NOTES FOR GUIDANCE

STAMP DUTIES CONSOLIDATION ACT 1999

(as amended by subsequent Acts up to and including the Finance Act 2022)

Part 9 - Levies

Revenue Cáin agus Custaim na hÉireann Irish Tax and Customs	**These notes are for guidance only and do not purport to be a definitive legal interpretation of the provisions of the Stamp Duties Consolidation Act 1999 (No. 31 of 1999) as amended by subsequent Acts up to and including the Finance Act 2022.**

PART 9 LEVIES

Overview: Levies

This Part provides for stamp duty to be levied are imposed on cash cards, combined cards, debit cards, credit card accounts and charge cards, life and non-life insurance premiums, health insurers, pension schemes, "section 84" loans and on certain financial institutions.

Additional Guidance Notes entitled "Stamp Duty on Financial Cards" are also available on the Revenue website at www.revenue.ie.

Section 123 Cash cards

Repealed from 1 January 2022 – *Section 63 Finance Act 2021*.

Section 123A Debit cards

Repealed from 1 January 2022 – *Section 63 Finance Act 2021*.

Section 123B Cash, combined and debit cards

Summary

Finance Act 2015 introduced a €0.12 cash transaction charge on cash withdrawals from automated teller machines (ATM) located in the State with effect from 1 January 2016. The charge is capped at €2.50 in relation of cash cards or combined cards where only the cash function is used during the year. The charge is capped at €5.00 in the case of combined cards where both the debit and cash withdrawal function were used during the year. The charge applies where a card is valid at 31 December in each year. The duty is payable by a promoter who is required to submit details of these cards to the Revenue Commissioners and to accompany those details with the payment of the duty. They may pass on the charge to their customers. A promoter includes credit and financial institutions but does not include a credit union or An Post or any of its subsidiaries.

Prior to Finance Act 2015, a flat rate charge of €2.50 applied on cash, debit and combined cards where only one function was used. In the case of combined cards where both functions were used the stamp duty payable was €5.00.

Other appropriate provisions of this Act apply, in particular:

- ***section 126B*** which enables an appeal against an assessment to duty, and
- ***section 152*** which enables the Revenue Commissioners to refund duty in certain circumstances – but also see ***section 159A*** as regards the time limit for making a refund claim and ***section 159B*** as regards interest that may be payable on such refunds.

Details

"account holder", "basic payment account", "Capital Requirements Regulation", "card account", "cash card", "cash transaction" "chargeable period", "combined card", "credit institution", "credit union" "debit card", "electronic means", "financial institution", "period of financial exclusion", "promoter" and "quarter" are self-explanatory. ***(1)***

Strictly, an account will cease to be a basic payment account on the expiry of 2 months from the date a promoter has served notice of termination of the account. However, as a matter of practice Revenue will operate on the basis of a notice period of 3 months, as this facilitates certain promoters (financial institutions) procedures. ***(1B)***

A promoter shall, within one month of the end of each year, commencing with the year 2016, deliver to the Revenue Commissioners a statement showing: ***(2)***

(a) the number of cash cards and combined cards issued at any time by the promoter that are valid on 31 December in the year,
(b) the number of cash transactions completed in the year using a card valid on 31 December in the year in respect of each type of card,
(c) the number of cash cards to which the monetary cap referred to in subsection (4) has been applied,
(d) the number of combined cards, both functions of which were used in the year, to which the monetary cap referred to in subsection (4) has been applied, and
(e) the number of combined cards, only the cash card function of which was used in the year, to which the monetary cap referred to in subsection (4) has been applied.

A card is a valid card on 31 December in a year if the card has not been cancelled or expired before this date, and the card owner has an address in the State on this date. ***(2A)***

The promoter must provide details of cards and the related cash transactions where the monetary cap was not applied. ***(2B)***

Where an original card is replaced with a new card during the year, both cards are to be treated as a single card for the purposes of applying the monetary cap. Where the replacement during a year by a new card of cards that are cancelled or that expire, where this happens, both cards are to be treated as a single card. ***(2C)***

Cards which: ***(3)***

- are not used during the year,
- are issued in respect of a deposit account, the average of the daily positive balance which does not exceed €12.70,
- are issued in respect of a basic payment account

are not liable to duty[1].

In relation to the cash transactions included in the statement provided for under subsection (2), a stamp duty is imposed at the rate of €0.12 for each cash transaction included in the statement, but the amount charged in respect of: ***(4)***

(a) any individual combined card, both functions of which were used in the year, shall not exceed €5,
(b) any individual combined card, only the cash card function of which was used in the year, shall not exceed €2.50, and
(b) any individual cash card shall not exceed €2.50.

The statement must be accompanied by the amount of duty payable. ***(5)***

Promoters must provide all necessary information to the Revenue Commissioners relating to the liability to duty. ***(6)***

[1] The exemption contained in the Diplomatic Relations and Immunities Act 1967 applies to cash and combined cards (see **Appendix 2**).

Interest at the rate of 0.0219 per cent per day (see ***section 159D***) is chargeable, in addition to the duty, on the unpaid duty from the date the duty was required to be paid to the date the duty is paid. ***(7)***

Promoters may pass on the duty and any interest payable to the account holder. ***(9)***

If the card is liable to duty under ***section 124*** then it is not liable to duty under this section. ***(10)***

In relation to the definition of "basic payment account", the Minister of Finance has power to vary by order ***(11)***

- the duration of the period of financial exclusion, and
- the threshold amount (currently €4,500), subject to a maximum variation of 20 per cent.

Every order made under ***subsection (11)*** must be laid before Dáil Eireann after it is made. ***(12)***

Statements are to be delivered under this section by electronic means. The relevant provisions of Chapter 6 of Part 38 of the Taxes Consolidation Act 1997 apply. Chapter 6 of Part 38 provides a legal framework for making electronic tax returns to the Revenue Commissioners. A tax return made electronically under these provisions has the same status as a return made on paper. ***(13)***
Note: This provision does not apply to statements required to be delivered to the Revenue Commissioners on or before 31 January 2023 (section 70(1)(a) of Finance Act 2022 refers).

Section 123C Preliminary duty: cash, combined and debit cards

This section was repealed by section 61 of Finance Act 2021 (as amended by section 70 of Finance Act 2022), with effect from 1 January 2023. It does not apply to statements required to be delivered after 15 December 2022.

Section 123D Bills of Exchange

Summary

This section provides for stamp duty to be levied on bills of exchange. It was introduced by section 61 of Finance Act 2021 (as amended by section 70 of Finance Act 2022) and applies to bills of exchange processed or issued in 2023 and subsequent years. The section replaces the Bills of Exchange head of charge in Schedule 1, which was repealed by Finance Act 2021 (as amended by section 70 of Finance Act 2022) with effect from 1 January 2023.

Details

The following definitions are used in the section: ***(1)***

"credit institution" means an undertaking which satisfies point (a) of the definition of 'credit institution' in Article 4(1) of the Capital Requirements Regulation.

"financial institution" has the same meaning as it has in the Capital Requirements Regulation.

"electronic means" is the same definition as that used in section 917EA of the Taxes Consolidation Act 1997, the electronic statements will be treated as if they were electronic returns under that Act.

"promoter" means a credit or a financial institution.

The definition of **"processed"** is included to allow promoters to account for the levies on a certain basis, it means a bill of exchange that has been cleared through an account.

"relevant bill of exchange" means a bank draft, an order or a cheque drawn on an account of a credit institution or financial institution in the State, subject to certain exclusions as follows:

(a) a draft or order drawn by any banker in the State on any other banker in the State, not payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such bankers;
(b) a letter written by a banker in the State to any other banker in the State, directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made or to any person on such person's behalf;
(c) a draft or order drawn by the Accountant of the Courts of Justice;
(d) a coupon or warrant for interest attached to and issued with any security, or with an agreement or memorandum for the renewal or extension of time for payment of a security;
(e) a coupon for interest on a marketable security being one of a set of coupons whether issued with the security or subsequently issued in a sheet;
(f) direct debits and standing orders;
(g) a bill drawn on or behalf of the Minister for Finance by which payment in respect of prize bonds is effected.

The section provides for a promoter to submit a return within 1 month of the end of each year, commencing with the year 2023, showing the number of bills processed or cleared through its accounts during the year. ***(2)***

The section gives the option to a promoter to account for bills of exchange based on the number issued to customers rather than processed on the first occasion the promoter delivers a statement to the Commissioners. Where the promoter chooses this option, they must continue to account on the same basis in the future. ***(3)***

The section requires that where the promoter chose the option in subsection (3), all statements delivered must indicate that the election was made and show the number of bills of exchange issued for the period. ***(4)***

The section imposes a €0.50 charge for each bill of exchange included in the statement. ***(5)***

A payment of the duty chargeable shall be made on delivery of the statement. ***(6)***

The promoter is required to provide any details as required by the Commissioners in relation to the statement. ***(7)***

An interest charge for late payment will be imposed, calculated in accordance with section 159D SDCA 1999 from the date the duty was required to be paid to the date of payment. ***(8)***

Statements are to be delivered under this section by electronic means. The relevant provisions of Chapter 6 of Part 38 of the Taxes Consolidation Act 1997 apply. Chapter 6 of Part 38 provides a legal framework for making electronic tax returns to the Revenue Commissioners. A tax return made electronically under these provisions has the same status as a return made on paper. ***(9)***

Section 124 Credit cards and charge cards

Summary

This section provides for an annual stamp duty at the rate of €30 to be levied in respect of credit card accounts and charge cards. Finance Act 2021 (sections 61 and 63) provided for the modernisation of the collection of this duty. Part of this was the requirement to submit electronic returns for 2024 and subsequent years.

The duty is payable by a bank in respect of each credit card account maintained by that bank at any time during the 12-month chargeable period. As part of the modernisation of banking levies the chargeable period will change from the current basis period where it ends on 1 April to a calendar year basis. In order to accommodate this transition, the chargeable period starting 2 April 2023 will run for a shorter period of 9 months to end on 31 December 2023, allowing for the next chargeable period to coincide with the 2024 calendar year.

The duty is payable by a promoter (see ***subsection (2)(a)***) in respect of every charge card issued or renewed by that promoter at any time during the chargeable period. Certain “replacement cards” issued on “replacement accounts” are excluded from this charge (see ***subsection (2)(d)***).

With effect for statements due in respect of 2024, banks and promoters are required to submit details via Revenue’s online service of chargeable and non-chargeable credit card accounts and chargeable and non-chargeable charge cards to Revenue and to accompany those details with the payment of the duty in respect of the chargeable credit card accounts and charge cards within one month of the end of the chargeable period. Banks and promoters may pass on the charge to their customers.

The section may be looked at as comprising 3 parts *i.e.*

(a) ***subsection (1)*** relating to the duty on accounts maintained by banks in respect of credit cards;

(b) ***subsection (2)*** relating to the duty on charge cards; and

(c) the remaining subsections dealing with matters common to both credit card accounts and charge cards.

Other appropriate provisions of this Act apply, in particular:

1. ***Section 126C*** which applies a surcharge for late filing of a return

2. ***Section 152*** which enables Revenue to refund duty in certain circumstances – but see also ***section 159A*** as regards the time limit for making a refund claim and ***section 159B*** as regards interest that may be payable on such refunds.

Details

Subsection (1) deals with credit cards which are issued to individuals. ***(1)***

“account”, “account holder”, “credit card”, “credit institution” and “financial institution” are self-explanatory.

“bank” means a credit or a financial institution other than a credit union or An Post or any of its subsidiaries.

"**letter of closure**" means a letter, in such form as the Revenue Commissioners may specify, issued during a relevant period by a bank to an account holder in relation to an account which has been closed during that period confirming that the account holder has accounted for the amount of stamp duty—

- which the bank is required to pay in respect of the account for the relevant period, or
- which another bank (*i.e.* a different bank) is required to pay for the relevant period in respect of another account which has been closed during that period.

"chargeable period" means:

- each 12-month period beginning on 2 April 2006 and ending with the period from 2 April 2022 to 1 April 2023.
- the period from 2 April 2023 to 31 December 2023 (short chargeable period to provide for the move to a calendar year basis).
- the 12-month period from 1 January 2024 to 31 December 2024 and each subsequent 12-month period.

"replacement account" means an account that is opened and maintained by a bank in the name of an account holder during a relevant period—

- where an account in the name of the account holder was, during the relevant period, closed by the bank (which can include a branch of the same bank), or
- where the account holder has, during the relevant period, furnished to the bank a letter of closure issued by another bank (*i.e.* a different bank) in relation to an account in the name of the account holder which was closed during that period.

To be within the charge the card must be issued to an individual who has an address in the State. A card issued by a foreign bank to such an individual comes within the charge while a card issued by any bank to a person outside the State does not. Cards issued to enable cash only to be obtained are outside the charge.[2] ***(1)(a)***

This paragraph provides that a bank must deliver a statement to the Revenue Commissioners which shows in respect of accounts maintained by the bank at any time during the chargeable period: ***(1)(b)***

- the number of accounts that are replacement accounts, and
- the number of accounts that are not replacement accounts.

The date for delivery of the statement is as follows:

- for the chargeable period ending on 1 April 2006 and each subsequent 12-month chargeable period ending with the period ending on 1April 2023, within 3 months of the end of the chargeable period.
- for the chargeable period commencing on 2 April 2023 and ending on 31 December 2023, within 1 month of 31December 2023, i.e. 31 January 2024.

[2] The exemption contained in the Diplomatic and Immunities Act 1967 applies to credit cards – (see **Appendix 2**).

- for the chargeable period ending on 31 December 2024 and each subsequent 12-month chargeable period, within 1 month of the end of the chargeable period commencing with the calendar year 2024.

For the chargeable period ending on 31 December 2023 and prior chargeable periods, the statement is to be delivered in writing. For the chargeable period commencing on 1 January 2024 and each subsequent chargeable period, the statement is to be delivered by electronic means (section 70 of Finance Act 2022 refers).

Stamp duty is chargeable at a rate of €30 for the 12-month chargeable period in respect of each account. A reduced charge of €22.50 applies for the short chargeable period running from 2 April 2023 and ending on 31 December 2023. ***(1)(c)***

Each account that is not a "replacement account" is chargeable with a stamp duty of €30. ***(1)(d)***

A bank may not issue a letter of closure to an account holder during a relevant period for an account that has been closed during that period unless the bank has received a stamp duty of €30 from the account holder for the account for that period or has received a letter of closure from the account holder in relation to another account closed with a different bank during the same period. A letter of closure may only be used once to treat an account as a replacement account. ***(1)(e), (f)***

A bank may only issue one letter of closure in respect of an account and may only issue a duplicate letter to an account holder, to whom the original letter of closure issued, where the bank is satisfied that the original letter of closure has been lost or destroyed. Any duplicate must state that it is a duplicate of an original letter of closure. ***(1)(g)***

Subsection (2) deals with charge cards which are issued to individuals having an address in the State. A charge card issued by a foreign bank to such an individual comes within the charge while a charge card issued by any promoter to a person outside the State does not[3]. Cards issued to enable cash only to be obtained are within the charge. ***(2)***

"account", "account holder", "charge card", "company charge card" and "supplementary card" are self-explanatory. Because they are excluded from the definition of "charge card" in-house cards are not within the charge to duty. "In-house" means something which pertains to the internal affairs of a business as opposed to that business's relations with persons external to itself. An "in-house" card may only be used to purchase goods and services of the person issuing the card. An example of a card which is not an "in-house" card is a card which may be used to buy petrol at a petrol station but which may also be used to buy goods from the shop on the forecourt even though that shop is not owned by the person who owns the petrol station. ***(2)(a)***

"letter of closure" means a letter, in such form as the Revenue Commissioners may specify, issued during a relevant period by a promoter to an account holder in respect of an account which has been closed during the period—

- confirming that the account holder has accounted for stamp duty on the charge cards in respect of which the promoter is liable for the relevant period and stating the number of such charge cards, and

- confirming, where it is the case, that the account holder has, during the relevant period, accounted for stamp duty on the charge cards in respect of which another promoter (i.e. a different promoter) is liable for the relevant period and stating the number of such charge cards.

[3] The exemption contained in the Diplomatic and Immunities Act 1967 applies to charge cards – (see **Appendix 5**).

"chargeable period" means:

- each 12-month period beginning on 2 April 2006 and ending with the period from 2 April 2022 to 1 April 2023.

- the period from 2 April 2023 to 31 December 2023 (short chargeable period to provide for the move to a calendar year basis).

- the 12-month period from 1 January 2024 to 31 December 2024 and each subsequent 12-month period.

"**replacement account**" means an account which is opened and maintained by a promoter in the name of an account holder during a relevant period—

- where an account in the name of the account holder was previously closed by the promoter (which can include a branch of the same promoter) during the same period, or

- where the account holder has furnished to the promoter, during the relevant period, a letter of closure issued by another promoter (i.e. a different promoter) in relation to an account in the name of the account holder which was closed in that period.

"**replacement card**" means a charge card in relation to a replacement account.

Subsection (2) also deals with company charge cards and supplementary cards which are issued to persons other than individuals or to employees of such persons. The persons concerned must have an address in the State. ***(2)***

This paragraph provides that a promoter must deliver a statement to the Revenue Commissioners which shows in respect of the charge cards issued or renewed by the promoter and expressed to be valid at any time during the chargeable period: ***(2)(b)***

- the number of cards that are replacement cards, and

- the number of cards that are not replacement cards.

The date for delivery of the statement is as follows:

- for the chargeable period ending on 1 April 2006 and each subsequent 12-month chargeable period ending with the period ending on 1 April 2023, within 3 months of the end of the chargeable period.

- for the chargeable period commencing on 2 April 2023 and ending on 31 December 2023, within 1 month of 31 December 2023, i.e. 31 January 2024.

- for the chargeable period ending on 31 December 2024 and each subsequent 12-month chargeable period, within 1 month of the end of the chargeable period commencing with the calendar year 2024.

For the chargeable period ending on 31 December 2023 and prior chargeable periods, the statement is to be delivered in writing. For the chargeable period commencing on 1 January 2024 and each subsequent chargeable period, the statement is to be delivered by electronic means (section 70 of Finance Act 2022 refers).

Stamp duty is chargeable at a rate of €30 for the 12-month chargeable period in respect of each charge card, company charge card and supplementary card. A reduced charge ***(2)(c)*** of €22.50 applies for the short chargeable period running from 2 April 2023 and ending on 31 December 2023.

Where a replacement account replaces an account maintained by the same promoter, and where the number of charge cards issued on the replacement account exceeds the number of charge cards on the original account, only each ***excess*** replacement card is chargeable to stamp duty. Similarly, where a replacement account replaces an account maintained by another promoter, and where the number of charge cards issued on the replacement account exceeds the aggregate number of charge cards stated in the letter of closure in relation to that other account, only each ***excess*** replacement card is chargeable to stamp duty. ***(2)(d)***

A promoter may only issue a letter of closure during a chargeable period for an account that has been closed during that period, if the account holder has accounted for the amount of stamp duty which the promoter is required to pay, in respect of the charge cards to which the account relates, for that period. ***(2)(e)***

A letter of closure may only be used once to treat an account as a replacement account. ***(2)(f)***

A promoter may only issue one original letter of closure in respect of an account and may only issue a duplicate letter to an account holder to whom the original letter issued where the promoter is satisfied that the original letter of closure has been lost or destroyed. Any duplicate letter must state that it is a duplicate of the original letter of closure. ***(2)(g)***

The remaining subsections are common to all cards, whether credit, charge or company or supplementary charge cards. ***(3) – (7)***

The Revenue Commissioners may obtain from banks and promoters whatever information they need to ensure that the correct amount of duty is paid. ***(3)***

The bank or promoter must pay the duty at the same time as the relevant statement is delivered. ***(4)***

Interest at the rate of 0.0219 per cent per day (see ***section 159D***) is chargeable, in addition to the duty, if the statement is not delivered by the due date which is the last day of the chargeable period or if duty is paid late. ***(5)***

A bank or promoter must retain the original letter of closure or any duplicate letter of closure received from a credit card account holder or charge card holder for a period of 4 years from the date of receipt of such letter. ***(5A)***

In the case of an account which is maintained in the name of more than one person, a letter of closure may only be issued to one person named on that account. ***(5B)***

This subsection enables the Revenue Commissioners to enforce delivery of the statement. ***(6)***

A bank or promoter may pass on the duty and any interest payable to its customers. ***(7)***

Statements are to be delivered under this section by electronic means. The relevant provisions of Chapter 6 of Part 38 of the Taxes Consolidation Act 1997 apply. Chapter 6 of Part 38 provides a legal framework for making electronic tax returns to the Revenue Commissioners. A tax return made electronically under these provisions has the same status as a return made on paper. ***(8)***
This provision applies to the chargeable period commencing on 1 January 2024 and subsequent chargeable periods. (section 70 of Finance Act 2022 refers).

Section 124A Preliminary duty: credit and charge cards

This section was repealed by section 61 of Finance Act 2021 (as amended by section 70 of Finance Act 2022) with effect from 1 January 2023. It does not apply to statements required to be delivered after 15 December 2022.

Section 124B Certain premiums of life assurance

Summary

This section provides for a levy of 1% on life assurance premiums. For each quarter, commencing with the quarter ending on 30 September 2009, an insurer must deliver to the Revenue Commissioners a statement showing the assessable amount for the insurer for the quarter. The statement must be accompanied by the amount of stamp duty payable. The assessable amount due in the quarter ending 30 September 2009 is that as is comprised of premiums received on or after 1 August 2009 in respects of contracts of insurance whenever entered into by an insurer.

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

- ***section 126B*** which enables an appeal against an assessment to duty (the internal review procedures set out in Statement of Practice SP-GEN/2/99 (Revised January 2005) also apply), and

- ***section 152*** which enables the Revenue Commissioners to refund duty in certain circumstances – but see also ***section 159A*** as regards the time limit for making a refund claim and ***section 159B*** as regards interest that may be payable on such refunds.

Details

"assessable amount" means the gross amount received by an insurer by means of premiums in a quarter for policies of insurance in the classes of insurance listed below and referred to in Annex 1 (to Directive 2002/83/EC of the European Parliament and of the Council of 5 November concerning life assurance) to the extent that the risks to which those policies of insurance are located in the State being risks deemed* to be located in the State in accordance with ***section 61*** of the Stamp Duties Consolidation Act 1999 (but excluding amounts received in respect of pension business and amounts received in the course of or by means of reinsurance): ***(1)***

- Class I - Life assurance and contract to pay annuities on human life.

- Class II - Contracts of insurance to provide a sum on marriage or on the birth of a child.

- Class III - Class I policies which are linked to investment funds.

- Class IV - Permanent health insurance.

- Class V - Tontines *i.e.* associations of subscribers which are established to benefit the beneficiaries of a subscriber on the death of that subscriber.

- Class VI - Capital redemption operations i.e. in return for a single (or periodic) payment agreed in advance, the policy holder will have a right to a specified sum for a specified period in the future.

*The risk is deemed to be located in the State if the policyholder has his or her habitual residence in the State, or where the policy holder is a legal person other than an individual, or if the policy holder's head office or branch to which the policy relates is situated in the State.

"branch" means an agency or branch of a policy holder or any permanent presence of a policy holder in the State even if that presence does not take the form of an agency or branch but consists merely of an office managed by the policyholder's own staff or by a person who is independent but has permanent authority to act for the policyholder in the same way as an agency.

"due date" for each "quarter" is —

25 April, for the quarter ended 31 March,

25 July, for quarter ended 30 June,

25 October, for quarter ended 30 September, and

25 January, for the quarter ended 31 December.

"electronic means" is the same as that used in section 917EA of the Taxes Consolidation Act 1997 as the electronic statements will be treated as if they were electronic returns under that Act.

"insurer" means —

- a person who is the holder of an assurance licence under the Insurance Act 1936,
- the holder of an authorisation within the meaning of the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994), or
- the holder of an official authorisation to undertake insurance in Iceland, Liechtenstein or Norway, pursuant to the EEA Agreement within the meaning of the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent agreements to that Agreement, who is carrying on the business of life assurance in the State.

"premium" takes its meaning from the Insurance Act 1936 and means "any money or money's worth payable or paid to any person who carries on an assurance business and who in consideration of such money or money's worth undertakes any liability under any policy, bond or certificate".

An insurer shall in each quarter deliver to the Revenue Commissioners a statement, not later than the due date, showing the assessable amount for the insurer for the quarter. ***(2)***

Stamp duty at a rate of 1% is chargeable on the assessable amount shown in the statement. ***(3)***

The statement must be accompanied by the amount of stamp duty payable. ***(4)***

Insurers must furnish to the Revenue Commissioners whatever information they require to ensure that the correct amount of duty is paid. ***(5)***

Interest at the rate of 0.0219 per cent per day (by reference to ***section 159D)*** is chargeable, in addition to the duty, on the unpaid duty from the due date to the date the duty is paid. ***(6)***

Where during any accounting period but before a due date, an insurer ceases to carry on a business and another person acquires the whole, or substantially the whole, of the ***(7)*** business, the insurer will not be obliged to make the statement to the Revenue Commissioners on the due date. Instead, the statement is required to be made by the successor. If the successor is already obliged to make a statement, the successor must include details of the business acquired in its return. Otherwise, the successor is obliged to make a statement in lieu of the insurer.

The section provides for the delivery of a statement in electronic form and applies the provisions of Chapter 6 of Part 38 Taxes Consolidation Act 1997 which provides the legal framework for electronic returns to Revenue. ***(9)***

Section 125 Certain premiums of insurance

Summary

This section imposes a stamp duty of 3 per cent on the gross amount received by an insurer in respect of certain non-life insurance premiums. The exceptions are re-insurance, voluntary health insurance, marine, aviation and transit insurance, export credit insurance and certain dental insurance contracts. The 3 per cent rate of duty applies to premiums received on or after 1 June 2009 in respect of offers of insurance or notices of renewal of insurance issued by an insurer on or after 8 April 2009. In relation to notices of renewal or offers of insurance issued prior to 8 April 2009 stamp duty at a rate of 2 per cent applies.

Other appropriate provisions of this Act apply, in particular:

section 126B which enables an appeal against an assessment to duty

section 126C *which applies a surcharge for late filing of a return, and*

section 152 which enables the Revenue Commissioners to refund duty in certain circumstances – but see also ***section 159A*** as regards the time limit for making a refund claim and ***section 159B*** as regards interest that may be payable on such refunds.

Details

"assessable amount", "excluded amount" and "quarter" are self-explanatory.

In determining the amount on which duty is payable (i.e. the assessable amount) no account is to be taken of excluded amounts. The definition of "excluded amount" includes— ***(1)***

- an amount received in the course or by means of reinsurance;
- a premium received in respect of the various classes of business which are identified by reference to the classification which appears in the Annex to the First Council Directive 73/239/EEC of 24 July, 1973 (OJ No L228 of 16 August, 1973). Those classes of business are:
    - Class 4. Railway rolling stock – all damage to or loss of,
    - Class 5. Aircraft – all damage to or loss of,
    - Class 6. Ships – all damage to or loss of river, canal, lake or sea vessels,
    - Class 7. Goods in transit – all damage to or loss of goods in transit including merchandise, baggage and all other goods,
    - Class 11. Aircraft liability – all liability arising out of the use of aircraft including carrier's liability,

- Class 12. Liability for ships – all liability arising out of the use of vessels on sea, lakes, rivers, or canals including carrier's liability.

- the following classes, in so far as they relate to the insurance of passengers in marine and aviation vehicles and to carriers liability insurance respectively:

  - Class 1. Accident, including industrial injury and occupational diseases;

  - Class 10. Motor vehicle liability;

  - Class 14. Credit, in so far as it relates to export credit;

- a premium received in respect of health insurance business (being health insurance business within the meaning of section 2 of the Health Insurance Act 1994);

- a premium received in respect of insurance contracts entered into on or after 25 March 2004, the sole purpose of which is the provision of dental services other than those involving surgical procedures carried out in a hospital by way of in-patient services within the meaning of section 2(1) of the Health Insurance Act 1994.

The definition of "insurer" covers authorisations granted under the Regulations implementing the First, Second and Third Non-Life Insurance Directives. Thus, foreign-based insurers may be within the charge to duty to the extent that they receive premiums in respect of risks located in the State.

"premium" is assigned the meaning it has in the Insurance Act 1936, i.e. "…any money or money's worth payable or paid to any person who carries on an assurance business and who in consideration of such money or money's worth undertakes any liability under any policy, bond or certificate".

"electronic means" is the same as that used in section 917EA of the Taxes Consolidation Act 1997 as the electronic statements will be treated as if they were electronic returns under that Act.

An insurer[4] must furnish to the Revenue Commissioners, within 25 days from the end of each quarter, a statement showing the assessable amount for that quarter. ***(2)***

Stamp duty at the rate of 3% is chargeable on the assessable amount shown in the statement. ***(3)***

The statement must be accompanied by the amount of duty payable. ***(4)***

The Revenue Commissioners may obtain whatever information they require to ensure that the correct amount of duty is paid. ***(5)***

On failure to lodge the statement by the due date or to pay the duty within the time specified, interest is chargeable, in addition to the duty, at the rate of 0.0219 per cent per day (see ***section 159D***) from the end of the relevant quarter. ***(6)***

[4] In the case of co-insurance the leading insurer is responsible for the delivery of the statement and payment of the duty. However, if the leading insurer does not come within the definition set out in the European Communities (Co-Insurance) Regulations 1983, then each co-insurer is responsible for delivering a statement and paying the duty in respect of the portion of the gross premium received by that co-insurer.

The section provides for the delivery of a statement in electronic form and applies the provisions of Chapter 6 of Part 38 Taxes Consolidation Act 1997 which provides the legal framework for electronic returns to Revenue. ***(8)***

Section 125A Levy on authorised insurers

Summary

This section provides for the collection of a levy on health insurance companies based on the number of persons covered by policies underwritten by them.

The levy is not imposed on Restricted Membership Undertakings, on outpatient/GP products, on cash plans, on certain international contracts or on contracts relating solely to the charge for public hospital in-patient services. The levy is to be paid to the Revenue Commissioners every three months on 21 February, 21 May, 21 August and 21 November.

Details

The section contains definitions of "accounting period", "advanced cover" and "non-advanced cover", "authorised insurer", "due date", "electronic means", "excluded contract of insurance", "in-patient indemnity payment" "insured person", "relevant contract", "restricted membership undertaking" and "specified rate", which are self-explanatory. ***(1)***

An authorised insurer must deliver to the Commissioners a statement not later than the 21st day of the second next month following the end of the accounting period in question. ***(2)***

The statement must include the number of insured persons aged less than 18 years and aged 18 years and over, on the first day of the relevant accounting period, in respect of whom a relevant contract, which provides for either advanced cover or non-advanced cover, is renewed or entered into during the accounting period.

Stamp duty is chargeable at the "specified rate" on a statement delivered under ***subsection (2)***. ***(3)***

The specified rate in relation to a statement delivered under ***subsection (2)*** in respect of contracts renewed or entered into during the period commencing on or after 1 January 2023 and ending on 31 March 2023 is:

- €41 in respect of an insured person aged less than 18 years insured under a contract which provides for non-advanced cover,

- €135 in respect of an insured person aged less than 18 years insured under a contract which provides for advanced cover,

- €122 in respect of an insured person aged 18 years or over insured under a contract which provides for non-advanced cover, and

- €406 in respect of an insured person aged 18 years or over insured under a contract which provides for advanced cover.

The specified rate in relation to a statement delivered under ***subsection (2)*** in respect of contracts renewed or entered into on or after 1 April 2023

- €36 in respect of an insured person aged less than 18 years insured under a relevant contract which provides for non-advanced cover

- €146 in respect of an insured person aged less than 18 years insured under a relevant contract which provides for advanced cover,

- €109 in respect of an insured person aged 18 years or over insured under a relevant contract which provides for non-advanced cover, and

- €438 in respect of an insured person aged 18 years or over insured under a relevant contract which provides for advanced cover.

The stamp duty charged on a statement is payable on delivery of the statement. ***(4)***

The Revenue Commissioners may obtain whatever information they require to ensure that the correct amount of duty is paid. ***(5)***

In the case of failure to deliver a statement by the due date, interest is chargeable on the unpaid stamp duty in accordance with ***section 159D*** from the due date to the date the duty is paid. ***(6)***

Where during any accounting period but before a due date, an authorised insurer ceases to carry on a business and another person acquires the whole, or substantially the whole, of the business, the authorised insurer will not be obliged to make the statement to the Revenue Commissioners on the due date. Instead, the statement is required to be made by the successor. If the successor is already obliged to make a statement, it must include details of the business acquired in its return. Otherwise, the successor is obliged to make a statement in lieu of the authorised insurer. ***(7)***

An authorised insurer may not claim the duty or any interest or penalty paid as a deduction in the computation of any other tax or duty which is payable by the authorised insurer. ***(9)***

Where a person during an accounting period switches from one authorised insurer to another and the first authorised insurer is required to include insured persons on that insurers' statement for that accounting period, the second authorised insurer may exclude those insured persons who are required to be included on the first insurer's statement from the statement required to be delivered by the second authorised insurer for the same accounting period. The Revenue Commissioners have issued guidelines to ensure that only one levy is paid in any 12-month period for each insured person regardless of the number of health insurance contracts that person has entered into in the 12-month period. ***(10)***

This subsection makes similar provision to that made in ***subsection (10)*** where an insured person is deleted from one contract of insurance and takes out a contract of insurance in his or her own right during the same accounting period. ***(11)***

This subsection prevents a contract being taken out for more than one year to avoid payment of the levy. Such contract is deemed to be a yearly contract for each year covered by the contract. ***(12)***

Statements are to be delivered under this section by electronic means. The relevant provisions of Chapter 6 of Part 38 of the Taxes Consolidation Act 1997 apply. Chapter 6 of Part 38 provides a legal framework for making electronic tax returns to the Revenue Commissioners. A tax return made electronically under these provisions has the same status as a return made on paper. ***(13)***

Note: This provision applies to accounting periods commencing on or after 1 January 2023 (section 71of Finance Act 2022 refers).

Section 125B Levy on Pension schemes

Summary

This section provides for the collection of a levy on pension schemes. When first introduced the levy applied in the years 2011, 2012, 2013 and 2014 and the levy was charged at 0.6% on the value of the assets in a scheme on the 30 June in each year. [An exception may apply, as set out in the definition of "chargeable amount", to defined benefit occupational pension schemes and small self-administered schemes, as respects the assets of such schemes held other than by way of contracts of assurance.]

Under section 71 of the Finance (No. 2) Act 2013, the rate of the levy was increased by 0.15% to 0.75% for the year 2014 and the levy was extended to the year 2015 at the rate of 0.15%.

The levy is payable to the Revenue Commissioners on 25 September in each year and the statement, together with the payment, must be made electronically.

Details

Definitions are provided for certain terms used in this section. Most of these definitions are self-explanatory: ***(1)***

"Administrator" is defined in relation to a scheme (defined later) as meaning the trustees or "other persons having the management of the assets of the scheme". It is usual that the trustees of a scheme would hand over the management of the scheme and the scheme assets to professional administrators and/or investment managers. It is administratively desirable that such administrators/investment managers should value the assets, determine the liability to the levy and make the necessary return and payment. The definition goes on to put beyond doubt that it includes within its terms:

- An administrator of a retirement benefits scheme,
- An insurer carrying on a business of granting retirement annuity contracts and annuity contracts providing death in service benefits,
- An administrator of a Personal Retirement Savings Account,
- a PEPP provider, within the meaning of Chapter 2D of Part 30 of the Taxes Consolidation Act 1997.

"Assets" is defined to include all property, including investments, deposits, debts and contracts of assurance, held for the purposes of a scheme, other than excluded assets. Contracts of assurance are included so that there will be no doubt that the value of such contracts will be an asset of a scheme for the purposes of determining a chargeable amount under subsection (2). However, where the trustees of a retirement benefit scheme hold such contracts the levy will be charged not on the trustees but on the insurer who holds the investments backing the contract.

"Chargeable Amount" is the amount on which the levy of 0.6% is to be calculated. It is defined as the aggregate market value of the assets of a pension scheme (and in the case of land the market value is to be calculated net of any outstanding borrowings used to acquire the land) on a fixed valuation date of 30 June in each of the years 2011, 2012, 2013, 2014 & 2015 subject to the exception provided for in paragraph (b) of the definition. In essence, all pension scheme assets held in the form of contracts of assurance and all defined contribution occupational pension scheme assets will be valued for levy purposes on 30 June in each of the years 2011 to 2015.

An exception to the fixed valuation date will apply in the case of defined benefit occupational pension schemes and small self-administered schemes, as respects the assets of such schemes held other than by way of contracts of assurance. In these cases, the administrator may choose to value the assets at 30 June in each year or, where it has been customary to prepare accounts to an appropriate accounting standard to a different date, to use the valuation of the assets on the last day of the most recent scheme accounting period ended in the preceding 12 months.

Note the 30 June valuation date reflects the fact that most Life Companies value unit funds etc. backing contracts of assurance at the end of each quarter and so avoids such companies having to undertake an additional valuation if any other date was chosen, thus avoiding added administrative costs which might otherwise be passed on to trustees and scheme members.

"Chargeable Person" is defined to mean an insurer, in relation to a contract of assurance and an administrator, in relation to any other assets of a scheme.

"Contract of Assurance" means:

(a) a contract of assurance linked to pension business (as described in section 706(3) of the Taxes Consolidation Act 1997) undertaken by pension schemes with Life Companies, and

(b) any other policy or contract of assurance undertaken by the administrator of a retirement benefit scheme with Life companies. This brings with the definition what is called "investment only" business between pension schemes and Life Companies. The only exception to this is in relation to Small Self-Administered Schemes who hold trustee investment plans with Life Offices – the case has been made that in such cases the trustees of the scheme should remain responsible for the levy and the legislation provides accordingly.

"Due Date" is the date by which the levy is to be paid to the Revenue Commissioners by the chargeable person and is a fixed date of 25 September in each of the years 2011 to 2015.

"Excluded Assets" are assets that will not be subject to the levy. Essentially they are assets that represent the liabilities of an occupational pension scheme in respect of benefits to members whose employment, in the case of active members, is and always was exercised wholly outside the State, or in the case of deferred or retired members, whose employment always had been exercised outside the State. The exclusion applies, therefore, whether the member is still employed or has left the employment but with deferred benefits retained in the scheme or is actually retired and in receipt of pension benefits from the scheme, once the employment is and always was exercised outside the State.

This exclusion is designed primarily to ensure that the assets attributable to those members of certain Irish approved pension funds who are based wholly abroad, primarily in the United Kingdom, are not subject to the levy.

Assets of pension funds that are referable to individuals who are, or were, temporarily assigned to work abroad are not exempt from the levy.

"Insurer" means the holder of an authorisation to carry on insurance of a class listed in Schedule 2 to the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015).

"Market Value" has the same meaning as in Section 548 of the Taxes Consolidation Act 1997 – which generally provides that market value is the price that an asset might reasonably be expected to fetch on an arm's length sale in the open market. The only exception applies in relation to assets that are Land – in such cases the definition of "chargeable amount" provides that any outstanding borrowing used to acquire the land may be deducted from the market value.

"Member", is defined as any person admitted to membership of a retirement benefits scheme under the rules of the scheme;

“one member scheme” means, in effect, a single member Small Self-Administered Scheme – Small Self-Administered Schemes are the only retirement benefit schemes in respect of which Revenue approval requires the delivery of annual scheme accounts to Revenue.

“Pension Fund”, in relation to an insurer, is defined in accordance with section 706(2) of the Taxes Consolidation Act 1997 (which in the normal course would relate to the insurer’s pension business) but expanded to include “investment only” business as well (as per the definition of contract of assurance). The relevance of this term is in relation to subsection (12)(a) where insurers are permitted to treat the levy as a disbursement from their “pension funds” and adjust accordingly the benefits under any contract.

“Scheme” essentially includes:

> a retirement benefits scheme, approved by Revenue under the Taxes Consolidation Act 1997 or under any other enactment (including any enactment that is repealed) – the latter ensures that schemes approved under now repealed legislation are also caught.
>
> an annuity contract or a trust scheme or part of a trust scheme approved under section 784 (which relates primarily to retirement benefits under retirement annuity contracts) or section 785 (which relates to annuities providing for death in service benefits) of the TCA 1997 – but excluding “vested” annuity contracts. As regards the latter, there are certain older type deferred annuity contracts where the annuity becomes payable automatically as part of the contract, as opposed to an open market purchase option that applies in more modern annuity contracts. The definition clarifies that once an annuity is vested, which in most cases arises when the tax-free lump sum is taken, it is no longer subject to the levy.
>
> a personal retirement savings account contract - other than a “vested” PRSA, i.e. a PRSA in respect of which a lump sum, to which paragraph (a) of section 787G(3) of the Act of 1997 applies, has been paid or made available to the PRSA contributor.
>
> a PEPP contract, within the meaning of Chapter 2D of Part 30 of the Taxes Consolidation Act 1997, in respect of a PEPP, within the meaning of that Chapter, other than a PEPP contract in respect of which a lump sum, to which paragraph (a) of section 787AA(3) of that Act applies, has been paid or made available to the PEPP contributor.
>
> However, as regards retirement benefit schemes, it does not include a scheme in respect of which-
>
> (a) the trustees have passed a resolution to wind-up the scheme, and
>
> (b) the employer is insolvent, for the purposes of the Protection of Employees (Employers’ Insolvency) Act 1984.

“valuation date” means the appropriate date under paragraphs (a) or (b) of the definition of “chargeable amount” used to value the scheme assets. This definition has relevance to subsection (12)(b) in the context of the option provided to scheme trustees to reduce benefits to members.

A chargeable person must provide no later than the due date, in electronic format, a statement to Revenue of the chargeable amount on which the levy is calculated for each year. ***(2)***

The stamp duty is 0.6% for the years 2011, 2012 & 2013, .75% for the year 2014 and 0.15% for the year 2015 of the chargeable amount included in the statement mentioned in subsection (2). ***(3)***

The stamp duty is to be paid by the chargeable person on delivery to Revenue of the statement mentioned in subsection (2) and the payment, like the statement, must be made electronically. ***(4)***

This subsection provides: ***(5)***

- that a chargeable person who is liable to pay the levy is entitled to dispose of or appropriate scheme assets for the purposes of meeting the amount of the levy payable. Such action by the chargeable person does not affect the Revenue Commissioner's approval of a scheme, and

- that where a chargeable person, who is not a trustee, for example a Life Office in respect of insurance contracts held as assets of a scheme, pays the levy through the disposal or appropriation of scheme assets that the trustees must allow that course of action and that the chargeable person is acquitted and discharged as regards any such disposal.

There is an explicit protection for a chargeable person from any court action by reason of having paid the levy by way of disposal or appropriation of scheme assets. ***(6)***

It is put beyond doubt- ***(7)***

- that the chargeable person and the trustees of a scheme are both jointly and severally liable for payment of the levy, and

- that this joint and several liability of the chargeable person and the trustee also applies in the particular circumstances of one-member Small Self-Administered Schemes, where both the member and the administrator are trustees of the scheme.

This subsection is a standard provision that provides that failure to deliver the necessary statement, or to pay the stamp duty by the due date, will result in: ***(8)***

- an interest charge, and

- a daily penalty of €380,

for each day the stamp duty remains unpaid.

This subsection is also a standard provision that provides for the situation where a chargeable person, who is liable to deliver a statement and pay the stamp duty, ceases to carry on business prior to a due date and the business is taken over by a successor. ***(9)***

If the successor was a chargeable person in his/her own right before taking over the business of another chargeable person, the successor must include, in the statement to be delivered by him /her, the chargeable amount in respect of the business taken over. It also provides that if the successor was not a chargeable person in his /her own right before taking over of a business, the successor must nevertheless deliver the statement due to be delivered in respect of the business taken over.

This subsection is again a standard provision providing for enforcement by the Revenue Commissioners where there is default by a chargeable person in the delivery of a statement. ***(10)***

This provides that the stamp duty charged by the section cannot be claimed as a deduction or a credit in computing any other tax or duty for which the chargeable person is liable. ***(11)***

This subsection provides that, notwithstanding any provision of any enactment or any rule of law, or anything in the rules of a scheme, or in the terms and conditions of a contract that might otherwise restrict the adjustment of scheme benefits, if ***(12)***

- a chargeable person who is an insurer, pays the levy in respect of a contract of assurance, the levy amount shall be deemed to be a necessary disbursement from the pension fund of the insurer and the insurer may pass on the levy to the insured person by adjusting any benefits payable under the contract; any such action on the part of the insurer will not prejudice Revenue approval of the contract as a retirement annuity contract.

- a chargeable person who is an administrator pays the levy in respect of the assets of a scheme or if the levy in respect of any assets of the scheme is paid by some other chargeable person (e.g. an insurer in respect of assets of the scheme that are held in the form of contracts of assurance), any such payment shall be deemed to be a necessary disbursement from the scheme assets and the trustees may pass on the levy by adjusting any benefits payable currently or prospectively to any scheme member. Paragraph (b) also provides that, should the option of reducing scheme benefits be taken, it must essentially be applied in an equitable fashion across the different classes of scheme members that could include active, deferred and retired members. In no case may the reduction in an individual member's or class of member's benefits exceed the member's or class of member's share of the levy. Any action on the part of the trustees to adjust scheme benefits will not prejudice Revenue approval of the retirement benefits scheme.

The Commissioners have authority to review any case where assets are disposed of by administrators or trustees in order to pay the levy to ensure that any such disposals are in keeping with or needed in order to pay the levy. It also gives the Commissioners oversight authority to review instances where benefits are adjusted as a result of the payment of the levy to ensure that any such adjustment is made in accordance with the requirement of the levy legislation and, in particular, with the requirements of subsection (12)(b) which stipulates that, as respects any member of a scheme, the adjustments must ensure that any diminution in value of the benefits shall not exceed the amount of the levy on the assets attributable to the schemes liabilities in respect of that member. ***(13)***

As regards the latter function, it also allows the Revenue Commissioners to consult with appropriate experts, where necessary.

Section 125C Policies of insurance other than life insurance

Summary

This section was introduced by section 62 of Finance Act 2021 and applies a levy on policies of non-life insurance. It replaced the POLICY OF INSURANCE and INSURANCE heads of charge in Schedule 1**.**

Details

Definitions used in the section.

"electronic means" is the same as that used in section 917EA of the Taxes Consolidation Act 1997 as the electronic statements will be treated as if they were electronic returns under that Act.

“insurer” has the same meaning as in section 125, which is:

- a person who is the holder of an assurance licence under the Insurance Act, 1936,
- a person who carries on the business of insurance in compliance with the Assurance Companies Act 1909, or
- the holder of an authorisation to carry on insurance of a class listed in Schedule 1 to the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015), this includes United Kingdom and Gibraltar based insurers authorised under these Regulations.

“premium” has the same meaning as in the Insurance Act, 1936. It means any money or money's worth payable or paid to any person who carries on an assurance business and who in consideration of such money or money's worth undertakes any liability under any policy, bond or certificate.

*“*quarter*”* means a period of 3 months ending on the 31st day of March, the 30th day of June, the 30th day of September or the 31st day of December.

“relevant policy” means a policy of non-life insurance where the risk to which the policy relates is located in the State and the premium or premiums payable over a period of 12 months is €20 or greater.

This section provides for an insurer to submit a statement within 25 days of the end of each quarter showing the number of policies issued during the quarter. ***(2)***

The section imposes a €1.00 charge for each policy included in the statement. ***(3)***

Payment shall be made on delivery of the statement. ***(4)***

The promoter is required to provide any details required by the Commissioners in relation to the statement ***(5)***

This section imposes an interest charge for late payment calculated in accordance with ***section 159D*** from the date the duty was required to be paid to the date of payment. ***(6)***

This section stipulates that the delivery of a statement required under this section be in electronic form and applies the provisions of Chapter 6 of Part 38 Taxes Consolidation Act 1997. ***(7)***

Section 126 Certain statements of interest

Summary

This section imposes a levy on the amount of interest received by a company in respect of certain loans i.e. so-called “section 84” loans.

The general scheme of the section is that a company which has made a loan to another company on a “section 84” basis must furnish statements of interest received to the Revenue Commissioners. A statement must be furnished within 30 days of the 31 January and 31 July in each year in respect of the relevant interest received by the lender during the 6-month period ending on each of those dates. Stamp duty is levied at the rate of 12% on the amount of the interest received. The duty is payable on the delivery of the statement, that is, within 30 days from the end of each 6-month period.

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

section 14(3) which enables the Revenue Commissioners to mitigate penalties payable in respect of late payment of duty,

section 152 which enables the Revenue Commissioners to refund duty in certain circumstances – but see also ***section 159A*** as regards the time limit for making a refund claim and ***section 159B*** as regards interest that may be payable on such refunds.

Details

The purpose of this section is to recoup some of the corporation tax which had been avoided through the use of "section 84" loans. Section 84 of the Corporation Tax Act, 1976 (now section 130 of the Taxes Consolidation Act, 1997), was introduced to combat an avoidance scheme whereby a company which received a loan from another company could obtain tax relief on its interest payments. Simply stated, section 84 deemed such interest payments to be distributions and, therefore, not tax deductible. However, another provision, in section 2 (now section 129 of the Taxes Consolidation Act, 1997) of the same Act, exempted from corporation tax dividends or other distributions received by one Irish resident company from another.

By exploiting the definition of "distributions" it was possible for a company to reduce its liability for corporation tax. Expressing the interest on a loan at a rate per cent plus a minuscule percentage of the company's profits was sufficient to convert the interest into a distribution. The result was that one company could lend money to another and have the repayment of interest on the loan so structured that the interest received was not taxable in the hands of the lender. The attraction of structuring the loan in this way for the borrower lay in the fact that the lender passed on some of its profit on the loan to the borrower in the form of a lower interest rate. This benefit outweighed the cost to the borrower of having to pay corporation tax on the distribution because the typical "section 84" borrower is one who suffers little or no corporation tax.

"corporation tax", "Corporation Tax Acts", "relevant interest" and "relevant period" are self-explanatory. The definition of "relevant interest" refers to a number of subparagraphs in section 130(2)(*d*) of the Taxes Consolidation Act, 1997. The subparagraphs referred to are: ***(1)(a)***

subparagraph (ii) - this treats interest as a distribution where the security for the loan is convertible (or has a right of conversion) into shares,

subparagraph (iii)(I) - this treats interest as a distribution where the rate or level of the interest is to any extent dependent on the results of the business of the borrower, and

subparagraph (v) - this treats interest as a distribution where the security for the loan is connected with the holding by the lender of some shares in the borrower.

Where the account of the borrowing company is debited with an amount of relevant interest, the amount so debited is treated as received by the lender. This is to counter any arguments as to whether an amount so debited could be regarded as within the strict meaning of the word "received". ***(1)(b)***

The lender must deliver a statement of the relevant interest to the Revenue Commissioners within 30 days of the end of each 6-month period ending on 31 January and 31 July. ***(2)***

Stamp duty at a rate of 12% is chargeable on the amount of the relevant interest shown in the statement. ***(3)***

Where, however, the interest received on foot of the security (or loan) is less than 6% p.a. throughout the period for which the interest is payable (which will be normally be 6 months but may be less for an initial payment or for a final payment in respect of a loan), the rate of duty is 8%. ***(4)***

The statement must be accompanied by the amount of duty payable. ***(5)***

The Revenue Commissioners may obtain whatever information they need to ensure that the correct amount of duty is paid. ***(6)***

On failure to deliver the statement by the due date or to pay the duty interest is chargeable, in addition to the duty, at the rate of 2.5% per month or part of a month from the expiration of the relevant period. ***(7)***

This subsection enables the Revenue Commissioners to enforce delivery of the statement. ***(8)***

A lender may not claim the duty paid as a deduction in the computation of any other tax or duty which is payable by the lender. ***(9)***

Section 126AA Further levy on certain financial institutions

Summary

This section provides for an annual levy on certain financial institutions in the years 2014 to 2023 which is payable on 20 October in each of these years. This is sometimes referred to as the "bank levy".

Details

Definitions are provided for certain terms used in this section. Most of these definitions are self-explanatory: ***(1)***

"appropriate tax" means the amount of DIRT deducted from interest paid on deposit accounts under section 256 of the Taxes Consolidation Act 1997.

"assessable amount" is the base on which the levy will be calculated (i.e. the DIRT attributable to the financial institution for the base year).

"base year" for the 2014 to 2016 was 2011. The base year for the years 2017 and 2018 was 2015. The base year for the years 2019 and 2020 was 2017 and for the years 2021, 2022 and 2023 it is 2019.

"relevant business" means the business of taking and holding deposits (within the meaning of section 256 of the Taxes Consolidation Act 1997) in respect of which DIRT was paid under sections 258 or 259 of the Taxes Consolidation Act 1997.

"due date" is the date on which the levy is payable (i.e. 20 October in 2021, 2022 and 2023).

"relevant person" means a financial institution which—

- in the base year was the holder of a banking licence or was a building society, and
- was obliged to pay DIRT in the base year, and

- is carrying on a trade or business in the State – whether including a business of taking and holding deposits or not on the date the statement is due for the year.

A financial institution, whose payment of DIRT did not exceed €100,000 in the base year, is excluded from payment of the levy.

“relevant retention tax” means the amount of DIRT that should have been paid in the base year whether paid in the base year or after the base year. DIRT amounts paid in the base year that are attributable to an earlier year are excluded.

Details of the DIRT attributable to the base year are:

1. By the 15th January in the base year, the balance of the financial institutions D.I.R.T. paid (or that should have been paid) for the previous tax year.

2. By the 20th April in the base year, initial D.I.R.T. paid (or that should have been paid) [covering the period 1st January to 31st March].

3. By the 20th July in the base year, 2nd D.I.R.T. paid (or that should have been paid) for the base year [covering the period 1st April to 30th June].

4. By the 20th October in the base year, 3rd D.I.R.T. paid (or that should have been paid) for the base year [covering the period 1st July to 30th September].

A financial institution is required to deliver to the Revenue Commissioners, by the due date in each of the years 2014, to 2023, a statement showing the assessable amount for that institution. ***(2)***

Where, between 1 January in a base year and a due date, a financial institution ceases to carry on a relevant business (i.e. a business of taking and holding deposits) and another person acquires the whole or substantially the whole of the relevant business, the financial institution will not be obliged to deliver the statement to the Revenue Commissioners on the due date. Instead, the statement is required to be delivered by the successor. If the successor is already obliged to deliver a statement, it must include the details in its return. Otherwise, it is obliged to deliver a statement in lieu of the financial institution. ***(3)***

KBC Bank Ireland plc and Ulster Bank Ireland DAC are not considered relevant persons for the year 2022 or 2023, therefore these institutions will not be liable for payment of the levy in the year 2022 or 2023. This also excludes any successor with regard to subsection 4 and 5. ***(3A)***

Where a further succession takes place before a due date, the person who succeeds to the relevant business assumes the responsibility for delivery of the statement to the Revenue Commissioners in place of the person from whom the relevant business was acquired. Similar rules apply for a subsequent succession and for any further successions to a relevant business. ***(4) & (5)***

A stamp duty of an amount equal to 308 per cent of the assessable amount is chargeable on the statement which is required to be delivered to the Revenue Commissioners. ***(6)***

The stamp duty is payable by the financial institution on delivery of the statement to the Revenue Commissioners. ***(7)***

The financial institution is obliged to furnish any information required by the Revenue Commissioners in relation to the statement. ***(8)***

The failure to deliver a statement and to pay the stamp duty by the due date will result in an interest charge (see ***section 159D***) and a penalty of €380 for each day the stamp duty remains unpaid. ***(9)***

A financial institution may not claim the stamp duty, or any interest or penalty chargeable under the section, as a deduction in the computation of any tax or duty payable by that financial institution. ***(11)***

Section 126B Assessment of duty charged on statements

Summary

This section allows the Revenue Commissioners to make assessments in relation to the duty due on ATM, debit, combined cards, on charge cards and credit card accounts, on the insurance levy, the bank levy and on the pensions levy should the need arise.

Details

Section 126B contains definitions most of which are self-explanatory. ***(1)***

"relevant person" means a person that is required to deliver a statement to the Commissioners under a specified section

"specified section" means sections 123B, 123C, 123D, 124, 124A,124B, 125, 125A, 125B, 125C or 126AA

The Revenue Commissioners have the power to make a written assessment where a statement that is required to be delivered by a relevant person is not delivered or is delivered but is not correct. ***(2) & (3)***

Subject to an assessment being appealed, the duty assessed and any interest and penalty in relation to the duty is payable to the Revenue Commissioners. In addition, where the required statement is submitted after an assessment has been raised, the Revenue Commissioners can substitute a revised assessment. ***(4)***

A relevant person, who is dissatisfied with an assessment, may appeal the assessment to the Appeal Commissioners. An appeal may only be lodged following payment of the stamp duty in conformity with the assessment. A person intending to appeal must give notice in writing to the Revenue Commissioners of their intention to appeal within 30 days of the date of the assessment. ***(5)***

The Revenue Commissioners may make a correcting assessment where an assessment already made is incorrect or incomplete. ***(7)***

The Revenue Commissioners may make an assessment of additional duty payable in circumstances where it comes to notice that the duty already paid on an assessment is insufficient. ***(8)***

Where an assessment is appealed and becomes final and conclusive the date on which the duty should have been originally paid is the date from which any interest and penalties are payable. ***(9)***

Any assessment raised in accordance with section 126B shall include a surcharge applying under section 126C(3). ***(11)***

Section 126C Surcharge for late filing of a return

Summary

This section applies a surcharge for incorrect or late returns in the same manner as other parts of the Act and the Taxes Consolidation Act 1997.

Details

This subsection contains the following definitions: ***(1)***

“due date” means the date on which a statement is required to be delivered to the Commissioners under a specified section.

“relevant person” means a person that is required to deliver a statement to the Commissioners under a specified section.

“specified section” means section 123B, 123C, 123D, 124, 124A, 124B, 125, 125A or 125C.

This section provides that the delivery of a return in the following circumstances is regarded as a failure to deliver a timely return: ***(2)***

- Where a relevant person deliberately or carelessly causes the delivery of an incorrect statement on or before the specified return date, the person is regarded as having failed to deliver the statement on or before that date unless a correct statement is delivered on or before that date.

- Where a relevant person causes the delivery of an incorrect statement on or before the specified return date, but does so neither deliberately or carelessly, and it comes to the person’s notice that the statement is incorrect, the person is deemed to have failed to deliver the statement on or before that date unless a correct statement is delivered without unreasonable delay.

- Where a relevant person causes the delivery of statement on or before the specified return date but the Revenue Commissioners being dissatisfied with the statement require the person by written notice to deliver a statement or evidence, the person is deemed to have failed to deliver the statement on or before the specified return date unless the person delivers the statement or evidence as requested by the Commissioners within the time specified in the notice.

Where a relevant person fails to cause the delivery of a statement on or before the specified return date, the stamp duty chargeable is to be increased by a surcharge amount equal to: ***(3)***

- 5 per cent of the amount of the stamp duty, subject to a maximum of €12,695 for delays in delivery of less than 2 months, and

- 10 per cent of the amount of the stamp duty, subject to a maximum of €63,485 for delays in delivery of 2 months or more