposes is done on the basis that he is resident for the year. His trading receipts for 2023 are €1,200,000, however, he also incurred the following expenses during the course of his trading activities for the year.

Accountancy fees	€10,000
Stationery costs	€1,000
Employee remuneration costs	€100,000
Rental costs of a business premises	€10,000
Total	€121,000

These expenses were expended wholly and exclusively for the purpose of the trade carried on by Clive in 2023. On this basis, it follows that, when computing the amount of profits or gains for the purposes of Case I of Schedule D, Clive may claim a deduction for these amounts. Clive´s profit for 2023 for the purposes of Case I of Schedule D is therefore **€1,079,000** (€1,200,000 less €121,000).

When computing his world-wide income for domicile levy purposes, Clive seeks to claim the following deductions relating to his trading activities:

Losses carried forward	€75,000
Capital allowances on capital items	€18,750
Total	€93,750

However, for domicile levy purposes, the losses and capital allowances are not deductible when computing "world-wide income". On this basis, Clive's "world-wide income" figure for domicile levy purposes for 2023 remains at **€1,079,000**.

Example 4

Taking the facts in example 3 and assume that Clive is legally separated from his spouse.

Under the terms of a legally enforceable maintenance agreement, Clive is required to make payments to his separated spouse of €100,000 per annum. The tax treatment of these payments is subject to the provisions of s.1025 TCA 1997.

During 2023, Clive makes the payments of €100,000 to his separated spouse.
For domicile levy purposes, s.531AA(b)(i) provides that Clive may have regard to this amount when computing his "world-wide income" for 2023.

The calculation of his "world-wide income" is as follows:

Trading profit under Case I of Schedule D	€1,079,000
Less:	
Maintenance payments	(€100,000)
World-wide income	€979,000

As this amount does not exceed €1,000,000, Clive is not a "relevant individual" for domicile levy purposes.

Example 5

Sally is an Irish resident and domiciled taxpayer with UK investment income, which is subject to tax in the UK. For 2023, Sally´s Irish income tax liability on this UK investment income is €250,000, while her UK income tax liability is €200,000. Sally does not have any additional sources of income in the State or elsewhere.

Under the terms of the Ireland/UK double taxation agreement, Sally is entitled to claim a foreign tax credit in her 2023 Irish tax return for this UK income tax liability. This works by reducing the level of Irish income tax chargeable on the income, resulting in a final Irish income tax payment of €50,000 for the year.

As Sally's liability to income tax in the State on the UK investment income exceeds €200,000, she is not "a relevant individual" for domicile levy purposes, notwithstanding that this amount is reduced by a foreign tax credit in respect of her UK tax liability on the income.

Example 6

Anne is an Irish domiciled individual who is not resident in Ireland for tax purposes in 2023. Although not resident, Anne maintains substantial ties to Ireland, as outlined below. For domicile levy purposes, the market value of Irish property to which Anne is beneficially entitled in possession on 31 December in the tax year is calculated below.

Asset	Value of asset on 31 December 2023	Qualifies as Irish property for domicile levy?	Debts or encumbrances on property (e.g. value of personal borrowings)	Value of Irish property for domicile levy purposes
Irish residential property	€6,500,000	Yes	€1,000,000	€6,500,000
Shares in Irish trading company	€500,000	No	€0	€0
Share of Irish partnership profit	€375,000	Yes	€100,000	€375,000
Total				**€6,875,000**

On the basis that this amount exceeds €5,000,000, Anne will be liable to the domicile levy for 2023 if her worldwide income for the year exceeds €1,000,000 and her liability to Irish income tax for the year is less than €200,000.