Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2024 edition

Part 4

Principal provisions relating to the Schedule D Charge

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PART 4
PRINCIPAL PROVISIONS RELATING TO THE SCHEDULE D CHARGE

CHAPTER 1
Supplementary charging provisions

Overview

This Chapter contains a number of provisions which are supplementary to or extend the basic Schedule D charging provisions contained in ***section 18***. It should be noted that these are not comprehensive and a Schedule D charge to tax is imposed by many other sections of the Act in the context of specific provisions (for example, the anti-avoidance provisions of ***Part 33***).

52 Persons chargeable

Income tax under Schedule D is charged on and is paid by persons and bodies of persons receiving or entitled to the income in respect of which tax under that Schedule is directed to be charged by the Income Tax Acts. In particular, this provision ensures that the trustees of a settlement may be charged to income tax under Schedule D on any income which passes through their hands or on any income which they are entitled to but which they may not actually receive (it should be noted that, in practice, in some circumstances trustees may not be charged on income which they are entitled to receive provided some other person can be charged).

53 Cattle and milk dealers

Cattle and milk dealers who use farm land (that is, land in the State wholly or mainly used for farming other than land used for market gardening) where such land is insufficient for the upkeep of any cattle brought onto the land are treated as carrying on a trade. The profits of such cattle and milk dealers are to be charged to tax under Case I of Schedule D.

54 Interest, etc paid without deduction of tax under Schedule C

This section provides an alternative method of assessment for interest, dividends, etc payable out of the Public Revenue of the State or the United Kingdom where for any reason tax under Schedule C has not been deducted. In such a case, the person entitled to receive such payments is chargeable by direct assessment under the appropriate Case of Schedule D.

55 Taxation of strips of securities

Summary

This section provides a tax regime for a form of financial instrument known as a strip. This regime applies to strips of all kinds (including strips of Irish Government securities).

A strip of an interest bearing security is created when the right to receive each interest payment and the right to receive the capital repayment on redemption is separated from other rights to receive payments in respect of the security (for example, a 3 year, €100 bond which bears annual interest of 4 per cent could be split into 4 separate securities, one yielding €4 at the end of year 1, one yielding €4 at the end of year 2, one yielding €4 at the end of year 3 and the fourth yielding €100 also at the end of year 3).

Where strips are created each strip can then be traded independently. Strips can also be reassembled or reconstituted back into the security from which they originated.

The section provides that the creation of a strip is deemed to be a disposal of the original security at its market value and an acquisition of the strip at an appropriate proportion of —

- the market value of the security at the time of creation in the case of a person carrying on a trade of dealing in securities, or
- the lower of the nominal value or the market value of the security at that time in the case of any other person.

Where a person who is not a dealer in securities acquires a strip which has already been created, the strip is treated as having cost the lower of the amount paid and the appropriate proportion of the nominal value of the security.

Reconstitution back into the original security is deemed to be a disposal of each of the strips at their market value at the time of reconstitution and an acquisition of the security at the aggregate market value of the strips which make it up.

For the purposes of the section, a strip is deemed to be a deep discount or zero coupon security (referred to in the section as a "non-interest-bearing security"). In normal circumstances any profits earned on such securities are taxed only when the securities have been disposed of or redeemed. The section, however, provides for a scheme of deemed disposal and reacquisition of strips at the end of each tax year, thus providing for tax to be levied on strips on an annual basis.

Details

Definitions

The section contains a series of definitions, including — ***(1)***

"nominal value" which, subject to some minor exceptions, is generally the par value of the security.

"opening value" which, in the case where the security is held as part of a trade of dealing in securities, is the market value of the security at the time the strips were created and, in any other case, the lower of the nominal value and market value of the security at the time the strips were created.

Creation of strips

The creation of strips is regarded as a disposal of the original security at its market value. ***(2)(a)***

Each strip, which makes up the security, is deemed to have been acquired at the time of creation for the appropriate proportion of the opening value of the security. ***(2)(b)***

Each strip created is deemed to be a non-interest-bearing security chargeable under Case III of Schedule D unless it is charged under Case I of that Schedule as part of a trade of dealing in securities. ***(2)(c)***

Acquisition of certain strips

Where a person, other than a person carrying on a trade of dealing in securities, purchases (as opposed to creates) a strip of, broadly, an Irish Government security ***(3)*** (that is, a security listed in ***section 607***), the purchase price is deemed to be the lesser of the amount paid and a proportion of the nominal value of the security.

The proportion of the nominal value of the security is determined by —

- firstly, determining what would have been the market value of each of the strips had they been created on the day the security was issued, and
- secondly, determining the ratio which the market value of the strip at that time bears to the aggregate value of all the strips at that time and applying that ratio to the nominal value of the security.

Reconstitution of strips

Reconstitution of a series of strips back into the original security is regarded as — ***(4)***

- a disposal at market value at the time of reconstitution of each of the constituent strips, giving rise to a charge to tax under Case III unless the transaction is charged under Case I as part of a trade of dealing in securities, and
- an acquisition of the original security at a price equal to the aggregate market value of the constituent strips.

Annual revaluation of strips

Strips are deemed to be disposed of and reacquired by a person at the end of each tax year or accounting period, as appropriate, at the strips market value at that time, the profit being chargeable to income or corporation tax. ***(5)***

Losses which arise solely under this deemed disposal provision may be offset against profits similarly arising. This applies only to persons chargeable under Case III since such a facility is already available under Case I. ***(6)***

56 Tax on quarries, mines and other concerns chargeable under Case I (b) of Schedule D

Summary

This section provides rules relating to the charge and assessment to tax of the concerns mentioned in Case I(b) of Schedule D (see ***section 18***).

Details

Subject to this section, the rules relating to the basis of assessment under Cases I and II of Schedule D set out in ***Chapter 3*** of this Part and to the statement of profits in ***section 108*** apply to the assessment and charge to tax of profits or gains of quarries, mines and the other concerns listed under Case I (b) of Schedule D. ***(1)***

The tax under Case I of Schedule D is assessable on the person or body of persons carrying on such a concern, or on the agents or other officers who have the direction or management of the concern or who receive the profits of the concern. ***(2)***

The computation in respect of any mine carried on by a company of adventurers is to be made jointly in one sum. However, any adventurer may apply to be separately assessed on making a declaration as to his/her share in the mine. In such a case, he/she may set off his/her profits from the mine against any loss he/she may have sustained in any other mine. The adventurer is to be assessed only once on the balance of profit and loss from such concerns, and the assessment is to be made in the district or branch where the adventurer is chargeable to the greatest amount. ***(3)***

57 Extension of charge to tax under Case III of Schedule D in certain circumstances

Summary

Persons who are employed in the State by non-resident companies and whose remuneration arises outside the State are to be charged to tax in respect of benefits in kind and expense payments to the same extent as they would be charged if their remuneration had arisen within the State.

Details

This section applies to expense payments or benefits in kind arising to a person in receipt of remuneration assessable to tax under Case III of Schedule D (that is, income derived from outside the State) as if the expenses or benefits arose to a person assessable to tax under Schedule E. ***(1)***

Where a person who holds an office or employment the income from which is chargeable to tax under Case III of Schedule D receives a sum in respect of any such expenses or derives any such benefits, the expenses or benefits concerned are to be included in the profits or gains arising from that employment and charged to tax accordingly. ***(2)***

The amount of such expenses or benefits so brought into charge are the sums or benefits which would be chargeable by virtue of ***Chapter 3*** of ***Part 5*** if the recipient's remuneration were chargeable to tax under Schedule E. ***(3)***

58 Charge to tax of profits or gains from unknown or unlawful source

Summary

Profits or gains arising from illegal activities are chargeable to tax as miscellaneous income under Case IV of Schedule D. The section enables assessments to be raised in respect of any profits or gains the particular source of which cannot be identified.

Details

Profits or gains are chargeable to tax notwithstanding that at the time the assessment in respect of those profits or gains was made — ***(1)***

- the source from which the profits or gains arose was not known to the inspector (this provision enables an inspector to assess income arising from a source, whether legal or illegal, which he/she cannot identify),
- the profits or gains were not known to the inspector to have arisen wholly or partly from a lawful source or activity, or
- the profits or gains arose and were known to the inspector to have arisen from an unlawful source or activity.

The chargeability of such profits or gains is not to be affected by the question whether they arose in whole or in part from an unknown or unlawful source or activity. This aspect can, therefore, be simply disregarded in determining the chargeability to tax of such profits or gains. The legality or otherwise of the source cannot affect the validity of the assessment.

Notwithstanding anything in the Tax Acts, any profits or gains charged to tax by virtue of ***subsection (1)*** or any profits or gains charged to tax following an investigation by the Criminal Assets Bureau are chargeable under Case IV of ***(2)***

Schedule D and are to be described as "miscellaneous income" in the assessment. Any such assessment may be made solely in the name of the Criminal Assets Bureau. In addition, any such assessment cannot be discharged either by the Appeal Commissioners or a court by reason only of the fact that the income should, apart from this section, have been described in some other manner or by reason only of the fact that the profits or gains arose wholly or partly from an unknown or unlawful source or activity.

Payment of any tax charged in any such assessment may be demanded solely in the name of the Criminal Assets Bureau. On payment to the Criminal Assets Bureau of any such tax, the bureau is required to issue a receipt, lodge the payment in the bank account of the Revenue Commissioners and transmit details of the assessment and payment to the Collector-General.

59 Charge to tax on income from which tax has been deducted

The gross amount of income taxed at source is to be included in the total income of the recipient of that income. Such income is, therefore, chargeable income for the purposes of the charge to income tax provided for by ***section 15***. A credit is to be given for the tax borne by deduction from the taxed income.

Taxed income in the context of this section means income from which tax is deductible by virtue of provisions relating to Schedule C or D, or ***section 237*** (annual payments payable wholly out of taxed income) or ***section 238*** (annual payments not payable out of taxed income).

The gross amount of the income taxed at source is charged under Case IV of Schedule D on the basis of the actual amount arising in the year of assessment. The amount of tax actually suffered by deduction is allowed as a credit.

CHAPTER 2
Foreign Dividends

Overview

Chapter 2 of ***Part 4*** provides for the collection of income tax at source by persons in the State entrusted with dividends of a non-resident body for payment to another person in the State. The assessment and charge to income tax is made under Schedule D, and the same procedure applies for the deduction of tax at source as applies to the deduction of tax under Schedule C. The Chapter also provides for the tax treatment of interest from quoted Eurobonds.

60 Interpretation (*Chapter 2*)

The section provides for the interpretation of the Chapter and defines, in particular, the term "dividends to which this Chapter applies" (that is, foreign dividends) as any interest, dividend or other annual payment payable out of or in respect of stocks, shares or securities of any non-resident body of persons. Foreign dividends, however, does not include payments payable out of taxed or untaxed income which has suffered tax deducted at source under ***section 237*** or ***238***.

61 Dividends entrusted for payment in the State

Foreign dividends which are entrusted to persons in the State for payment to any person in the State are assessable and chargeable to tax under Schedule D and ***Parts***

1, ***4*** and ***5*** of ***Schedule 2*** apply for the purposes of the assessment, charge and payment of tax charged under this section.

62 Dividends paid outside the State and proceeds of sale of dividend coupons

This section extends the charge to tax under Schedule D to —

- payments of foreign dividends other than in the State, where a banker or any other person in the State by means of coupons receives from another person or on behalf of another person such payments,
- the proceeds of a realisation, where a banker sells or otherwise realises coupons for any foreign dividends and pays over the proceeds of such a realisation to or carries such proceeds to the account of any person, and
- the purchase price, where a dealer in coupons in the State purchases coupons for any foreign dividends otherwise than from a banker or another dealer in coupons.

The section applies ***Parts 1***, ***4*** and ***5*** of ***Schedule 2*** for the purposes of the assessment, charge and payment of the tax charged under this section.

The section does not apply to a banker by virtue only of the banker clearing a cheque or arranging to have a cheque cleared.

63 Exemption of dividends of non-residents

Summary

A person who establishes to the satisfaction of the Revenue Commissioners that he/she is not resident in the State is not chargeable to tax in respect of income arising from foreign dividends payable in the State.

Details

Exemption

Exemption from tax is provided for foreign dividends payable in the State provided it is proved to the satisfaction of the Revenue Commissioners that the person owning the stocks, shares, funds or securities and entitled to the income arising from them is not resident in the State. Subject to any exception in the Income Tax Acts (in this regard see ***subsection (2)***), no allowance or repayment is to be made for tax on such foreign dividends which are payable in the State. ***(1)(a)***

In the case of stock, funds, shares or securities giving rise to such foreign dividends held under a trust, where the person who is the beneficiary in possession under the trust is the sole beneficiary in possession and can, by means either of revocation of the trust or of the exercise of any power under the trust, request the trustees at any time to transfer the stock, funds, shares or securities to that person absolutely free from any trust, that person is deemed for the purpose of this section to be the person owning the stock, funds, shares or securities. ***(1)(b)***

On a claim being made the exemption under this section may be given by way of allowance or repayment. ***(2)***

Appeals

There is a right of appeal to the Appeal Commissioners on any decision of the Revenue Commissioners as to a person's residence status. Any appeal must be made within 2 months of the date on which notice of the decision is given and is to be heard and determined by the Appeal Commissioners in the same way as an appeal ***(3) & (4)***

against an assessment to income tax is heard and determined. The provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law also apply.

64 Interest on quoted Eurobonds

Summary

Interest on quoted Eurobonds may be paid without deduction of withholding tax in certain circumstances. Eurobonds are, in general, long-dated debt securities issued through the Euro-markets.

Interest on quoted Eurobonds which is paid by or through a person who is not resident in the State may be paid without deduction of tax. Where the person by or through whom the interest is paid is resident in the State, withholding tax applies unless the recipient makes a declaration of non-residence, or the bonds are held in a recognised clearing system.

Where interest is paid in full in a case where the bonds are held in a clearing system, a withholding tax arises where receiving agents receive interest on behalf of Irish bondholders.

Details

Definitions

"appropriate officer" is an officer of the Revenue Commissioners who is authorised by them for the purposes of the section. ***(1)***

"quoted Eurobond" is a security which is issued by a company, is quoted on a recognised stock exchange and carries a right to interest.

Recognised clearing systems

The clearing systems listed in ***section 246A(2)(a)*** are automatically recognised for the purposes of this section. The clearing systems concerned are: Bank One NA, Depository and Clearing System; Central Moneymarkets Office; Clearstream Banking SA; Clearstream Banking AG; CREST; Depository Trust Company of New York; Euroclear; Monte Titoli SPA; Netherlands Centraal Instituut voor Giraal Effectenverkeer BV; National Securities Clearing Corporation; Siccovam SA; SIS Sega Intersettle AG. ***(1A)***

In addition, any other clearing system designated by the Revenue Commissioners as a "recognised clearing system" for the purposes of ***section 246A*** is automatically designated also for the purposes of this section.

Clearing systems - background

These Systems were created in response to the need of the international securities markets for a mechanism for the settlement of transactions. The systems include settlement of transactions in internationally traded debt and equity securities to "participants" who have entered into an agreement to participate in the systems. In general, participants are banks, brokers, dealers and other institutions professionally engaged in managing new issues of securities, market-making or trading, and holding the wide variety of securities accepted in the Clearing System, either on their own account or on behalf of client investors.

Each participant opens one or more clearing accounts in accordance with their own requirements and those of their clients. Transfers of securities between participants are effected simultaneously in the accounts of the 2 participants. This simultaneous book entry basis of settlement limits risks to participants. Participants agree to submit the securities deposited by them to be held by the manager of the system. Participants share, with all other participants holding securities of the same type in the system, a co-ownership right in the pool of such securities held. Ownership may be transferred by mere changes in book entry so that title is expressed only by the latest available book entry record in the accounts.

"relevant foreign securities" are —

- investments which give rise to foreign dividends, that is, stocks, funds, shares or securities of bodies of persons not resident in the state, and
- investments which give rise to foreign public revenue dividends, that is, investments which give rise to interest, annuities, dividends or shares of annuities payable out of the public revenue of any Government or public authority or institution outside of the State.

"relevant person" is either the company by whom the interest is paid, the paying agent or the receiving agent, as appropriate. A paying agent is a person who pays the interest on behalf of a company. It can be a bank, stockbroker or similar person. A receiving agent is a bank or other person who obtains payment of interest on behalf of another person. It could be a dealer in interest coupons who will purchase the coupons form the investor. Paying and receiving agents have certain responsibilities under the section.

Removal of obligation on company to withhold tax

Section 246 requires that interest paid by a company should be paid under deduction of tax. The tax so deducted is payable to the Revenue Commissioners. In certain specified circumstances a company is not obliged, subject to outbound payments defensive measures contained in ***Chapter 5 of Part 33*** of the Act, to withhold tax from interest payments on any quoted Eurobond. The specified circumstances are where — ***(2)***

- the paying company or the paying agent is outside of the State (obviously, a paying company which is not in the State is not obliged to withhold tax; however, payment by a foreign company operating through an Irish paying agent could give rise to a liability on the paying agent to withhold tax – this provision ensures that such a liability cannot arise, thus facilitating the use of Irish paying agents),
- the payment is made by or through a person in the State, and either the Eurobond is held in a recognised clearing system or the beneficial owner of the interest is not resident in the State and has made a declaration of non-residence to the paying company or the paying agent.

Where the interest payment is made by or through a person in the State, that person is required to make a return to the appropriate officer of payments made without deduction of tax to non-residents. The return must specify the payer's name and address and describe the payment. It does not require identification of the recipient's name and address. However, the payer of the interest is obliged to retain the declarations of non-residence for inspection by an inspector or appropriate officer where required. A return is to be made on request by the appropriate officer, or automatically within 12 months of the making of the payment. ***(3)***

Where any provision of the Tax Acts deems interest paid on any quoted Eurobond to be the income of any person other than the beneficial owner, the provisions as to non-residence apply in a like manner to the person whose income the interest is ***(4)*** deemed to be. An example of this arises in the case of the "transfer of assets abroad" provisions under ***section 806***. Under that section certain income arising to a person who is non-resident can be treated as being income of a person who is resident. In those circumstances, the non-resident recipient of the interest would not be entitled to make a declaration of non-residence because the interest is deemed to be income of the other person.

Receiving agents

A withholding tax applies where a receiving agent in the State receives Eurobond interest on behalf of any person. However, that tax need not be withheld if the beneficial owner of the interest is a non-resident and makes a declaration of non-residence to the paying agent. The subsection adapts ***sections 62*** and ***63*** and applies them in relation to interest on Eurobonds. ***(5)***

Under ***section 62*** as adapted, where a receiving agent in the State obtains payment of interest on behalf of another person, and either — ***(5)(a)***

- the payment was not made by or entrusted to a person in the State, or
- the bonds were held in a clearing system,

withholding tax is to be applied.

It should be noted that withholding tax is not needed at the point of the receiving agent if the interest was paid by an Irish company (unless the bond was held in a clearing system) as withholding tax would have been operated at the level of the company. The same situation applies in a case where that interest was paid by an Irish paying agent. If, however, the bond was held in a clearing system, the company or paying agent would not be obliged to withhold tax and it would, consequently, then be appropriate to have withholding tax at the point of the receiving agent.

Under ***section 63*** as adapted, the necessity for the receiving agent to operate a withholding tax where the beneficial owner of the interest is non-resident and has made a declaration of non-residence is removed. ***(5)(b)***

The consequential changes necessary in ***Schedule 2*** are made. That Schedule provides the machinery for assessment and collection of the withholding tax. For the purposes of dealing with withholding tax at the point of the receiving agent, ***clauses (1)*** and ***(2)*** of the definition of "chargeable person" in ***paragraph 1A*** of ***Part 1*** of ***Schedule 2*** are ignored. Those clauses deal only with withholding tax at the point of the paying agent and are not relevant in the context of a receiving agent. ***(5)(c)***

Declarations as to non-residence

The form of declaration in respect of securities beneficially owned by persons who are not resident in the state so that a relevant person may pay interest without a deduction of tax is set out. ***(7)***

The person to whom interest on a deposit is payable must sign the declaration and give it to the relevant person. The person who makes the declaration ("the declarer") may be the non-resident beneficial owner himself or herself or a person, resident or otherwise, holding the security in trust for a non-resident.

The declaration must be in a form prescribed or authorised by the Revenue Commissioners.

The declarer must declare that the person beneficially entitled to the interest is not resident in the State.

The declaration, as respects a non-resident person who is beneficially entitled to the interest, must contain the name of the person, the address of that person's principal place of residence, and the name of the country in which that person is resident at the time the declaration is made.

An undertaking must be given by the declarer to advise the relevant person if the person beneficially entitled to the interest becomes resident in the State.

Such other information as the Revenue Commissioners may reasonably require must be supplied in the declaration.

A relevant person is required to keep and retain declarations for the longer of 6 years, and 3 years after the latest date on which interest, in respect of which the declaration was made, is paid. An inspector or appropriate officer may require a relevant person to make available to the inspector or appropriate officer within a specified time all declarations made under this section on giving notice in writing to the relevant person. An inspector or appropriate officer may examine all such declarations made available by a relevant person and take extracts from them or copies of them. ***(8)***

CHAPTER 3
Income tax: basis of assessment under Cases I and II

Overview

Chapter 3 of ***Part 4*** sets out the basic rules governing the basis of assessment to income tax under Cases I and II of Schedule D. The Chapter also sets out special rules which apply to the basis of assessment on commencement, discontinuance and change of ownership of a trade or profession and to certain "short-lived" businesses.

65 Cases I and II: basis of assessment

Summary

The general rule is that income tax is charged on the full amount of the profits of a trade or profession arising in the year of assessment. However, where accounts are made up for the trade or profession, the profits of the trade or profession are, in general, charged to income tax on the full amount of the profits arising in the 12 month period of account ending in the year of assessment. Special rules apply to determine the basis of assessment where accounts are made up for periods in excess of 12 months or where there is more than one period of account ending in a year of assessment. Provision is also made to allow, in certain circumstances, the revision of an assessment for the preceding year where there is a change in the date to which accounts are made up. Special arrangements also apply to cater for the changeover from a 6 April to 5 April year of assessment to a calendar year of assessment with effect from 1 January 2002.

Details

Basis of assessment

General Rule

The general rule is that income tax is to be charged under Case I or Case II of Schedule D on the full amount of the profits of the year of assessment – this is ***(1)*** referred to as the current year basis of assessment. This rule may be modified as provided for by the subsequent provisions of this Chapter.

Special Rule 1

Where a person makes up accounts for a trade or profession and there is only one account made up to a date in the year of assessment and that account is for a period of one year, the profits of that year are taken to be the profits of the year of assessment. ***(2)(a)***

Example 1

Where a person makes up annual accounts to, say, 31 October each year, the profits of the year ended 31 October 2002 will be taken to be the profits of the year of assessment 2002.

Special Rule 2

A different rule applies in the case of an account which is for a period greater or lesser than one year ending on a date in the year of assessment or where there is more than one period of account ending on a date in the year of assessment. In such cases the profits for the period of one year up to the date on which the period of account ends or the date on which the last of the periods of account ends, as the case may be, is taken to be the profits of the year of assessment. ***(2)(b)***

Example 2

Where a person makes up accounts for, say, an 18 month period to 30 September 2002, the profits for the year ended 30 September 2002 will be taken to be the profits of the year of assessment 2002.

Example 3

Where a person makes up annual accounts to, say, 30 April 2002 but then makes up further accounts for the six month period to 31 October 2002, the profits for the year ended 31 October 2002 will be taken to be the profits of the year of assessment 2002.

Special Rule 3

A different rule also applies where an account is drawn up covering the year of assessment but the accounting period does not end in the year of assessment. In such a case the profits of the year of assessment itself are to be taken as the basis of the assessment (in effect this reapplies the general rule). ***(2)(c)***

Example 4

Annual accounts drawn up to 31 October 2002 give the basis of assessment for the year of assessment 2002. If the next accounts are not made up until 31 January 2004, a period of 16 months, there will be no period of account ending in the year of assessment 2003. In such a case the profits of the year of assessment itself (i.e. the profits of the year ending 31 December 2003) will be the profits which will be assessed to tax for the year of assessment 2003.

Change of basis period and review of preceding year

Where the assessment for a year has been computed by reference to a period of account which is greater or less than one year (***subsection (2)(b)*** – Special Rule 2) or by reference to the profits of the year of assessment itself because no account has been drawn up to a date in the year of assessment (***subsection (2)(c)*** – Special Rule 3), and the profits of the corresponding period in the previous year of assessment exceed the profits assessed for that year, the profits of that corresponding period are to be taken to be the profits of the previous year of assessment and the extra profits are to be charged for that year. This rule takes precedence over the rules contained ***(3)*** in ***section 66(2)*** which deals with the basis of assessment in the second year in which a trade or profession is carried on.

Example 5

Following a number of years where accounts are prepared up to 30 September, accounts covering 15 months to 31 December 2003 are submitted. The profits are —

year ended 30 September, 2002, €120,000

15 months ended 31 December, 2003, €250,000

The basis for assessment for 2003 will be the profits arising for the 12 months ended 1 December, 2003. The assessment for 2003 will be €250,000 x 12/15 = €200,000.

The assessment for 2002 was €120,000 based on the profits for the year of account ending on 30 September, 2002. However, the assessment now requires to be revised as the profits for the period of 12 months ended 31 December 2002 are greater than the profits actually assessed for 2002. The revised assessment is —

€120,000 x 9/12 =	€90,000
€250,000 x 3/15 =	€50,000
	€140,000

The additional tax payable of €20,000 is due for payment by 31 October 2004 under the rules of Self Assessment (see ***Part 41***). If the revised figure had been less than the original assessment, the assessment would not be adjusted.

Deceased persons

Where a person dies, income tax for any year of assessment for which the person has not already been assessed is to be charged and assessed on the person's executors or administrators. Any such tax is a debt due from the deceased person's estate. ***(4)***

Changeover to a calendar year of assessment

With effect from 1 January 2002, the year of assessment is changed so as to align with the calendar year. This necessitates the operation of a short "year" of assessment 2001 covering the period from 6 April to 31 December 2001. It also results in a mismatch between the length of the short "year" of assessment 2001 and the previous and subsequent years of assessment. In order to take account of these aspects of the changeover to a calendar year of assessment, special transitional adjustments are made (***subsections (3A)*** to ***(3F)***) to the rules governing the basis of assessment under Case I and Case II of Schedule D.

Short "year" of assessment 2001

For the short "year" of assessment 2001, persons assessed to tax on the basis of ***subsection (2)(a)*** [Special Rule 1] will be assessed on the basis of 74% of the profits of the 12 month period of account ending in that year. ***(3A)***

Example 6

A trader normally makes up accounts to 30 June each year. The profits for the year ended 30 June 2001 are €200,000. The profits to be assessed for the short "year" of assessment 2001 are:

Year ended 30 June 2001 – €200,000 x 74% = €148,000.

For the short "year" of assessment 2001, persons assessed to tax on the basis of ***subsection (2)(b)*** [Special Rule 2] will be assessed on the basis of 74% of the profits of the year ending on —

- the date in the year of assessment to which an account (not being a single 12 month account) is made up, or
- the date in the year of assessment which is the date to which the last of two or more accounts in that year is made up.

Example 7

A trader makes up accounts for an 18-month period to 31 December 2001. The profits of that period are €360,000. The profits to be assessed for the short "year" of assessment are:

€360,000 x 12/18 x 74% = €177,600.

Example 8

A trader makes up two sets of accounts as follows:

12 months to 30 April 2001 —	profits: €72,000
8 months to 31 December 2001 —	profits: €48,000

The profits to be assessed for the short "year" of assessment 2001 are:

[basis period y/e 31/12/2001] [€48,000 + (4/12 x €72,000)] x 74% = €53,280.

What is the position if the 12 months accounts end in the period from 1 January 2002 to 5 April 2002?

For the purposes of ***subsection (2)(a)*** [Special Rule 1], a 12 month account ending in the period 1 January to 5 April 2002 (which now actually ends in the year of assessment 2002) is, in addition to being an account made up to a date in the year of assessment 2002, to be treated as an account made up for a period of one year to a date in the short "year" of assessment 2001, and the corresponding period relating to the year of assessment 2000–2001 for the purposes of ***subsection (3)*** will be determined accordingly. ***(3B)***

The consequence of this treatment is that the same 12 month period of account forms the basis for the assessment for the short "year" of assessment 2001 and also the year of assessment 2002. The assessment for the short "year" of assessment 2001 is on the basis of 74% of the profits of the period of account, while the assessment for the year of assessment 2002 is on the basis of the full (100%) profits of that period.

Example 9

A trader makes up accounts to 31 March each year as follows:

Year-end 31 March 2001 – profits €400,000

Year-end 31 March 2002 – profits €100,000

Basis period for the year of assessment 2000/2001 = y/e 31/3/2001 = €400,000

Profits to be assessed for the short "year" of assessment 2001:

Basis period is y/e 31/3/2002 (€100,000 x 74%) = €74,000.

Profits to be assessed for the year of assessment 2002:

Basis period is y/e 31/3/2002 = €100,000.

What is the position if there are changes in the basis period requiring a review of the preceding year?

The provisions of ***subsection (3)*** provide that where the basis period for a year of assessment is determined in accordance with ***subsection (2)(b)*** [Special Rule 2] or ***subsection (2)(c)*** [Special Rule 3] and the basis period as so determined does not correspond to the basis period for the preceding year of assessment, the preceding year of assessment must be reviewed. Where the profits of the corresponding period relating to the previous year of assessment exceed the profits assessed for that year, the profits of that corresponding period are taken to be the profits of that previous year.

Example 10

A trader normally makes up his accounts to 30 April each year. He changes the accounting date to 31 December 2001. The profits are as follows:

Year ended 30/4/2000	€120,000
Year ended 30/4/2001	€180,000
8 months ended 31/12/2001	€140,000

The basis period for 2001 is the year ended 31/12/2001. The corresponding period for 2000/01 is the year ended 31/12/2000.

Profits assessed originally [basis period y/e 30/4/2000]	€120,000
Profits for corresponding period y/e 31/12/2000	
[€120,000 x 4/12] + [€180,000 x 8/12] =	€160,000

As the profits of the corresponding period exceed the profits charged to tax, the assessment for 2000/01 is increased to €160,000. The additional tax payable is due for payment by 31/10/2002 under the rules of Self Assessment (see ***Part 41***).

Normally the corresponding period to a basis period for a year of assessment is a period of 12 months ending on the same date in the preceding year of assessment. The move to a calendar tax year creates a mismatch between the length of the short "year" of assessment 2001 and the length of the previous and subsequent years of assessment. This results in problems of matching the basis period for a year of assessment with a corresponding period in the preceding year. The legislation (***subsections (3C)*** to ***(3F)***) sets out how to deal with this as follows:

Year of assessment 2001 and revision of year of assessment 2000–2001

Where the profits of the short "year" of assessment 2001 have been taken to be the full amount of the profits of that "year" in accordance with ***subsection (2)(c)*** [Special Rule 3] and the full amount of the profits of the year of assessment 2000–2001 exceed the profits charged to income tax for that year, then, the profits of the year of assessment 2000–2001 are to be taken to be the full amount of the profits of that year, and the assessment for that year is to be amended accordingly. In other words, where the basis period for the short "year" of assessment 2001 is the period from 6 April 2001 to 31 December 2001 [Special Rule 3], the corresponding period for the year of assessment 2000–2001 is the year ended 5 April 2001. ***(3C)***

Example 11

A trader makes up accounts as follows:

12 months ended 31/12/2000	profits	€72,000
18 months ended 30/6/2002	profits	€120,000

Year of Assessment 2001 – basis period is the period 6/4/2001 to 31/12/2001

Year of Assessment 2000–2001 Review:

Profit originally assessed [Special Rule 1]	€72,000
Profits of corresponding period [y/e 5/4/2001]:	
€72,000 x 9/12 + €120,000 x 3/18 =	€74,000
Increase assessment to	€74,000

As for example 10, the additional tax liability is due and payable by 31/10/2002.

Year of assessment 2002 and revision of short "year" of assessment 2001

Where the profits of a period of one year ending in the year of assessment 2002 have been taken to be the profits of that year of assessment in accordance with ***subsection (2)(b)*** [Special Rule 2] and the profits charged to income tax for the short "year" of assessment 2001 are less than 74% of the profits of the corresponding period relating to the short "year" of assessment 2001, then, the profits of the short "year" of assessment 2001 are to be taken as 74% of the profits of that corresponding period, and the assessment for that "year" is to be amended accordingly. ***(3D)***

It could happen that the corresponding period relating to the short "year" of assessment 2001 might not actually end in that "year" of assessment. This will be the case where the corresponding period is a 12 month period ending in the period 1 January 2001 to 5 April 2001 and that period does not actually end in the short "year" of assessment 2001 (which commences on 6 April 2001). To overcome such difficulty, it is provided that, for the purposes of ***subsection (3D)***, a period (the "relevant period") which, by virtue of the fact that it ends on a date falling in the period from 1 January to 5 April 2001, would not otherwise be treated as the corresponding period relating to the short "year" of assessment 2001 is nonetheless be treated as the corresponding period relating to that "year" of assessment. In essence, therefore, where the basis period for the year of assessment 2002 is, on the basis of Special Rule 2, a period of 12 months ending in the year 2002, the corresponding period for the short "year" of assessment 2001 is the period of 12 months ending in the calendar year 2001. ***(3E)***

Example 12

A trader makes up accounts as follows:

year ended 30/4/2000 – profits	€120,000
year ended 30/4/2001 – profits	€96,000
9 months 31/1/2002 – profits	€90,000

2002 Basis period is y/e 31/1/2002.

2001 Review:

Corresponding period is year ended 31/1/2001

Profits [3/12 x €120,000 + 9/12 x €96,000] x 74% =	€75,480
Profit originally assessed [Special Rule 1] €96,000 x 74% =	€71,040
Result: Increase assessment to	€75,480

The additional tax payable is due for payment by 31/10/2003 under the rules of Self Assessment (see ***Part 41***).

Finally, where the profits of the year of assessment 2002 have been taken to be the full amount of the profits of that year of assessment in accordance with ***subsection (2)(c)*** [Special Rule 3], that is, the assessment is based on the profits of the actual year of assessment 2002 (1 January to 31 December 2002), and the full amount of the profits of the short "year" of assessment 2001 exceed the profits charged to income tax for that "year", then, the profits of the short "year" of assessment 2001 (6 April to 31 December 2001) are to be taken as the full amount of the profits of that "year", and the assessment for that "year" is to be amended accordingly. In essence, therefore, where, on the basis of Special Rule 3, the basis period for the year of assessment 2002 is the profits of the year of assessment itself, the corresponding period for the short "year" of assessment 2001 is the short "year" of assessment 2001. ***(3F)***

Example 13

A trader makes up accounts as follows:

year ended 30/9/2001 – profits	€100,000
18 months ended 31/3/2003 – profits	€200,000

Year of assessment 2002: basis period is period 1/1/2002 – 31/12/2002 under Special Rule 3

Year of assessment 2001 Review: Corresponding period is short "year" of assessment 2001, i.e. profits 6/4/2001 to 31/12/2001

Profits of corresponding period:

€100,000 x 6/12 + 3/18 x €200,000 =	€83,334
Profit originally assessed under Special Rule 1:	
€100,000 @ 74% =	€74,000
Result: Increase assessment to	€83,334

The additional tax payable is due for payment by 31/10/2003 under the rules of Self Assessment (see ***Part 41***).

66 Special basis at commencement of trade or profession

Summary

In the case of the commencement of a trade or profession, the first year's assessment is based on the profits arising from the date of commencement to the following 31 December. The assessment for the second year depends on the number of accounting periods ended in the year and/or the length of the accounting period. A taxpayer may elect to have the assessment for the third year of assessment reduced by any excess

of the profits assessed for the second year over the actual profits of that second year (that is, profits from 1 January to the following 31 December). Special arrangements also apply to cater for the changeover from a 6 April to 5 April year of assessment to a calendar year of assessment with effect from 1 January 2002.

Details

Commencement year

In a start up situation the Case I or II assessment for the first year of assessment is based on the profits arising from the commencement date of the trade or profession to the following 31 December. ***(1)***

Second year of assessment

The assessment for the second year of assessment depends on a number of situations that might arise in that second year.

One set of accounts for a period of 12 months ending in second year of assessment

If there is only one set of accounts for a period ending in the second year of assessment and these are for 12 months, the individual is chargeable to income tax on the profits of that 12 month period of account. ***(2)(a)***

Example 1

Business commenced 1 July 2002. Taxpayer makes up accounts as follows:

Profits 12 months period ended 30 June 2003	€12,000
Profits 12 months period ended 30 June 2004	€24,000

First Year – 2002

Assessable on profits from 1/7/2002 to 31/12/2002

€12,000 x 6/12 = €6,000

Second Year – 2003

Assessable on profits of 12 months ended 30/6/2003	€12,000

One set of accounts for a period in excess of 12 months

If there is only one set of accounts for a period ending in the second year of assessment and the period to which the accounts relate is in excess of 12 months, the individual is chargeable to income tax on the profits of the 12 month period ending on the date to which the accounts are made up. ***(2)(b)***

Example 2

Business commenced 1 September 2002. Taxpayer makes up accounts as follows:

Profits 14 months period ended 31 October 2003	€28,000

First Year – 2002

Assessable on profits from 1/9/2002 to 31/12/2002

€28,000 x 4/14 = €8,000

Second Year – 2003

Assessable on profits of 12 months ended 31/10/2003

€28,000 x 12/14 = €24,000

More than one set of accounts for periods ending in second year of assessment

If there is more than one set of accounts for periods ending in the second year of assessment, the taxpayer is assessable on the profits of the 12 month period ending on the date to which the latest such accounts are made up provided that date is at least 12 months after the commencement of the trade or profession. ***(2)(b)***

Example 3

Business commenced 1 October 2002. Taxpayer makes up accounts as follows:

Profits 6 months period ended 31 March 2003	€18,000
Profits 7 months period ended 31 October 2003	€21,000

First Year – 2002

Assessable on profits from 1/10/2002 to 31/12/2002

€18,000 x 3/6 = €9,000

Second Year – 2003

Assessable on profits of 12 months ended 31/10/2003 (i.e. 5 months to 31/3/2003 plus 7 months ended 31/10/2003)

(€18,000 x 5/6) + €21,000= €36,000

Other cases

In all other cases the assessment for the second year of assessment is based on the full amount of profits in the year of assessment, i.e. on a calendar year basis. This method of assessment will arise where there is no accounting period ended in the second year of assessment or where one accounting period ends in the second year of assessment and this accounting period ends less than 12 months after the date of commencement of the trade or profession. ***(2)(c)***

Third year of assessment

The assessment for the third year of assessment is based on the normal rules of ***section 65*** (normally the latest 12 month period of account in that year). However, where the amount of the assessment for the second year of assessment exceeds the actual profits of that year, the taxpayer may elect in writing to the inspector to have the assessment for the third year of assessment reduced by the excess. A claim for this treatment must be made with the return of income required under ***Chapter 3 of Part 41A***. Where the reduction cannot be given full effect in the third year of assessment due to insufficiency of profits, the balance may be treated as a loss for the purposes of ***section 382*** (which allows the carry forward of losses to future years) and carried forward and relieved in a subsequent year of assessment. ***(3)***

Example 4

Business commenced 1 July 2002. Taxpayer makes up accounts as follows:

Profits 12 months period ended 30 June 2003	€16,000
Profits 12 months period ended 30 June 2004	€12,000

Original assessments will have been made as follows:

1st year – 2002 (basis period 1/7/02 – 31/12/02) Assessable profits	€8,000
2nd year – 2003 (basis period 1/7/02 – 30/6/03) Assessable profits	€16,000
3rd year – 2004 (basis period 1/7/03 – 30/6/04) Assessable profits	€12,000

The taxpayer may claim, when submitting the return of income for the year of assessment 2004, to have the assessment for that year reduced by the excess of the assessed profits for the year of assessment 2003 over the actual profits for the year of assessment 2003 (1/1/03 to 31/12/03).

Assessed profits for 2003	€16,000
Actual profits	
(i.e. 6/12 of y/e 30/6/03 + 6/12 of y/e 30/6/04)	€14,000
Excess	€2,000
The revised assessment for 2004 is €10,000 ***(i.e. €12,000 less €2,000).	

What are the special arrangements to cater for the changeover to a calendar year of assessment in the case of the commencement of a trade or profession?

Commencement Year

The basic rule remains unchanged.

Second Year of Assessment

The basis rules remain unchanged but where the second year of assessment is the short "year" of assessment 2001, and the basis of assessment is a 12 month period ending in that "year", the profits chargeable are 74% of the profits of that 12 month period. ***(3A)***

Example 5

A trader commenced business on 1 June 2000 and makes up accounts as follows:

Profits for 12 months ended 31 May 2001		€60,000
Profits for 7 months ended 31 December 2001		€40,000
First Year 2000/2001 (basis period 1/6/2000 —5/4/2001)		
Profits to be assessed	€60,000 x 10/12	= €50,000
Second Year 2001 (basis period 12 months to 31/12/2001)		
Profits to be assessed	[€40,000 + (€60,000 x 5/12] x 74% =	€48,100

The provisions of ***subsection (2)*** are intended to apply only in the case of the second year of assessment in which a trade or profession is carried on. Thus, the subsection speaks of a trade or profession which has been set up and commenced “within one year preceding the year of assessment”.

The move to a calendar year basis of assessment involves a mismatch between the length of the year of assessment for the short transition “year” 2001 (9 months from 6 April to 31 December 2001) and the length of previous and subsequent years of assessment (12 months). Therefore, because of the reference to “within one year preceding the year of assessment”, ***subsection (2)*** could (in the absence of a legislative provision) operate in the case of the third year of assessment in which a trade or profession is carried on if that third year were the year of assessment 2002. In order to prevent this it is provided that, as respects the year of assessment 2002, ***subsection (2)*** is to apply as if “within the period from 6 April 2001 to 31 December 2001” were substituted for “within one year preceding the year of assessment”. In effect, therefore, “second year treatment” in a commencement situation will apply for the year of assessment 2002 only if the trade or profession had been set up and commenced in the period from 6 April 2001 to 31 December 2001. ***(3B)(a)***

Third Year of Assessment

The provisions of ***subsection (3)*** are intended to apply only in the case of the third year of assessment in which a trade or profession is carried on. Thus, the subsection speaks of a trade or profession which has been set up and commenced “within the year next before the year preceding the year of assessment”.

Again, because of the mismatch between the length of the year of assessment for the short transition “year” 2001 (9 months from 6 April to 31 December 2001) and the length of previous and subsequent years of assessment (12 months), and also because of the reference in ***subsection (3)*** to “within the year next before the year preceding the year of assessment”, ***subsection (3)*** could (in the absence of a legislative provision) operate in the case of the fourth year of assessment in which a trade or profession is carried on if that fourth year were either the year of assessment 2002 or the year of assessment 2003. In order to prevent this, it is provided that ***subsection (3)*** is to apply — ***(3B)(b)& (3C)***

- as respects the year of assessment 2002, as if “within the period from 6 April 2000 to 5 April 2001” were substituted for “within the year next before the year preceding the year of assessment”, and
- as respects the year of assessment 2003, as if “within the period from 6 April 2001 to 31 December 2001” were substituted for “within the year next before the year preceding the year of assessment”.

In effect, therefore, “third year treatment” in a commencement situation will apply for the year of assessment 2002 only if the trade or profession had been set up and commenced in the year of assessment 2000–2001 (i.e. in the period from 6 April 2000 to 5 April 2001), and for the year of assessment 2003 only if the trade or profession had been set up and commenced in the short “year” of assessment 2001 (i.e. in the period from 6 April 2001 to 31 December 2001).

Example 6

Calculation of Second Year Excess

Business commenced 1 June 2000. Taxpayer makes up accounts as follows:

Profits 12 months period ended 31 May 2001	€20,000
Profits 12 months period ended 31 May 2002	€15,000

Original assessments will have been made as follows:		
1st year – 2000/2001 (basis period 1/6/00 – 5/4/01)		
Assessable profits €20,000 x 10/12 =		€16,666
2nd year – 2001 (basis period 1/6/00 – 31/5/01)		
Assessable profits €20,000 x 74% =		€14,800
3rd year – 2002 (basis period 1/6/01 – 31/5/02)		
Assessable profits =		€15,000
Second Year Excess:		
Profits taxed in second year 2001		€14,800
Actual profits of second year 2001		
(i.e. period from 6/4/01 to 31/5/01)		
€20,000 x 2/12 =	€3,333	
€15,000 x 7/12 =	€8,750	€12,083
Second year excess =		€2,717

Since the actual profits for the second year, the year of assessment 2001, are less than the amount assessed for that year, the taxpayer may claim that the excess be deducted from the assessable profits for the third year, the year of assessment 2002, as follows:

Profits assessed in 3rd year 2002	€15,000
LESS Second year excess	€2,717
Assessable profits 2002	€12, 283

The claim in respect of the excess must be included on the return of income for the year 2002 and that return must be made not later than 31 October 2003.

67 Special basis on discontinuance of trade or profession

Summary

In the case of the cessation of a trade or profession, the final year's assessment is based on the actual profits arising from 1 January to the date of cessation. An amended assessment may be made for the penultimate year of assessment if the actual profits of that year (that is, profits in a calendar year) exceed the profits assessed for that year under the normal rules set out in ***section 65***.

Details

Year of cessation

The profits to be charged to income tax for the year of assessment in which a trade or profession is permanently discontinued are those of the period from 1 January in the year of assessment and ending on the date of cessation. Any unutilised losses carried forward are to be set off or deducted from such profits. Where a person has been charged otherwise than in accordance with this procedure, any tax overpaid is to be repaid or an amended assessment is to be made. ***(1)(a)(i)***

Example 1

Business ceases on 31 July 2003. Taxpayer's profits for the 10 month accounting period ended 31 July 2003 are €22,000.

Final year of assessment: 2003

Basis period for 2003 is 1/1/2003 to 31/7/2003

Assessable profit is €22,000 x 7/10 = €15,400

Penultimate year

The assessment for the penultimate year of assessment is initially based on the rules of ***section 65(2),*** e.g. on the profits arising in the twelve month period of account ending in that year of assessment where the rules of ***section 65(2)(a)*** have applied. However, if the actual profits of the penultimate year of assessment (i.e. the profits of the period from 1 January to 31 December in that year) exceed the profits on which a person has been assessed for that year, an amended assessment is made to charge the excess. ***(1)(a)(ii)***

Example 2

Business permanently ceases on 31 May 2004. Accounts have been made up as follows:

Year ended 30/9/2002	Profits €20,000
Year ended 30/9/2003	Profits €24,000
8 months ended 31/5/2004	Profits €32,000
Year of cessation assessment	
2004 (basis period 1/1/2004 to 31/5/2004) = €32,000 x 5/8	= €20,000
Penultimate year assessment	
2003 original assessment (basis period y/e 30/9/2003)	= €24,000
Actual profits of 2003:	
Profits 1/1/2003 to 30/9/2003 = €24,000 x 9/12	= €18,000
plus	
Profits 1/10/2003 to 31/12/2003 = €32,000 x 3/8	= €12,000

Total	= €30,000

As the originally assessed profits for 2003 of €24,000 are less than actual profits of €30,000, assessment must be revised to actual profits of €30,000.

What are the changes arising in the case of cessation of a trade or profession as a result of the introduction of the calendar year of assessment?

The basic rules remain unchanged but some technical amendments were necessary to reflect the change to a calendar year of assessment, including an amendment to ensure that, where a cessation takes place in the year of assessment 2002, the review of the penultimate year of assessment will be by reference to the actual profits of the short "year" of assessment 2001 (i.e. the profits of the period from 6 April 2001 to 31 December 2001).

Example 3

A trade is permanently discontinued on 31 May 2002. Accounts are made up as follows:

Profits 12 months ended 30/9/2000	€120,000
Profits 12 months ended 30/9/2001	€80,000
Profits 8 months ended 31/5/2002	€72,000

Year of cessation 2002:

Basis period = profits 1/1/2002 – 31/5/2002 = €72,000 x 5/8	€45,000
Penultimate year 2001:	
Original assessment 2001 (***section 65(2)(a)*** ***[Special Rule 1], as modified by ***section 65(3A)***):	
Basis period y/e 30/9/2001 Profits €80,000 x 74%	€59,200
Actual profits of year 2001	
Profits 6/4/2001 – 30/9/2001 €80,000 x 6/12	€40,000
Profits 1/10/2001 – 31/12/2001 €72,000 x 3/8	€27,000
Total	€67,000

As the profits of the short "year" of assessment year 2001 exceed the original assessment for 2001 the assessment will be increased to €67,000.

Deceased persons

In the case of a deceased person, income tax for any year of assessment for which the person has not already been assessed is to be charged and assessed on the person's executors or administrators. Any such tax is a debt due out of the deceased person's estate. ***(1)(b)***

Cessation of trade on death

A trade or profession being carried on by an individual is treated as having permanently ceased on the date of that person's death. This applies despite the fact that the trade or business may be continued to be carried on by another person. ***(2)***

68 Short-lived businesses

Summary

This section alters the rules in ***section 66*** relating to the basis of assessment in a commencement situation where a trade or profession is short-lived (that is, one which commences and ceases within a period of 3 years of assessment). In such cases, the assessment to tax is to be based on the actual profits earned in the period in which the trade or profession was in existence.

Details

Application

The section applies to a trade or profession which commences and ceases within 3 years of assessment where the aggregate of the profits or gains of the trade or profession charged to tax exceed the actual aggregate of profits and gains of the trade or profession over its life. ***(1)***

Adjustments

An adjustment is provided for in the form of a reduction in the amount of profits subject to tax in the year of assessment before that in which the business ceases. The adjustment ensures that tax is levied on actual profits only for that year. As a consequence, this ensures that tax is payable on actual profits over the life of the business since the profits of the first and final years of trading are already taxed on an actual basis. For the adjustment to apply, the taxpayer is required to notify the inspector in writing that his/her business is one to which this section applies. Such a notification must be made by the return filing date for the tax year in which the business ceases. ***(2)***

A discontinued trade or profession includes one which ceases as a result of the death of the person carrying on the trade or profession. ***(3)***

69 Changes of proprietorship

Summary

Where a trade or profession undergoes a change of proprietorship, the change is treated as a permanent cessation of the trade or profession and the commencement of a new trade or profession.

Details

Cessation of trade

A trade or profession is treated as permanently discontinued where one individual is succeeded by another individual or by a partnership (including a partnership in which the former individual is a partner). Accordingly, the provisions applicable to the cessation of a trade or profession set out in ***section 67*** apply in such circumstances. ***(1)***

Succession to a trade or profession

A successor is treated as having set up a new trade or profession where he/she succeeds to a trade or profession previously solely carried on by another individual or by a partnership (including a partnership in which the successor was a partner). ***(2)***

Accordingly, the provisions applicable to the commencement of a trade or profession set out in ***section 66*** apply in such circumstances.

Deceased persons

Where a deceased person has a liability to tax due to the operation of this section, that liability is assessable and chargeable on his/her executors or administrators and is a debt due from and payable out of that person's estate. ***(3)***

CHAPTER 4

Income tax: basis of assessment under Cases III, IV and V

Overview

Chapter 4 of ***Part 4*** sets out the rules relating to the basis of assessment to income tax under Cases III, IV and V of Schedule D. The Chapter also sets out special rules relating to the Case III basis of assessment, including the remittance basis, certain anti-avoidance rules relating to this basis and rules relating to income arising from certain UK possessions.

70 Case III: basis of assessment

Summary

Income/profits chargeable to income tax under Case III of Schedule D is/are deemed to issue from a single source. However, this single source provision shall not be taken to mean that an "excluded amount", i.e. foreign rental losses, can be included in the computation of such income/profits. With the exception of income from foreign securities and possessions for which ***subsection (4)*** and ***sections 71*** and ***73*** provide special rules, income tax under Case III is computed on the full amount of the income/profits arising within the year of assessment without deduction. Where income tax is to be computed by reference to the amount of income actually received in the State rather than on the income arising, income tax under Case III of Schedule D is computed on the full amount of the income/profits actually received in the year of assessment (this is known as "the remittance basis of assessment").

Details

For the purposes of ascertaining liability to income tax, income/profits chargeable to tax under Case III of Schedule D is/are treated as issuing from a single source. ***(1)***

An "excluded amount" is the amount of a deficiency (or loss) computed in respect of foreign rental property. ***(1A)(a)***

The single source provision in ***section 70(1)*** cannot be taken to mean that a loss arising from foreign rental property, i.e. an "excluded amount" as defined, may be taken into account in the computation of income or profits chargeable under Case III of Schedule D. ***(1A)(b)***

Income/profits chargeable to tax under Case III of Schedule D is/are, subject to the provisions applicable to income arising from foreign securities or possessions in ***subsection (4)*** and ***sections 71*** and ***73***, chargeable on the full amount of such income/profits arising in the year of assessment without any deduction. No deductions are available, therefore, in respect of Case III income which arises in the State. ***(2) & (3)***

Where Case III income is computed by reference to the amount received in the State, the amount so chargeable is the income/profits actually received in the State in the year of assessment. ***(4)***

71 Foreign securities and possessions

Summary

In general, income from foreign securities and possessions is computed on the full amount of the income arising, irrespective of whether the income has been or will be received in the State. However, in the case of such income assessed on the arising basis which is not received in the State, any deductions and allowances that would normally be available for similar Irish source income are available. Deductions are also available for income tax paid in respect of such income in the place where the income arises, and for any annuity or other annual payment paid out of the income to a person not resident in the State. These rules do not apply to a person who is not domiciled in the State or who up to the year ended 31 December 2009 was an Irish citizen not ordinarily resident in the State. In such cases, income tax is computed on the full amount of the actual sums received in the State from remittances, etc into the State without any deduction or relief being given. Special rules apply in the case of foreign rental income which-

- allow for a deduction from the rents in respect of interest paid on loans used to purchase, improve or repair the rental property, and
- provide that the amount of such income on which a debtor (within the meaning of the Personal Insolvency Act 2012) is chargeable to tax includes rents and easements arising while the property is held in trust under a Debt Settlement Arrangement or a Personal Insolvency Arrangement for the benefit of creditors.

Details

General rule

Income tax is charged under Case III of Schedule D on the full amount of income arising from foreign securities and possessions irrespective of whether the income has been or will be received in the State. In the case of such income not received in the State- ***(1)***

- the same deductions and allowances are available as if the income had been received in the State,
- a deduction is allowable in respect of any foreign tax paid in the place where the foreign income arose, where such a deduction is not authorised or prohibited by any other provision of the Income Tax Acts,
- a deduction is allowed for any annuity or other annual payment (other than interest) payable out of the income to a person not resident in the State.

Non-domiciled or non-ordinarily resident

Subsection (1) does not apply to any person who satisfies the Revenue Commissioners that he/she is not domiciled in the State or for the years up to and including the year ended 31 December 2009 being a citizen of Ireland, he/she was not ordinarily resident in the State. ***(2)***

In the case of non-domiciled persons and for the years up to and including the year ended 31 December 2009 in the case of Irish citizens non-ordinarily resident, tax is computed on the full amount of the actual sums received in the State from foreign ***(3)*** income or possessions in the year of assessment without deduction or abatement. For the purpose of the assessment and the computation of the tax, the rules in ***section 70*** as modified by ***subsection (4)*** of that section apply to such income.

Where income arising outside the State is chargeable to tax under Case III of Schedule D and a payment is made under the law of the foreign territory to the person in receipt of the income by reference to foreign tax paid by another person, then the amount of income chargeable to Irish tax is increased by the amount of the payment. ***(3A)***

For the purposes of this subsection 'foreign tax' means a tax chargeable and payable under the law of a territory outside the State and which corresponds to income tax or corporation tax.

Where, on or after13 February 2013 an individual who is not domiciled in the State makes a loan of, or transfers money from income arising outside the State or transfers a property acquired using income arising outside the State to his or her spouse or civil partner, and where that money or property is subsequently remitted to the State, the individual who made the transfer will be treated as if he or she made the subsequent remittance and his or her tax liability will be computed accordingly. ***(3B)***

Foreign rents

A deduction is given in taxing income from certain rental receipts for interest paid on borrowed money used to purchase, improve or repair premises (including land, tenements and hereditaments) located outside the State. The deduction is available only in respect of such income which if it arose in the State would be chargeable to tax under Case V of Schedule D. ***(4)***

The restrictions imposed by ***subsections (2A)***, ***(2B)***, ***(2C)*** and ***(2E)*** of ***section 97*** in relation to relief against rental income arising in the State in respect of interest on borrowed money employed to purchase, improve or repair residential premises apply as respects foreign rents in relation to money so employed on or after 7 May, 1998. However, it should be noted that under ***subsection (2G)*** of that section relief for such interest is restored as a deductible expense in calculating tax on rental income from residential property where such interest accrues on or after 1 January 2002. ***(4A)***

A person who has rental property outside the State, and who transfers that property to another person to hold it in trust for the benefit of creditors under a Debt Settlement Arrangement or a Personal Insolvency Arrangement entered into under the Personal Insolvency Act 2012, remains chargeable to tax in respect of rents and easements arising from that property while it is held in trust. ***(4B)***

Appeals

There is a right of appeal to the Appeal Commissioners on any question as to a person's domicile or for the years up to and including 31 December 2009 a person's ordinary residence. Any such appeal is to be heard and determined by the Appeal Commissioners in the same way as an appeal against an assessment to income tax. The provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law also apply. ***(5) & (6)***

72 Charge to tax on sums applied outside the State in repaying certain loans

Summary

This is an anti-avoidance provision directed against the use of a device whereby a person with foreign income assessable on the remittance basis under ***section 71*** could avoid tax on such income by obtaining an overdraft or other loan which could be enjoyed in the State and then paying off the overdraft or loan out of the foreign income. The section treats the amount used to pay off the loan abroad as income remitted to the State and, accordingly, subject to Irish tax.

Details

Attempts to circumvent the application of the section by use of a series of loans is prevented. ***(1)(a)***

A "lender" is any person entitled to repayment of any money loaned. ***(1)(b)***

For the purpose of computing income under the remittance basis as provided for in ***section 71(3)*** in the case of persons ordinarily resident in the State (for the remittance basis to apply to such persons they would have to be not domiciled in the State), such income as is applied abroad by such a person in or towards the settlement of — ***(2)***

- a loan made in the State or interest on such a loan,
- a loan made abroad and received in or brought to the State, or
- a debt incurred in satisfying in whole or in part any such loan,

is treated as receivable in the State as a remittance.

Where a loan has been paid off abroad out of foreign income before the proceeds of the loan are brought to the State, the foreign income out of which the loan is settled is treated as a remittance received in the State when the proceeds of the loan are brought to the State, and ***subsection (2)*** applies accordingly. ***(3)***

In certain circumstance a borrower may not literally repay his/her loan, but may deposit income or assets representing income with the lender in such circumstances that the lender is content to leave his/her loan outstanding or even add to it. For example, a borrower may use his/her foreign income to buy securities and may then deposit those securities with the foreign lender, creating a charge in favour of the lender. Any income so applied is treated as being applied towards settlement of the loan if there is an arrangement between lender and borrower that the amount for the time being of the loan, or the time when it is to be repaid, depends directly or indirectly on the amount held by the lender on behalf of or to the account of the borrower. ***(4)***

The section is extended to persons resident in the State who are subject to the remittance basis provided for in ***section 71(3)*** (such persons would have to be not domiciled in the State). This extension, however, has effect only in relation to income applied to pay off a loan taken out on or after 20 February, 1997. ***(5)***

73 Income from certain possessions in Great Britain or Northern Ireland

Summary

Special rules apply to the computation of income of non-domiciled persons and non-ordinarily resident Irish citizens arising from possessions in the United Kingdom. The remittance basis does not apply in such cases. Instead such income is computed on the same basis as if the income had arisen in the State, that is, on the full Great Britain or Northern Ireland income arising. Any deductions, allowances or reliefs which would be available if the income source arose in the State are available in respect of the income (other than income from stocks, shares, rents or the occupation of land). These special rules cease to have effect in respect of income arising on or after 31 January 2008.

Details

The term "rents" is given an extended meaning to include royalties in addition to payments which would normally be considered rents. ***(1)***

By disapplying ***section 71(2)***, the remittance basis of assessment does not apply to the income of non-ordinarily resident Irish citizens or non-domiciled persons which arises from property situated in Great Britain or Northern Ireland. Instead such income is subject to the normal rules relating to the Case III basis of assessment contained in ***sections 70*** and ***71***. Also the rules in ***subsection (3)*** apply to such income despite anything to the contrary in ***sections 70*** and ***71***. ***(2)***

Income tax on income arising from possessions in Great Britain or Northern Ireland is computed either on the full amount of income arising in the year of assessment or on the full amount of such income on an average of such period as the case may require and as may be directed by the Appeal Commissioners. Excluded from this provision is income arising from stocks, shares, rents or the occupation of land. Deductions are available in respect of an annuity or other annual payment (other than interest) payable out of the income to a person not resident in the State. Persons chargeable under this provision are also entitled to the same allowances, deductions and reliefs as if the income had arisen in the State. ***(3)***

The section ceases to have effect in respect of income arising on or after 31 January 2008. ***(4)***

74 Case IV: basis of assessment

Income chargeable to tax under Case IV of Schedule D is computed either on the full amount of the profits/gains arising in the year of assessment or according to the average of such a period (not greater than one year) as the case may require and as may be directed by the inspector. The nature of the profits/ gains and the basis on which the amount is computed must be stated to the inspector. Any such statement or computation must be made to the best of the knowledge and belief of the person in receipt of or entitled to the profits/gains.

75 Case V: basis of assessment

Summary

Income arising from rents and easements is chargeable to tax under Case V of Schedule D. All such income is treated as arising from a single source and the tax is computed on the full amount of the profits/gains arising in the year of assessment. Rents from uneconomic lettings are excluded from the Case V basis of assessment, and expenses incurred in respect of such lettings, and losses arising from them, are not allowable against other Case V income.

Details

Interpretation

Section 96 gives the meaning of particular words and expressions used in this section and also provides for the application of certain constructions. ***(5)***

General

Profits/gains arising from rents in respect of premises (including lands, tenements and hereditaments) and receipts in respect of easements are deemed for the purpose of the Income Tax Acts to be profits/gains within the charge to tax under Schedule D and the person entitled to such profits/gains is chargeable to tax under Case V of that Schedule. Excluded from this charge are payments of rent (including tolls, duties, royalties or annual or periodical payments in the nature of rent) and certain other payments chargeable to tax under Case IV of Schedule D by virtue of ***section 104***. ***(1)***

Profits/gains chargeable to tax under Case V are deemed to issue from a single source. ***(2)***

Tax charged under Case V is computed on the full amount of the profits/gains arising within the year of assessment. ***(3)***

Uneconomic lettings

Excluded from the Case V basis of assessment and from ***sections 97*** (Case V computational rules) and ***384*** (treatment of Case V losses) is rent reserved under a lease which is insufficient, taking one year with another, to meet — ***(4)***

- the lessor's cost of any obligations under the lease, and
- any expenses of maintenance, repairs, insurance and management of the leased premises (including lands, tenements and hereditaments) which are borne by the lessor.

CHAPTER 5

Computational provisions: corporation tax

Overview

This Chapter provides the corporation tax rules for the computation of income (***sections 76*** and ***77***) and chargeable gains (***section 78***) of companies. The Chapter also includes the rules relating to the treatment of foreign exchange gains and losses (***section 79***) and loans denominated in a foreign currency (***section 80***).

76 Computation of income: application of income tax principles

Summary

In general, the amount of any income to be brought into charge to corporation tax is to be computed in accordance with income tax law and practice. The income tax law that applies is the law for the year of assessment in which the company's accounting period ends. Income for corporation tax purposes is computed under the same Schedules and Cases as for income tax and in accordance with the relevant income tax provisions applicable. Income from each source, as so computed, and any chargeable gains (computed in accordance with ***section 78***) are to be aggregated to give the total profits chargeable to corporation tax for an accounting period. In computing income, no deductions are allowed for distributions or for charges on income deductible from total profits by virtue of ***section 243***. Finally, the section provides that provisions which grant exemption from income tax are to apply also to grant exemption from corporation tax.

Details

Application of income tax law

Income tax principles apply in determining for corporation tax purposes what is or is not income, the amount of any income and the time at which any income arises. Exceptions to this general rule include ***section 77(3)*** which allows for the deduction of yearly interest in computing trading income, ***sections 716(4)*** and ***717(6)*** which allow certain annuities paid to be deducted in computing certain income of insurance companies and ***section 845(3)*** which allows for the inclusion of foreign dividends and interest in computing the Irish profits of a non-resident bank, insurance company or company dealing in securities. ***(1)***

The income tax law to be applied for corporation tax purposes is that which applies to individuals for the year of assessment in which the company's accounting period ends. The income tax law so applied excludes any provisions applicable to individuals only. ***(2)***

Income from each source is computed under the same Schedules and Cases as for income tax and in accordance with the relevant income tax provisions applicable to those Schedules and Cases. The income from all sources together with any chargeable gains (computed in accordance with ***section 78***) are aggregated to arrive at the total profits for the accounting period. ***(3)***

Income arising in any period is not (as it may be for income tax) to be measured by reference to the income arising in some other period, except in apportioning the income of a whole period to its parts. ***(4)***

Deductions

No deduction is given in computing income for corporation tax purposes in respect of distributions or interest or other charges on income. (Relief in respect of charges on income is given against total profits under ***section 243***.) Exceptions include ***section 77(3)*** which allows the deduction of yearly interest in computing trading profits and ***section 97(2)(e)*** which allows the deduction of interest on money borrowed for the purchase, improvement or repair of premises in computing income from rents for the purpose of a charge under Case V of Schedule D. ***(5)***

Application of income tax exemptions and charging rules

The income tax provisions providing exemptions or imposing a charge to tax are carried over into corporation tax. Examples of exemptions so carried over are those for charities (***sections 207*** and ***208***), friendly societies (***section 211***), credit unions (***section 212***), trade unions (***section 213***), certain agricultural societies (***section 215***) and approved superannuation funds (***section 774***). In the case of a charge to income tax, this applies whether the amount is expressed to be income or not. An example of this is where income tax is charged by virtue of ***section 100*** on a portion of the sale price where land is sold with a right of reconveyance. ***(6)***

Non-application of remittance basis

The section does not carry over the remittance basis of assessment to corporation tax. That basis, which is concerned with income arising abroad to a resident person ***(7)*** who is not domiciled in the State or who is not ordinarily resident in the State, is not appropriate in the case of companies.

Inter-relationship of taxes

Where income tax provisions apply to both income tax and corporation tax, the 2 taxes are, as far as possible, treated as if they were one, so that a provision regulating a transaction between 2 individuals liable to income tax equally governs a transaction between an individual and a company for the purpose of the income tax of the individual and the corporation tax of the company. ***(8)***

76A Computation of profits or gains of a company – accounting standards.

Summary

This section consists of five subsections which set out the methodology for computing a company's Case I and Case II profits, each of which is discussed in detail below. This section provides that, for the purposes of Case I or Case II, a company's taxable profits are to be computed in accordance with generally accepted accounting practice subject to any adjustment required or authorised by law. It is important to remember that it is the profits of the company's trade or profession which are assessable to tax under Case I and Case II of Schedule D, not the accounting profits of the company itself. For example, separate rules apply to the computation of a company's chargeable gains (see section 78).

It should also be noted that the income of an Irish resident company from a trade carried on wholly abroad, although chargeable to corporation tax under Case III of Schedule D, is computed in accordance with the rules of Case I of Schedule D (see section 77). Similarly, the profits or gains of certain Irish-resident securitisation vehicles, although chargeable to corporation tax under Case III of Schedule D, are also computed in accordance with the rules of Case I of Schedule D (see section 110).

Details

General principle

For the purposes of Case I or Case II, the profits or gains of a trade or profession carried on by a company are to be computed in accordance with generally accepted accounting practice subject to any adjustment required or authorised by law in computing such profits or gains for those purposes. It is important to remember that it is the profits of the company's trade or profession which are assessable to tax under Case I and Case II of Schedule D, not the accounting profits of the company itself. For example, separate rules apply to the computation of a company's chargeable gains (see section 78). ***(1)***

Generally accepted accounting practice

'Generally accepted accounting practice' is defined in section 4 as either:

International Financial Reporting Standards (**IFRS**); or
Irish generally accepted accounting practice (**Irish GAAP**).

IFRS and Irish GAAP consist of 'accounting standards'. Accounting standards set out the detailed accounting rules for recognising and measuring income and expenses, assets and liabilities in a company's financial statements. In simple terms, 'recognition' refers to when an item is included in the accounts and how it is recorded (e.g., as income or expense) while 'measurement' determines the value of the item for accounting purposes.

Profits or gains computed in accordance with generally accepted accounting practice

Profits or gains computed in accordance with generally accepted accounting practice means all items of income and expense recognised during the period in determining profit or loss. Entities are required to recognise all items of income and expense in a period in profit or loss unless generally accepted accounting practice requires or permits otherwise [IAS 1.88/FRS 101/section 5.2(b) of FRS 102/section 5.4 of FRS 105].

Where a separate income statement is presented (which may be identified using another term such as 'profit and loss account' or 'statement of profit or loss'), all items of income and expense recognised during the period in determining profit or loss will be reflected in the income statement. The 'profit or loss before tax' figure as per the income statement forms the starting point for the Case I/Case II computation.

Where a single statement of comprehensive income is presented (which may be identified using another term such as 'statement of profit or loss and other comprehensive income'), items of other comprehensive income are excluded from the Case I/Case II computation because they do not represent 'profits or gains computed in accordance with generally accepted accounting practice'. The 'profit or loss before tax' figure as per the statement of comprehensive income forms the starting point for the Case I/Case II computation.

Prior period adjustments

When a company:

- changes its accounting rules; or
- corrects certain accounting errors,

IFRS and Irish GAAP usually require companies to apply the new accounting rules and correct errors 'retrospectively'. This means that the opening balances and prior period comparative figures in the financial statements are restated to what they would have been if the new accounting rules had always applied or if the error had never been made. Retrospective application can give rise to large accounting adjustments to previously reported figures for profit or loss; these are commonly referred to as 'prior period adjustments' (**PPAs**) or 'prior year adjustments' (**PYAs**). PPAs represent the difference between: (i) the accounting profit as originally reported and taxed; and (ii) the restated accounting profit.

PPAs affect the balance sheet (or 'statement of financial position') rather than the current period's profit or loss account (as shown in the 'income statement'/profit and loss account'/'statement of profit or loss'). The taxation of PPAs is governed by:

- ***subsection (3)***: where the PPA results from a change in accounting policy;

- ***subsection (4)***: where the PPA results from the adoption of an accounting standard or the adoption of an amendment of an accounting standard; and

- ***subsection (5)***: where the PPA results from the correction of a 'material' or 'fundamental' accounting error.

Subsection (5) also sets out the tax treatment of accounting errors which are neither 'material' nor 'fundamental'. Please see below for further details including an explanation of key terms such as 'accounting policy' and 'accounting standard'.

Adjustments required or authorised by law

As previously noted, the profits or gains of a trade or profession carried on by a company for the purposes of Case I or Case II are to be computed in accordance with generally accepted accounting practice subject to any adjustment required or authorised by law in computing such profits or gains for those purposes. "Law" for these purposes is not defined but it would include statute law, statutory instruments, and any directly applicable EU law. It would also include case law because case law involves a decision by the courts as to what statute law means. While Revenue produced materials, such as Notes for Guidance and Tax and Duty Manuals, explain how Revenue interprets the law, such materials are not law.

The types of adjustments that might be required or authorised by law in computing profits for tax purposes include the disallowance of capital expenditure that may have been taken into account in computing accounting profits, the disallowance of entertainment expenses, the deduction of capital allowances, and the special rules applying to PPAs (as discussed below). The key point is that the accounting treatment is influential but not necessarily determinative of the correct tax treatment.

Transitions from former Irish GAAP to: (i) IFRS or (ii) current Irish GAAP ***(2)***

By virtue of this subsection, ***Schedule 17A*** provides for transitional arrangements where both of the following conditions apply:

- that, in respect of an accounting period, the profits or gains of the company's trade or profession are computed in accordance with 'relevant accounting standards' (within the meaning of ***Schedule 17A***) – ***subsection (2)(a)***; and

- that, for previous accounting periods of the company, the profits or gains of the company's trade or profession were computed in accordance with accounting standards other than 'relevant accounting standards' (within the meaning of ***Schedule 17A***) – ***subsection (2)(b)***.

Schedule 17A defines 'relevant accounting standards' as IFRS and Irish GAAP to the extent that Irish GAAP is stated to embody IFRS. Therefore ***Schedule 17A*** applies to a change from former Irish GAAP to either IFRS or current Irish GAAP (to the extent that current Irish GAAP is stated to embody IFRS). Prior to the

introduction of current Irish GAAP, ***Schedule 17A*** also applied where a company adopted a former Irish GAAP standard which embodied IFRS (e.g., FRS 25 or FRS 26) for the first time.
Please refer to ***Schedule 17A*** for further details if required. However, as companies are no longer permitted to use former Irish GAAP (and hence cannot transition from former Irish GAAP or adopt former Irish GAAP standards which embodied IFRS), ***Schedule 17A*** is effectively now obsolete and has been replaced by ***subsection (4)***.

Changes in accounting policy ***(3)***

Subsection 3 applies when a company changes an accounting policy. Accounting policies are the specific principles, bases, conventions, rules and practices applied by a company in preparing and presenting financial statements [IAS 8.5 and IAS 8.35/FRS 101/section 10.2 of FRS 102/section 8.2 of FRS 105]. For example, where a company sells goods, it needs an accounting policy for valuing its closing inventory (stock on hand). In accordance with both IFRS [IAS 2.9] and current Irish GAAP [FRS 101/section 13.4 of FRS 102/section 10.3 of FRS 105], inventory should generally be valued at the lower of cost and net realisable value. The company's accounting policy for inventory therefore needs to confirm that it complies with this principle and to specify how cost is to be measured, for example, on a first in, first out (**FIFO**) or weighted average basis. Irish company law (paragraph 30 of Part III of Schedule 3 of *The Companies Act 2014*) prohibits the use of last in, first out (**LIFO**) for stock valuation, as do IFRS [IAS 2.25] and current Irish GAAP [FRS 101/section 13.18 of FRS 102/section 10.17 for FRS 105].
In accordance with IFRS and current Irish GAAP, an entity is only allowed to change an accounting policy if the change is required by a particular accounting standard or the change results in the financial statements providing reliable and more relevant information about the effects of transactions, other events or conditions on the entity's financial position, financial performance or cash flows [IAS 8.14/FRS 101/section 10.8 of FRS 102/ section 8.7 of FRS 105].
This subsection incorporates in statute existing practice, based on case law principles, which provides that there should be neither a tax-free uplift nor a double charge to tax because of a change from one valid basis to another for good commercial reasons.

Adoption of an accounting standard/amendment of an accounting standard ***(4)***

As previously noted, IFRS and Irish GAAP consist of 'accounting standards'. Accounting standards set out the detailed accounting rules for recognising and measuring income and expenses, assets and liabilities in a company's financial statements. Accounting standards provide a standardised way of describing the company's financial performance, thus allowing comparisons over time and between companies.

The Companies (Accounting) Act 2017 permits a company to change from Irish GAAP to IFRS or from IFRS to Irish GAAP once every five years. Where a company changes from Irish GAAP to IFRS, it must adopt all relevant IFRS accounting standards. Similarly, where a company changes from IFRS to Irish GAAP, it must adopt the most relevant Irish GAAP accounting standard.

In addition, where the IASB issues a new accounting standard or makes changes to an existing accounting standard, companies using IFRS (and FRS 101) are obliged to adopt the new standard or the amendment of the accounting standard to remain compliant with IFRS/FRS 101. Similarly, the FRC intends to carry out triennial reviews to identify any required improvements to their standards, having regard to users' experience of applying the previous versions of the standards as well as developments in IFRS. Following each review, the FRC issues updated versions of its existing accounting standards and companies using Irish GAAP are obliged to adopt the relevant amendment of an accounting standard to remain compliant with Irish GAAP.

Furthermore, a company may need to adopt an accounting standard for the first time where its circumstances change. For example, where a company enters into a new type of transaction for the first time, the appropriate accounting treatment of the transaction may not be specified in the accounting standards that the company has applied to date. The company would therefore be required to adopt whatever accounting standard deals with the transaction in question. Although that standard in question may not be newly issued by the IASB/FRC, it will be new to the company.

Subsection 4 applies where an accounting standard or an amendment of an accounting standard is adopted for the first time, for example:

- where a company preparing accounts in accordance with IFRS adopts an IFRS standard or an amendment to an IFRS standard for the first time, or

- where a company preparing accounts in accordance with current Irish GAAP adopts a current Irish GAAP standard or an amendment to a current Irish GAAP standard for the first time, or

- where a company transitions from current Irish GAAP accounting standards to IFRS accounting standards, or

- where a company transitions from IFRS accounting standards to current Irish GAAP accounting standards.

This subsection legislates for the case law principles that no taxable income or deductible expenditure is to be double counted or to fall out of the charge to tax because of the adoption of an accounting standard or an amendment of an accounting standard for the first time. In addition, companies are required to calculate a transitional adjustment upon adoption of an accounting standard or an amended accounting standard for the first time; this is known as the 'relevant amount'. The 'relevant amount' is then taxed or deducted (as the case may be) over a five-year period following the transition. This is consistent with the approach applied by ***Schedule 17A*** to changes from former Irish GAAP to IFRS or current Irish GAAP.

Correction of accounting errors ***(5)***

Subsection 5 applies to the correction of accounting errors. Errors are omissions from, and misstatements in, an entity's financial statements for one or more prior periods arising from a failure to use, or misuse of, reliable information that:

(a) was available when financial statements for those periods were authorised for issue; and

(b) could reasonably be expected to have been obtained and taken into account in the preparation and presentation of those financial statements [IAS 8.5/FRS 101/ Appendix I to FRS 102/Appendix I to FRS 105].

Such errors include the effects of mathematical mistakes, mistakes in applying accounting policies, oversights or misinterpretations of facts, and fraud [IAS 8.5/FRS 101/section 10.20 of FRS 102/section 8.15 of FRS 105].

Former Irish GAAP defined a 'fundamental' error as an error of such significance as to destroy the truth and fairness and hence validity of a set of financial statements [FRS 3.63]. The concept of a 'fundamental error' does not exist in current Irish GAAP or IFRS; instead, they use the term 'material error'. Materiality is an accounting concept. Omissions or misstatements of items are material if they could, individually or collectively, influence the economic decisions of users taken on the basis of the financial statements. Materiality depends on the size and nature of the omission or misstatement judged in the surrounding circumstances. The size or nature of the item, or a combination of both, could be the determining factor. [IAS 8.5*/FRS 101/Appendix I to FRS 102/Appendix I to FRS 105].

* = *On 31 October 2018, the IASB announced that the IFRS definition of materiality has been amended with effect from 1 January 2020 (although companies can choose to early apply the new definition). The new definition states that information is material if omitting, misstating or obscuring it could reasonably be expected to influence the decisions that the primary users of general purpose financial statements make on the basis of those financial statements which provide financial information about a specific reporting entity.*

The general position under former Irish GAAP was that:

1. prior period errors that are not fundamental are accounted for in the period they are identified (i.e., the correction is included in the profit or loss account for that period) [FRS 3.60]; and

2. all fundamental prior period errors must be corrected retrospectively (i.e., as a PPA) in the first set of financial statements authorised for issue after their discovery [FRS 3.63].

The general position under current Irish GAAP and IFRS is that:

1. prior period errors that are not material are accounted for in the period they are identified (i.e., the correction is included in the profit and loss account for that period); and

2. all material prior period errors must be corrected retrospectively (i.e., as a PPA) in the first set of financial statements authorised for issue after their discovery [IAS 8.42/FRS 101/section 10.21 of FRS 102/section 8.16 of FRS 105].

This subsection incorporates in statute existing practice based on case law principles. These provide that, in the case of a change from a non-valid basis to a valid basis (such as the correction of an error), the accounting profits must be computed on the new valid basis. Any adjustments which need to be made to previous periods' tax computations in order to compute taxable profits on a valid basis must be done by changing the computations for those periods. These changes can only be made subject to the normal statutory time limits for the correction of errors. ***Section 959V(6)*** imposes a general four-year time limit (with some exceptions) so this would operate to impose the same time limit on this subsection by virtue of ***paragraph (h)*** of this subsection.

As previously noted, the concept of a 'fundamental error' does not exist in current Irish GAAP or IFRS. However, this subsection sets out the tax treatment of 'fundamental errors' because, for many companies, their 2013, 2014 and 2015 'accounting periods' were still within the statutory time limit for amending returns when this subsection was enacted and the accounts for those years could have been prepared in accordance with former Irish GAAP.

This subsection refers to 'an accounting period which commences on or after 1 January 2013' and 'an accounting period which commenced before 1 January 2013'. The legislation requires a distinction between accounting periods commencing before and after 1 January 2013 because new assessing rules were introduced in Finance Act 2012 (***Part 41A***) to replace the previous rules (***Part 41***) which applied to accounting periods beginning before 1 January 2013. ***Part 41A*** introduced a system of "full" self-assessment for direct taxes which applies from the 2013 tax years (for income tax) and for accounting periods commencing on or after 1 January 2013 (for corporation tax).

Part 41A, including ***section 959V***, refers to a 'return' and a 'self-assessment' for a 'chargeable period' (which, for a company, is an 'accounting period' – see ***section 959A***). However, "full" self-assessment did not exist prior to 1 January 2013. Therefore, for ***section 959V*** to apply to accounting periods beginning before 1 January 2013, the references to 'self-assessment' must be deleted and references to ***section 959Z*** must be replaced with references to ***section 956*** (the equivalent section which applied before the introduction of 'full' self-assessment).

76B Treatment of unrealised gains and losses in certain circumstances

Summary

Section 76B provides for the taxation of unrealised profits or gains or losses on certain "financial assets" and "financial liabilities" (as defined in "relevant accounting standards" within the meaning of ***Schedule 17A***). "Financial assets" and "financial liabilities" are collectively referred to as "financial instruments" by "relevant accounting standards" and this term has also been used in these Notes for Guidance for simplicity.

Section 76B provides that, in the case of a company carrying on a trade or profession, profits or gains or losses which are:

(i) calculated by reference to the change in the "fair value" of a financial instrument in an accounting period; and

(ii) included in the profit or loss of the company for the accounting period

are to be taken into account in computing Case I or II profits or gains or losses. This treatment applies only to profits or gains on financial instruments which are trading assets and liabilities for tax purposes. In the absence of ***section 76B***, companies could have continued to compute Case I or II profits or gains or losses on these financial instruments on a realised basis.

Additional rules apply where the companies in question are certain Irish-resident securitisation vehicles (see ***section 110***) or leasing entities (see ***section 76D***).

Details

Interpretation rules

The terms "*fair value*", "*financial asset*" and "*financial liability*" as used in this section have the meanings given to them by "international accounting standards". ***(1)(a)*** "*International accounting standards*" are defined in ***section 4*** as International Financial Reporting Standards (**IFRS** – see below for further details).

For the purposes of this section, ***section 76A*** and paragraph 4 of ***Schedule 17A***, references to profits or gains include references to losses and losses are to be ***(1)(b)*** computed in the same way as profits or gains. For the remainder of these Notes for Guidance on ***section 76B***, references to profits or gains should be interpreted as including references to losses.

Schedule 17A defines "relevant accounting standards" as IFRS and Irish generally accepted accounting practice (**GAAP**) to the extent that Irish GAAP is stated to ***(2)*** embody IFRS. IFRS and Irish GAAP both consist of 'accounting standards'. Accounting standards set out the detailed accounting rules for recognising and measuring income and expenses, assets and liabilities in a company's financial statements. In simple terms, 'recognition' refers to when an item is included in the accounts and how it is recorded (e.g., as income or expense) while 'measurement' determines the value of the item for accounting purposes.

Taxation of unrealised gains and losses

Unrealised gains and losses on financial assets and financial liabilities are taxable for an accounting period if the two conditions in subsection 2 are met. The ***(2)*** conditions are that, in accordance with "relevant accounting standards" (meaning IFRS or Irish GAAP which is aligned to IFRS):

(i) the profit or gain on a financial asset or liability is calculated by reference to the change in the fair value of the asset or liability in the accounting period; and ***(2)(a)***

(ii) that profit or gain is included in the profit or loss of the company for that accounting period (this is explained further below). ***(2)(b)***

This treatment applies only to gains and losses on financial assets and financial liabilities which are trading assets and liabilities for tax purposes. In the absence of this section, companies could have continued to compute Case I or II profits or gains on these financial assets and financial liabilities on a realised basis.
Additional rules apply where the companies in question are certain Irish-resident securitisation vehicles (see ***section 110***) or leasing entities (see ***section 76D***).

Included in the profit or loss of the company
Companies are required to include all items of income and expense in a period in profit or loss unless IFRS or Irish GAAP requires or permits otherwise [IAS 1.88/FRS 101/section 5.2(b) of FRS 102/section 5.4 of FRS 105].

Where a separate income statement is presented (which may be identified using another term such as ‘profit and loss account’ or ‘statement of profit or loss’), all items of income and expense recognised during the period in determining profit or loss will be reflected in the income statement. The ‘profit or loss before tax’ figure as per the income statement forms the starting point for the Case I/II computation.

Where a single statement of comprehensive income is presented (which may be identified using another term such as ‘statement of profit or loss and other comprehensive income’), items of other comprehensive income are excluded from the Case I/II computation because they do not represent ‘profits or gains computed in accordance with generally accepted accounting practice’. The ‘profit or loss before tax’ figure as per the statement of comprehensive income forms the starting point for the Case I/II computation.

76C Use of different accounting policies within a group of companies

Summary
Section 76C is an anti-avoidance provision which sets aside any ‘tax advantage’ accruing to a company which prepares ‘IAS accounts’ where that ‘tax advantage’ arises as a result of a transaction or a ‘series of transactions’ between that company and another ‘associated company’ which prepares its accounts in accordance with ‘Irish generally accepted accounting practice’. ***Section 76C*** operates to deny the ‘tax advantage’ by requiring that the Case I or II profits or gains of that company from that transaction or series of transactions to be computed in accordance with ‘Irish generally accepted accounting practice’. This measure applies without regard to whether or not an avoidance motive is present.

Details

Definitions

Each of the key terms necessary to understand ***section 76C*** are explained below.

- ***Tax advantage***: defined in ***section 76C*** as (a) a reduction, avoidance or deferral of any charge or assessment to tax, including any potential or prospective charge or assessment; or (b) a refund of or a payment of an amount of tax, or an increase in an amount of tax refundable or otherwise payable to a person, including any potential or prospective amount so refundable or payable. ***(1)(a)***

- ***IAS accounts***: defined in ***section 4*** as accounts prepared in accordance with 'international accounting standards' (see below).

- ***International accounting standards***: defined in ***section 4*** as the international accounting standards, within the meaning of *Regulation (EC) No. 1606/2002 of the European Parliament and the Council of 19 July 2002* [note: this definition essentially means International Financial Reporting Standards (**IFRS**).]

- ***Series of transactions***: ***section 76C*** provides that a series of transactions is not prevented from being a series of transactions in relation to companies by reason only of the fact that one or more of the following applies: ***(1)(b)***

    - there is no transaction in the series to which both companies are parties; ***(1)(b)(i)***

    - parties to any arrangement in pursuance of which the transactions in the series are entered into do not include one or both of the companies; ***(1)(b)(ii)***

    - there are one or more transactions in the series to which neither of the companies is a party. ***(1)(b)(iii)***

Associated company: ***section 76C*** provides that this term shall be interpreted in accordance with ***section 432*** (see the ***Notes for Guidance*** for that section; broadly,
- companies are associated if they are under common 'control' (as defined in that section).

- ***Irish generally accepted accounting practice***: defined in ***section 4*** as generally accepted accounting practice (**GAAP**) with respect to accounts (other than IAS accounts) of companies incorporated or formed under the laws of the State, being accounts that are intended to give a true and fair view.

Special rule for tax purposes

A transaction involving two associated companies must be accounted for by both companies for tax purposes using **Irish GAAP** where the following conditions are met: ***(2)***

- one of the companies is within the charge to tax under Case I or Case II and prepares its accounts in accordance with IFRS; ***(2)(a)***

- the associated company, also within the Case I or II charge, prepares its accounts in accordance with Irish GAAP. ***(2)(b)***
- there is a transaction between, or a series of transactions involving, those companies; and ***(2)(c)***
- a tax advantage would otherwise accrue to the company that prepares its accounts in accordance with IFRS compared to its position if it had prepared its accounts in accordance with Irish GAAP in relation to the transaction or series of transactions. ***(2)(d)***

Group relief

A claim to group relief by one company in respect of a loss incurred by another company would not itself be regarded as a transaction between the companies, notwithstanding that a payment for the group relief may be made.

76D Computation of income from finance leases

Summary

Section 76D clarifies and codifies the current tax treatment of lease payments.

Under ***section 76A***, trading income of a company is based on the accounts of the company prepared in accordance with accounting standards, ***subject to any adjustment required or authorised by law***. Accounting standards for leases can often involve applying substance over form and, in effect, accounting for leases as if they were financing transactions – this results in significant levels of adjustment often being required.

Section 76D sets out how lease income and expenses should be computed for tax purposes in scenarios where the accounting treatment is likely to deviate substantively from the legal form. These deviations are more likely in the case of finance lessors, and lessees more generally following the introduction and commencement of IFRS 16.

The section confirms that in the case of any lease transaction:

- the income from a lease, in the case of a lessor, and
- the lease rental payments, in the case of a lessee,

should generally be recorded evenly over the life of the lease in line with the legal form of the transaction, except where sections 80A and 299 apply.

Prior to Finance Act (No.2) 2023, this section confirmed this point in respect of finance lessors only.

Details

Definitions

Subsection (1) inserts necessary definitions for the functionality of the section. ***(1)***

Prior to Finance Act (No.2) 2023, some of these were previously included in section 299, but have been moved to create a central location for general leasing terminology in the Act.

'finance lease' means a lease which, under Generally Accepted Accounting Practice, falls to be treated as a finance lease;

'lease' means to either a finance lease or an operating lease;

'leased asset' refers to the asset that is the subject of the lease;

'lease payments' refers to the amounts payable under the lease to the lessor, including amounts prepaid. This definition explicitly includes:

a) residual amounts payable to the lessor at, or after, the end of the lease term and guaranteed by either:
   - the lessee,
   - a person connected with the lessee, or
   - under the terms of any scheme or arrangement between the lessee and any other person, and

b) any amount refundable by the lessor at, or after, the end of the lease term and guaranteed by either:
   - the lessor,
   - a person connected with the lessor, or
   - under the terms of any scheme or arrangement between the lessor and any other person.

'lease term' takes its meaning from Generally Accepted Accounting Practice;

'lessee' and *'lessor'* in relation to machinery or plant provided for leasing, respectively refer to:

- the person to whom the machinery or plant is or is to be leased, and
- the person providing the machinery or plant for leasing.

The terms 'lessee' and 'lessor' also respectively include the successors in title of a lessee or a lessor;

'operating lease' refers to a lease which, under Generally Accepted Accounting Practice, does not fall to be treated as a finance lease.

Computation of income by finance lessors

Subsection (2) confirms that, for the purposes of calculating income of company from a finance leasing trade: ***(2)***

- the accounting treatment provided for in section 76A does not apply, and
- the lease income is to be recorded evenly over the length of the lease,

in line with the legal form of the agreement.

Computation of lease payment expenses by lessees

Subsection (3) confirms that lease payments payable by both operating and finance lessees should be recorded evenly over the length of the lease, in line with the legal form of the agreement. ***(3)***

Change to lease during lease term

If there is a change to the conditions of the lease during its life, then the amount to be taxed or deducted should be recalculated (with the difference being spread evenly over the remaining life of the lease). ***(4)(a)***

Where the change arises from a fact or matter arising that could not be reasonably foreseen/estimated at the time of commencement, the difference should be spread over the period, or periods, to which that change relates. ***(4)(b)***

Treatment of rebates

If a lessee receives a rebate at the end of the lease then that rebate (by virtue of being a refund of a lease payment) is: ***(5)***

- deductible in the hands of the lessor on the later of when it is paid or accrued, and
- taxable in the hands of the lessee on the earlier of when it is received or accrued.

The requirement for 'the later of' and 'the earlier of' is an anti-avoidance measure to prevent a lessor taking a tax deduction for the rebate before it is paid and taxable in the hands of the lessee.

However, if the lease rebate by the lessor (or a person connected with the lessor) is certain from the inception of the lease, then it will form part of the lease payments and should be spread over the life of the lease in the manner set out in ***subsection (3)***. Equally, if there is a residual amount to be paid to the lessor at the end of the lease by the lessee or a person connected with the lessee, and this is certain from the inception of the lease, it will form part of the lease payments at inception.

76E Taxation of Certain Qualifying Financing Companies

Summary

The purpose of the provision is to allow a qualifying company, referred to as Qualifying Financing Company (QFC) in this section, obtain a deduction for interest paid to an external or third party financier (external interest), on a loan from that financier where:

- the activities of the QFC relate wholly to the making of the qualifying business loans to certain qualifying subsidiaries in which it holds 75% or more of the share capital (such loans are referred to as relevant loans), and
- the external interest paid by the QFC can be matched against interest income received in respect of a relevant loan or loans advanced by the QFC,

subject to strict qualifying criteria and anti-avoidance rules being met.

Details

Definitions

'arrangements' refers to any agreement, understanding, scheme, transaction, or series of transactions (whether enforceable or not); ***(1)***

'associated enterprise', refers to an enterprise that is an associated enterprise of a company for the purposes of Chapter 4 of Part 35C (i.e. where the entities are associated enterprises for the purposes of that Chapter);

'control' is to be construed in accordance with section 432;

'EEA State' means a state, not being a Member State or the State, which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993;

'enterprise' has the same meaning as in Part 35C;

'external interest' means the amount of interest payable on an external loan;

'external loan', subject to subsection (11), in respect of a company, means a loan from a person who—

- does not have the beneficial ownership of, or the ability to control (directly or indirectly) more than 5 per cent of the ordinary share capital of the company, and
- is not an associated enterprise of the company;

'indirect qualifying subsidiary' refers to any company that would be a qualifying subsidiary for the purposes of this section, but for the fact that 75 per cent or more of its ordinary share capital is held directly by an intermediate holding company;

'intermediate holding company' refers to a company—

- in which a QFC holds a direct ownership of at least 75% of the ordinary share capital of the company, and
- whose business consists wholly of the holding of ordinary shares of indirect qualifying subsidiaries of the QFC.

'qualifying financing company' (or QFC) means a company that—

- directly holds at least 75% of the ordinary share capital of one or more than one:
    - qualifying subsidiary, or
    - intermediate holding company
- borrows money for the purpose of on-lending that money by making relevant loans to its qualifying subsidiary or indirect qualifying subsidiary (or subsidiaries as the case may be), and
- apart from activities ancillary to the above, carries on no other activities;

'qualifying subsidiary' in respect of a QFC refers to a company—

- that exists wholly or mainly for the purpose of carrying on any trade or trades
- that is tax resident in a Member State, EEA State or a DTA jurisdiction, and
- in which the QFC directly holds at least 75% of the ordinary share capital of the company;

'relevant loan' refers to a monetary loan (entered into by way of a bargain at arm's length) that is—

- advanced by a QFC to its qualifying subsidiary or indirect qualifying subsidiary, and
- used by the qualifying subsidiary or indirect qualifying subsidiary wholly and exclusively for the purposes of a trade, but such use cannot extend to the use of any amount of money for—
    - the redemption of or subscription for shares, or
    - any other payments relating to shares or the capital structure of any company.

Repayments and deemed repayments to QFCs

Subsection (2) sets out the scenarios where a relevant loan will be treated as repaid to a QFC. These include: ***(2)&(3)***

- actual repayment scenarios i.e.

  - the repayment of the loan, or part of the loan, by a qualifying subsidiary or indirect qualifying subsidiary as the case may be, or
  - the disposal by the QFC of its interest in the loan, (with the amount treated as repaid for the purposes of subsection (5)(a) being the higher of the outstanding principal and the market value of the loan)
- certain events which are deemed repayment events for recovery purposes, being either:
  - the full or partial write-off/forgiveness of a relevant loan,
  - a sale of shares that results in a subsidiary or indirect subsidiary no longer qualifying and the loan in turn is no longer a *relevant loan* (with the amount treated as repaid for the purposes of subsection (5)(a) being the higher of the outstanding principal and the market value of the shares), or
  - the repayment, redemption of or purchase of share capital by the qualifying subsidiary or indirect qualifying subsidiary (with the amount so repaid, redeemed or purchased being deemed to be the amount of the loan repaid).

Interest relief for QFCs (relief by deduction)

A QFC, in calculating its taxable profits under Case III or Case IV, is entitled to deduct the third-party interest paid in a chargeable period where the third-party interest paid is matched against interest income received from a relevant loan (or loans). ***(4)***

No deduction for third-party interest is available where the matching relevant loan has been repaid (or deemed repaid under subsection (2)) to the QFC unless: ***(5)***

- the proceeds of that repayment are used by the QFC to make further relevant loans (known as replacement loans), and
- the replacement loans are matched to the third-party debt for which the interest was paid,

No deduction is available where the repayment is deemed to arise from the disposal or redemption of shares by a QFC. ***(6)(b)***

Matching principles for QFCs

Interest paid by a QFC on third-party debt is to be automatically matched with the interest arising on the relevant loans made by the QFC at or around the time the third-party debt was borrowed by the QFC. ***(6)(a)***

Where a relevant loan is repaid (other than a deemed repayment by way of the sale or redemption of shares in a company to whom the relevant loan was made or an intermediate holding company) and replaced with a replacement relevant loan (or loans), the replacement shall be matched to the lower of: ***(6)(b)***

- the third-party loan (or unmatched proportion thereof) against which the original relevant loan was matched, and
- the money actually received.

The total amount of relevant loans matched with external loans cannot exceed the total value of external loans held by the QFC. ***(6)(c)***

On 1 January 2024, all existing external loans shall be matched with existing relevant loans in a manner consistent with the rules for matching set out in this subsection. ***(6)(d)***

Where a relevant loan that has been matched with an external loan (or portion thereof) and that external loan is subsequently refinanced, the new third-party loan shall be matched to the same relevant loans (or portion thereof). ***(7)***

Anti-avoidance rules

A QFC is precluded from deducting third-party interest where the matched relevant loan was made to a subsidiary who would be restricted by section 81 from claiming a deduction for third-party interest if they had opted to borrow directly from the third party instead of via the QFC. ***(8)***

A QFC is precluded from deducting third-party interest under this section where the interest is deductible under any other provision of the Acts. ***(9)***

This section is precluded from applying in scenarios where the payment of the third-party interest forms part of an avoidance arrangement. ***(10)***

The section includes a number of provisions against the making of back-to-back loans in order to access a deduction for interest paid. The provision counters a number of arrangements where interest is routed through a third party so that the interest (which would not qualify as deductible by a QFC if it was paid to a connected company) would be treated as if it were deductible third-party interest. ***(11)***

The specific arrangements addressed are as follows:

a) Arrangements where:
   - interest is payable by a QFC to another enterprise such that the exclusion for third-party debt applies only because the QFC and that enterprise are not associated, and
   - interest is payable by some other enterprise not associated with the QFC to an enterprise which is associated.

b) Arrangements where:
   - interest is payable by a QFC to another non-associated enterprise, and
   - that non-associated enterprise has either:
     - been advanced money by a different enterprise which is associated with the QFC, or
     - received a deposit from a different enterprise associated with the QFC.

c) Arrangements entered into in relation to a QFC and the effect of those arrangements is that any amount has been advanced or made available indirectly from an associate of a QFC to the QFC, or that interest is paid indirectly by a QFC to an associate.

d) Arrangements where:
   - associates of a QFC advance or make available amounts to a second QFC that they are not associated with, and
   - associates of that second QFC advance or make available amounts to the first mentioned QFC,

   and those QFCs or associates are acting together.

This section only provides relief for third party interest paid by a QFC where the QFC identifies the relevant loan against which the interest is matched in their tax return. ***(12)***

In scenarios where a qualifying subsidiary or qualifying indirect subsidiary has made a disguised capital payment to the QFC (whether directly or indirectly), ***(13)***

- the amount shall be treated as a repayment of the relevant loan by the subsidiary, and
- the QFC shall have no interest relief on the repayment of the corresponding third-party loan.

77 Miscellaneous special rules for computation of income

Summary

Miscellaneous special rules apply to modify the operation of income tax law as applied to corporation tax by ***section 76***. The date on which a company begins or ceases to carry on a trade, or begins or ceases to be within the charge to corporation tax, is taken to be the date of commencement or cessation of the trade, as the case may be, even though the trade was previously, or may thereafter be, carried on by someone else. The deduction of yearly interest for the purposes of computing trading income and Case IV leasing income is allowed. Expenses of management of mineral rights are allowable in computing income from the letting of those rights, subject to the same restrictions as for the income tax relief. The income of an Irish resident company from a trade carried on wholly abroad, although chargeable under Case III of Schedule D, is computed in accordance with the rules of Case I of Schedule D. Foreign income tax is allowable as a deduction from income from foreign securities and possessions. Also foreign tax is allowed as a deduction where the trading income of a trade carried on by a company includes relevant royalties or relevant interest then the amount of the income, relating to that relevant royalty or interest, chargeable to tax can be reduced by the relevant foreign tax attaching to that income. The reduction for foreign tax cannot exceed the amount of income which is chargeable to Irish tax, therefore relief from double taxation cannot result in the creation of a loss for tax purposes. Finally foreign income, mainly rents, interest and dividends, arising to a non-resident company from property attributable to a branch or agency though which the company trades in the State is chargeable to corporation tax under Case III of Schedule D in the same way as a resident company would be charged on such foreign income.

Details

General

Certain modifications set out in this section apply to the application of income tax law for corporation tax purposes. ***(1)***

Computation of income on commencement/discontinuance

Where a company begins to trade or comes within the charge to corporation tax in respect of a trade, its income is to be computed as though the trade has begun at that point even though the trade was previously carried on by some other person. Similarly, where a company ceases to carry on a trade or to be within the charge to corporation tax in respect of a trade, the company's income is computed as if the trade were discontinued at that point even though it may thereafter be carried on by someone else. This rule does not apply where there is specific provision that a trade is not to be treated as permanently discontinued. An example of such a case is that provided for in ***section 303(3)*** which secures, in relation to capital allowances for expenditure on dredging, that a balancing allowance is given only on the actual ***(2)*** discontinuance of the trade involved as distinct from a change of ownership which for assessment purposes is treated as a permanent discontinuance.

Treatment of yearly interest

Section 76(5) does not prevent the deduction of yearly interest in the computation of: ***(3)&(3A)***

- trading income, or
- leasing income under Case IV of Schedule D

Mineral rights

The income tax deduction given under ***section 111*** to owners of mineral rights for management expenses is also given for corporation tax purposes, restricted to the same extent as the income tax relief may be restricted. ***(4)***

Foreign trades

In the case of a resident company assessable under Case III of Schedule D in respect of a trade carried on wholly abroad, the income from such a trade is computed in accordance with the principles applicable to Case I of Schedule D. ***(5)***

Foreign income tax

A deduction is allowed in computing income for corporation tax purposes for foreign income tax paid on income from foreign securities and possessions. ***(6)***

Foreign interest

Where, for an accounting period, the trading income of a trade carried on by a company includes interest (referred to as relevant interest) the amount of the income, relating to that interest, chargeable to tax may be reduced by the relevant foreign withholding tax attaching to that income. However, the reduction is limited to the amount of the income for corporation tax purposes relating to the relevant interest i.e. the Irish measure of the income. ***(6A)***

Foreign royalties

Where, for an accounting period, the trading income of a trade carried on by a company includes royalties (referred to as relevant royalties) the amount of the income, relating to that royalty income, chargeable to tax may be reduced by the relevant foreign tax attaching to that income. However, the reduction is limited to the amount of the income for corporation tax purposes relating to the relevant royalties i.e. the Irish measure of the income. ***(6B)***

Non-resident companies

A non-resident company may be assessed to corporation tax under Case III of Schedule D on income from foreign securities and possessions in so far as under ***section 25(2)*** the company is chargeable on such income. This would arise where the income arises from property or rights used or held by or on behalf of a branch or agency through which the non-resident company trades in the State. It is to be noted that the subsection does not affect the normal case where a non-resident is not chargeable to tax on foreign income or on interest on Government and certain other securities to which ***section 49*** applies. ***(7)***

78 Computation of companies' chargeable gains

Summary

For corporation tax purposes, chargeable gains are computed in accordance with capital gains tax principles. However, for the purpose of including chargeable gains in a company's corporation tax computation, the chargeable gains are first reduced by any allowable losses, and the net gains are then recalculated to give an amount which, when charged at the normal corporation tax rate, produces the same tax result as if the net gains were charged at the appropriate capital gains tax rate.

Details

The chargeable amount

The amount to be included in respect of chargeable gains in a company's total profits for any accounting period is determined in accordance with ***subsection (3)*** after applying ***subsection (2)***. When the amount of chargeable gains so determined is included in the company's total profits and charged to corporation tax at the prevailing rate of corporation tax for the accounting period, the result is to tax the gains at effective rates of corporation tax equal to the capital gains tax rates which would apply to similar gains realised by persons liable to capital gains tax. ***(1)***

Calculation of notional amount of capital gains tax

Where chargeable gains accrue to a company for an accounting period a notional amount of capital gains tax is calculated in respect of those gains. This amount is calculated as if the company were liable to capital gains tax on those gains and as if accounting periods were years of assessment. ***(2)***

In arriving at the notional amount, chargeable gains accruing on disposals of development land are not taken into account. This is provided for in the definition of "chargeable gains" in ***subsection (4)***. (Gains on the disposal of development land are charged to capital gains tax and not corporation tax? see Notes on ***Chapter 2*** of ***Part 22***.)

It is also provided that, in calculating the notional amount of capital gains tax, ***section 31*** applies as if the reference in that section to deducting allowable losses were a reference to deducting relevant allowable losses as defined in ***subsection (4)*** (that is, current losses which are allowable for capital gains tax purposes and losses carried forward from earlier years which are so allowable).

Determination of amount to be charged to corporation tax

This provision sets out the mechanism for converting the notional amount of capital gains tax calculated under ***subsection (2)*** into an actual amount in respect of chargeable gains to be taxed at corporation tax rates so as to yield an amount of corporation tax equal to the notional amount of capital gains tax. The mechanism is to include in a company's total profits for the accounting period an amount in respect of chargeable gains of the company which if that amount was charged at the standard rate of corporation tax for that period would produce an amount of corporation tax equal to the amount of capital gains tax calculated in accordance with ***subsection (2)***. ***(3)(a)***

Where part of an accounting period falls in one financial year and the other part in the following financial year, and different rates of corporation tax are in force for ***(3)(b)*** those years, the rate of corporation tax to be used for the purposes of the mechanism described in ***subsection (3)(a)*** is determined by the formula —

$$\frac{(A \times C)}{E} + \frac{(B \times D)}{E}$$

where A is the rate per cent of corporation tax for the first financial year, B is the rate per cent of corporation tax for the following financial year, C and D are respectively the length of the parts of the accounting period falling in each of the financial years and E is the length of the accounting period.

Example

In its 12 month accounting period ending on 30 September 2002 a company has chargeable gains of €100,000. The rate of capital gains tax applicable to the gains is 20% so that the notional capital gains tax is €20,000. This €20,000 has to be "grossed up" at the rate of corporation tax in force for the financial year in order to give an amount to be brought into the company's profits in respect of chargeable gains which amount when charged to corporation tax will equal €20,000.

As the accounting period straddles 2 "financial years" in which rates of corporation tax of 20% and 16% respectively apply, the formula in ***subsection (3)(b)*** is used to determine the rate of corporation tax to be used in "grossing up" the figure of €20,000, namely —

$$\frac{(20 \times 3)}{12} + \frac{(16 \times 9)}{12} = \text{ 17 per cen}$$

The notional capital gains tax of €20,000 is regrossed, thus 20,000 x 100/17, to give the amount, €117,647 which is to be brought into the company's profits in respect of chargeable gains.

Computation of gains/losses

Chargeable gains and allowable losses for corporation tax purposes are computed in accordance with the principles applying for capital gains tax as if accounting periods were years of assessment. Exceptions are contained in ***section 615*** (involving a transfer of assets between 2 companies on a reconstruction or amalgamation), ***section 617*** (involving a transfer of assets between members of the same group), ***section 620*** ("rollover relief" for business assets within a group of companies) and ***Chapter 2*** of ***Part 20*** (deemed disposal of assets where companies cease to be resident in the State). ***(5)***

References to income tax in Capital Gains Tax Acts

References to income tax or to the Income Tax Acts in the Capital Gains Tax Acts are to be read as references to corporation tax in so far as companies are concerned with 2 exceptions, namely — ***(6)***

- the reference in ***section 554(2)*** to income tax in respect of a hypothetical trade (***section 554*** ensures that, where a trade or profession is not involved, allowable expenditure is confined to capital outlay by excluding from allowable expenditure for capital gains tax purposes any expenditure which, if it were incurred for the purposes of a trade, would be of a revenue nature),
- the capital gains tax provisions which apply only to individuals are not to apply to companies for corporation tax purposes.

Interaction of Capital Gains Tax Acts and Corporation Tax Acts

The imposition of corporation tax on companies' chargeable gains does not prejudice the operation of the Capital Gains Tax Acts, either generally or in relation to transactions in which both an individual and a company take part. Such transactions would include the disposal of an asset by an individual to a company with which the person is connected. In such a case the value at which the individual, ***(7)*** is for capital gains tax purposes, deemed to have disposed of the asset is also the value at which, for corporation tax purposes, the company is deemed to have acquired it.

For example, for the purpose of computing capital allowances and balancing charges (for income tax or corporation tax) a transfer of an asset may be treated as made at the asset's written down value where the buyer is connected with the seller. In such a case, ***section 555*** provides that, for capital gains tax purposes, the asset is nevertheless deemed to have been acquired at its market value. This affects the computation of an allowable loss for the seller, and also affects the computation of an allowable loss for the buyer if the buyer later sells the asset. If one of these persons is an individual and the other is a company, ***section 555*** is relevant for the individual in relation to capital gains tax and for the company in relation to corporation tax.

Liquidations

The vesting of a company's assets in a liquidator is not regarded as a disposal giving rise to a chargeable gain or a loss. ***(8)***

79 Foreign currency: computation of income and chargeable gains

Summary

This section ensures that both exchange differences on long-term borrowings, current accounts, trade receivables and the matching exchange differences on hedging contracts are brought into the computation of a trading company's profits on the same basis for tax purposes. This means that foreign exchange gains/losses which balance each other and leave the company unaffected for commercial purposes also balance out after tax.

Exchange gains/losses are brought into the computation of the company's trading income for tax purposes as they accrue in the audited accounts of the company. This reliance on the company's accounts provides an accessible tax treatment of exchange gains/losses which overrides distinctions between long-term and short-term borrowings and between realised and unrealised exchange gains/losses. The accounts-based approach is even-handed in charging gains on the same basis as it allows losses.

Details

"balance sheet" is a financial statement that contains details of a company's assets or liabilities at a specific point in time. ***(1)(a)***

"profit and loss account" is defined by reference to companies which are resident in the State and also by reference to the activities in the State of companies which are not resident in the State but who carry on a trade in the State through a branch or agency. The use of "business" in the case of such a non-resident company is intended to distinguish, where necessary, that part of a trade attributable to an Irish branch from the entirety of the trade which is partly carried on through the branch. "Business" is also used because the branch account might address non-trading aspects of the company's activity through or from the branch.

A number of companies, trading in the State through branches, are incorporated in countries outside the European Union which have no provision in their law which corresponds to Chapter 18 of Part 6 of the Companies Act, 2014 (that section provides for the appointment of auditors to companies). This is because there is no statutory audit requirement in respect of companies incorporated in these countries. Under Part III of the European Communities (Branch Disclosures) Regulations, 1993, such non-resident companies incorporated outside the European Union are required to prepare and deliver to the Companies Registration Office audited accounts of the Irish branch operations. Unless an inspector becomes aware that the treatment of exchange gains/losses in those accounts does not conform to a recognised accounting standard or has been inconsistent from year to year, such accounts are to be treated as being within the definition of "profit and loss account".

"rate of exchange" is "a" rate at which 2 currencies might be exchanged. The form of words used acknowledges that there could be more than one rate applicable at any time. However, the rate must be agreed between parties acting at arm's length. The reason for this is that non-arm's length exchange rates could be advantageous to a group of companies where the circumstances of the member companies differed so as to allow the value of the relief for a loss to exceed the cost of the charge on a gain (for example, where one company was entitled to manufacturing relief and another was not).

"relevant contract" is any hedging instruments such as swaps and forward rate agreements. A foreign currency deposit could be used to hedge an amount payable in that foreign currency and accordingly the currency deposit would be a "relevant contract" if the liability were trade-related. If a company hedges the net exposure created by a number of trading amounts, the hedging instruments are treated as relevant contracts so long as the net exposure hedged arises wholly from trade-related items.

"relevant tax contract" is a contract entered into to hedge against exchange rate risk on a tax liability which arises from a change in the rate of exchange between the functional currency and Euro.

"relevant monetary item" means:

- (i) trade receivables of a company
- (ii) non-euro currency denominated current bank accounts, being accounts the purpose of which is the lodgement of trade receivables and the payment of trade expenses. The payment of immaterial amounts that would not qualify as trade deductions (e.g. parking tickets) out of the account is permissible. Excess amounts should be transferred out of the account into deposit or investment accounts, to prevent the account being viewed as a deposit or investment account and not a relevant monetary item.
- (iii) money held by a company for its trade (being cash in hand)
- (iv) money payable by a company for its trade (being creditors of the company).

"trade receivable", are trade receivables as per the balance sheet.

The requirement that a "relevant monetary item" be "for the purposes of a trade" is central to the restriction of the scope of the section to trade-related exchange gains/losses. The "purposes of the trade" test works throughout the definition of a "relevant contract" which addresses the possibility of a loss being incurred on a relevant monetary item. The reference to "trading income" in ***subsection (2)*** reflects the fact that the gains/losses addressed by that subsection derive from "trading" items whether relevant monetary items or relevant contracts.

The purposes of requiring the treatment of contracts as relevant contracts to be disregarded except for the purposes of this section is to pre-empt the following argument being made: ***(1)(b)***

> A company is due to make a second and final payment in US Dollars in 6 months time for plant. In order to eliminate the risk of loss from an adverse movement in the $/€ exchange rate, the company places an amount of US Dollars equal to the payment due on deposit. The exchange gain or loss on the value of the US Dollar deposit will be brought into account in computing the trading income of the company. The "trading" treatment of the exchange difference to the US Dollar deposit could be cited as grounds for arguing that the deposit interest should also be treated as a trading receipt.

Gains/losses resulting from the introduction of the euro are treated as gains/ losses resulting from a change in a rate of exchange. ***(1)(c)***

Subsection (2) applies notwithstanding ***section 76***. ***Section 76*** provides for the application of income tax principles to computations for the purposes of corporation tax. The application of "income tax principles" or "income tax law and practice" as provided by ***section 76*** requires a capital/revenue distinction to be made as respects the treatment of foreign exchange gains/losses in corporation tax computations. To the extent that the treatment of foreign exchange gains/losses for corporation tax purposes provided for by this subsection conflicts with income tax principles, such as the capital/revenue distinction, this subsection takes precedence. ***(2)***

The tax treatment of foreign exchange differences follows the accounting treatment but only "for the purposes of corporation tax". The treatment bringing foreign exchange differences on trade-related "capital" liabilities into account applies to "any gain or loss". Since it is intended that not only should trade-related "capital" foreign exchange losses be allowed but also that trade-related "capital" foreign exchange gains should be charged, it is essential that the treatment of foreign exchange differences in accordance with accounting practice should be comprehensive and consistent. In addition, whether a foreign exchange difference is "realised or unrealised" is not one of the criteria which determines the treatment of exchange differences. The criteria which determines the treatment of exchange differences are that —

- the gains/losses be referable to trade-related amounts payable and cash, or to hedging in respect of such amounts,
- the gains/losses are foreign exchange gains/losses (that is, they must result "directly" from a change in a rate of exchange – for example, if a revaluation of currency A against currency B results in a decrease of sales by a distribution company X to customers in country B, leading company X to sell a warehouse at a loss, that loss is not treated as resulting "directly from a change in a rate of exchange"), and
- the gains/losses be reflected in an audited profit and loss account whether of the company or, in the case of a company which is not resident in the State, of the Irish branch. The gains/losses, however, must be "properly" reflected in those accounts – that is, debited and credited in accordance with the applicable standard accounting practice. Where a company makes up its accounts in a currency other than the euro, in accordance with the applicable standard accounting practice, foreign exchange differences are computed by reference to that currency rather than the euro.

Foreign exchange gains/losses taken into account in computing trading income of a company by virtue of this section should not be extracted from the amount of "the ***(3)(a)*** company's income for the relevant accounting period from the sale in the course of the trade mentioned in ***subsection (3)*** of ***section 448*** of goods and merchandise" for the purposes of computing manufacturing relief.

Exchange differences which are brought into account in computing trading income of a company by virtue of ***subsection (2)*** (that is, trade-related "capital" exchange differences) are not also brought into the computation of chargeable gains (and allowable losses) of the company. ***Sections 551*** and ***554*** would ensure the exclusion of the exchange differences in question from the computation of chargeable gains and allowable losses without the confirmation of ***subsection (3)***. Thus, ***subsection (3)*** has been inserted only to ensure that the position is as clear as possible.

Subsection (3) applies "for the purposes of corporation tax". ***Section 78(5)*** applies capital gains tax principles to computations of chargeable gains and allowable losses for the purposes of corporation tax. Given that ***subsection (3)*** essentially confirms the provisions of ***sections 551*** and ***554***, the phrase "Notwithstanding ***section 78***" is arguably unnecessary. However, there may be exceptional instances where ***subsection (3)*** would do more than simply confirm the position under the Capital Gains Tax Acts. For example, where a loss on a long-term trade liability is covered by a gain on a forward rate agreement, there might be no credit or debit taken to the profit and loss account of the company. The appropriate treatment of the forward rate agreement gain would not be beyond doubt given that it would not have been explicitly brought into account in computing trading income of the company. The wording of the subsection effectively removes any such doubt and ensures that the gain is excluded from the computation of the chargeable gains of the company.

Although this provision addresses gains/losses on hedging contracts it could also be relevant to a disposal of foreign currency which a company had contracted to acquire under the terms of a swap agreement. The separate treatment of the currency transaction component of a swap will not result in the gain/loss in question being treated as a chargeable gain or an allowable loss. The currency received on the unwinding of a swap in relation to a trade-related borrowing would be "money held" by the company for the purposes of the trade notwithstanding its immediate application in repayment of the borrowing.

The gain/loss referred to in ***subsection (3)*** must result "directly" from a change in an exchange rate.

The subsection does not prevent foreign exchange gains being treated as chargeable gains when received by life assurance companies carrying on life business which are not charged to corporation tax in respect of that business under Case I of Schedule D (that is, life assurance companies chargeable on the "investment income minus management expenses basis"). It should be noted, however, that since this provision only governs ***subsection (3)***, ***subsection (2)*** is still relevant to a life assurance company's notional Case I computation. ***Section 551*** ensures that, in the case of a life assurance company, the same foreign exchange differences are taken into account in the "notional Case I" computation and also in the computation of chargeable gains for the "investment income minus management expenses" computation. ***(3)(b)***

Exchange rate gains/losses on hedging instruments are, subject to conditions, not to be treated as a chargeable gain or an allowable loss. The conditions are — ***(4)***

- the gain/loss must be attributable to a contract entered into for the purposes of eliminating an exchange rate risk in relation to a corporation tax liability,
- the gain/loss must result directly from exchange rate fluctuations,

- a gain may only be ignored to the extent that it does not exceed the exchange rate loss on the corresponding tax liability, and
- a loss may only be ignored to the extent that it does not exceed the exchange rate gain on the corresponding tax liability.

79A Matching of relevant foreign currency assets with foreign currency liabilities

Summary

This section provides for the matching of foreign currency exchange gains and losses on certain assets and liabilities of companies for capital gains tax purposes.

A company may acquire a shareholding in another company in a non-euro currency. Where they do so they can be exposed to the risk of exchange rate gains and losses. They can, however, protect themselves against exchange rate losses by borrowing the funds to make the investment in the same currency as that in which the investment is made. Where they do so, any exchange rate loss on the shares will be matched by a corresponding exchange rate gain on the borrowing and any exchange rate gain on the asset would be matched by a corresponding loss on the liability. However, it removes the risk of exchange rate losses.

This section allows a company to elect to match certain assets and liabilities for capital gains tax purposes. If an election is made, any gain on the asset concerned is reduced by a loss on the matched liability. Alternatively, if a loss arises on the asset, it will be reduced by any gain on the liability.

An election may be made where the asset concerned consists of shares in a trading company (or a holding company of a trading company) provided that, immediately after the investing company acquires the shares, it holds at least 25% of the share capital of the trading or holding company.

Details

Definitions

"foreign currency asset" is an asset of a company the consideration for which is denominated in a non-euro currency. The full amount of the consideration must be so denominated. An asset will not be a foreign currency asset for the purposes of the section if it is already taken into account as a "relevant monetary item" for the purposes of ***section 79***. That section rolls all foreign currency gains and losses on "relevant monetary items" into the calculation of trading income for tax purposes. ***(1)(a)***

"foreign currency liabilities" are liabilities of a company which are denominated in a non-euro currency. They include any liability other than a liability which is a "relevant monetary item" for the purposes of ***section 79***.

"rate of exchange" has the meaning assigned to it in ***section 79***, i.e. the rate at which 2 currencies might reasonably be expected to be exchanged by persons dealing at arm's length.

"relevant foreign currency assets" are the assets in respect of which relief under the section applies. A "relevant foreign currency asset" is a foreign currency asset that consists of shares held by one company in another company provided that, immediately after the acquisition of the shares, the investing company owns at least 25% of the share capital of the other company and the other company is a trading company or a holding company of a trading company. ***(1)(b)(i)***

Calculation of gains and losses on foreign currency liabilities

Rules are provided on how a gain or loss on a foreign currency liability is to be calculated. This is necessary because, in the normal course, liabilities are outside the scope of capital gains tax. A gain or loss on a liability is to be calculated by comparing the amount given to discharge the liability with the liability incurred in the first place. If the liability originally incurred (expressed in €) is less than the amount required to discharge the liability (also expressed in €), then a loss arises. In an asset context, this compares with a situation where the sale price is less than original cost. Accordingly, in calculating whether a gain or loss arises on a liability the liability originally incurred is equated with the sale price of an asset and the amount required to discharge the liability is equated with the cost price of an asset. ***(1)(b)(iv)***

Elections for matching treatment

A company can elect to have a specified foreign currency asset denominated in a non-euro currency matched with a specified corresponding foreign currency liability matched in the same non-euro currency. ***(2)(a)***

An election must be made within 3 weeks of the acquisition of the asset. ***(2)(b)***

Consequences of making an election for matching

Where a company disposes of a relevant foreign currency asset that has been matched with a foreign currency liability, the foreign exchange losses or gains on the liability are to be offset against the foreign exchange gains or losses on the matched asset. ***(3)***

Where there is a foreign exchange loss on discharge of the liability, the consideration received by the company for the disposal of the asset is to be reduced by the amount of that loss – but only to the extent of any foreign exchange gain on the disposal of the asset. ***(3)(a)***

Where there is a foreign exchange gain on discharge of the liability, the consideration received on disposal of the asset is to be increased by the amount of that gain – but only to the extent of any foreign exchange loss on disposal of the asset. ***(3)(b)***

Miscellaneous

Where a company, which has matched a foreign currency asset with a foreign currency liability for the purposes of the new section, disposes of the asset but does not discharge the liability at the same time, the company will be treated as if it had discharged the liability at the time as it disposed of the asset. This will enable the appropriate matching relief to be applied. ***(1)(b)(ii)***

Where a company elects to match a foreign currency asset with a foreign currency liability which was incurred earlier than the time at which the asset was acquired. In those circumstances, the company will be regarded as discharging that liability, and incurring a new liability, at the time of acquisition of the asset. This will enable the appropriate matching relief to be applied. ***(1)(b)(iii)***

79B Matching of foreign currency assets with certain foreign currency share capital

Summary

This section enables a company with a foreign currency asset to match that asset for tax purposes with redeemable share capital denominated in the same currency.

Where a financial services company makes a loan in a foreign currency, the company will be exposed to the risk of losses arising from movements in the exchange rate of the currency concerned. Sometimes such a company will protect itself from that risk by issuing redeemable share capital denominated in the same currency so that any foreign exchange gain or loss on the loan will be matched by a corresponding foreign exchange loss or gain on the share capital.

Where a company protects itself this way, it may not achieve neutrality in tax terms. This is because any gain or loss on the loan would be taken into account in calculating its trading income for tax purposes. However, the corresponding loss or gain on the share capital would be ignored for such purposes. Depending on the movement in the currencies concerned, this could result in the company getting a tax advantage or suffering a tax disadvantage.

The section allows the company to opt to match the loan and share capital for tax purposes but it must opt within 3 weeks of acquiring the loan. The section thus provides tax neutrality for such a transaction for both the company concerned and the Exchequer.

Details

Definitions

"foreign currency asset" is an asset of a company the consideration for which is denominated in a currency other than the functional currency of the company. The full amount of the consideration must be so denominated. Also, any gain on the disposal of the asset must be taken into account in computing the company's trading income for it to be a foreign currency asset. ***(1)(a)***

"functional currency " is, in general, the currency of the primary economic environment in which the company operates.

"relevant foreign currency liability" is a liability of a company which is denominated in a currency other than the functional currency of the company and which arises from redeemable share capital issued by the company. It does not include any liability which is a "relevant monetary item" for the purposes of ***section 79***. Under that section foreign currency gains and losses on "relevant monetary items" are taken into account in the calculation of trading income.

"rate of exchange" has the meaning assigned to it in ***section 79***, i.e. the rate at which 2 currencies might reasonably be expected to be exchanged by persons dealing at arm's length.

Application

A company that has matched a foreign currency asset with a relevant foreign currency liability for the purposes of the section and which then disposes of the asset but does not discharge the liability at the same time, is treated as if it had discharged ***(1)(b)(i)*** the liability at the same time as it disposed of the asset. This enables the appropriate matching relief to be applied.

A company that elects to match a foreign currency asset with a relevant foreign currency liability incurred earlier than the time at which the asset was acquired is regarded as discharging that liability, and incurring a new liability, at the time of acquisition of the asset. This enables the appropriate matching relief to be applied. ***(1)(b)(ii)***

The method of how a gain or loss on a relevant foreign currency liability is calculated is set out. This is necessary because, in the normal course, liabilities are outside the scope of capital gains tax. A gain or loss on a liability is to be calculated by comparing the amount given to discharge the liability with the liability incurred in the first place. If the liability originally incurred (expressed in euro) is less than the amount required to discharge the liability (also expressed in euro), then a loss arises. In an asset context, this compares with the sale price being less than original cost. Accordingly, in calculating whether a gain of loss arises on a liability the liability originally incurred is equated with the sale price of an asset and the amount required to discharge the liability is equated with the cost price of an asset. ***(1)(b)(iii)***

Entitlement to elect for matching treatment

A company can elect to have a specified foreign currency asset denominated in a currency other than the functional currency of the company, matched with a specified corresponding relevant foreign currency liability in the same currency. That election must be made within 3 weeks of the acquisition of the asset. ***(2)***

Disposals of assets that have been matched

Where a company elects to match a relevant foreign currency asset with a relevant foreign currency liability, the foreign exchange losses or gains on the liability whether realised or unrealised are to be taken into account in computing the company’s trading income. ***(3)***

79C Exclusion of foreign currency as an asset of certain companies

Summary

This section, which was inserted by section 65 of the Finance Act 2012**,** provides that gains or losses arising from the disposal of foreign currency held in an Irish bank by certain holding companies will be chargeable to Corporation Tax rather than Capital Gains Tax.

In order that there is no loss to the Exchequer, the amount brought into charge is increased by an amount that will make the tax payable equate to the amount that would have been payable if Capital Gains Tax rather than Corporation Tax applied.

This section will facilitate the development of the holding company regime and applies as respect of accounting periods ending on or after 1 January 2012.

Detail

Definitions

“approved accounting standards” refers to accounts prepared under either Irish generally accepted accounting practice (Irish GAAP) or International Financial Reporting Standards (IFRS). ***(1)***

"net foreign exchange gain" means the excess of foreign exchange gains over foreign exchange losses arising from the disposal of currency in a "relevant bank deposit" by a "relevant holding company".

It would not include any such gains or losses which are chargeable to Corporation Tax under Case I of Schedule D.

"net foreign exchange loss" means the excess of foreign exchange losses over foreign exchange gains arising from the disposal of currency in a "relevant bank deposit" by a "relevant holding company".

It would not include any such gains or losses which are chargeable to Corporation Tax under Case I of Schedule D.

"profit and loss account" is given the same meaning as in ***section 81C*** (i.e. a profit an loss account has the meaning assigned to it by generally accepted accounting practices and includes an income and expenditure account where a company prepares accounts in accordance with international accounting standards.

"relevant bank deposit" is defined as a sum standing to the credit of a "relevant holding company" in a bank and which is not denominated in the currency of the state.

"relevant holding company" is defined as a company-

(a) that has a least one wholly owned subsidiary where that subsidiary derives the greater part of its income from trading activities, or

(b) which acquires or establishes, within one year of a net foreign exchange gain being credited to its accounts, a wholly owned subsidiary which derives the greater part of it income from trading activities.

Application

Subsection (2) provides that currency held in a "relevant bank deposit" will not be an asset to which ***section 532*** applies. ***(2)***

The effect of this is to remove the foreign currency deposits of holding companies from the Capital Gains Tax regime.

Subsection (3) is the charging section and provides that the amount to be chargeable as income under Case IV of Schedule D is the amount determined by the formula: ***(3)***

$$\frac{\mathbf{A \times C}}{\mathbf{B}}$$

where-

A is the net foreign exchange gain credited to the profit and loss account of the relevant holding company as reduced by so much of any loss under ***section 383*** as is attributable to a net foreign exchange loss and which has not been deducted from any other income.

B is the rate referred to in ***section 21A(3)(a)***, being the current rate of Corporation Tax on case IV income.

and

C is the rate referred to in ***section 28(3)***, being the current rate of Capital Gains Tax

Example

A = €100

B = 25% (i.e. the current rate of Corporation Tax on Case IV income). .

and

C = 33% (i.e. the current rate of Capital Gains Tax).

The amount by which the gain is to be increased to is €132 i.e.

$$\frac{100 \text{ X } 33}{25}$$

The amount of Corporation Tax chargeable will be €33 (i.e. €132 @ 25%).

The above formula applies in respect of accounting periods ending on or after 1 January 2013.

The formula to be used for accounting periods ending in the period 1 January 2012 to 31 December 2012 is as follows:

$$\frac{\mathbf{A \text{ X } 6}}{\mathbf{5}}$$

where-

A is the net foreign exchange gain credited to the profit an loss account of the relevant holding company as reduced by so much of any loss under ***section 383*** as is attributable to a net foreign exchange loss and which has not been deducted from any other income.

6/5 is used to ensure that the rate applicable will be the Capital Gains Tax rate (i.e. 30%) and not the Corporation Tax rate (i.e. 25%).

Approved accounting standards

The provisions of this section will not apply unless the accounts of the holding company are drawn up in accordance with approved accounting standards. ***(4)***

Allowable losses

Any losses arising from the disposal of currency in a "relevant bank deposit" of a "relevant holding company" which are unused at the date that this section comes into effect may be treated as either- ***(5)***

- an unused loss under the provisions of ***section 383(5)***, or
- an unused loss under the provisions of ***section 546(6)***

Losses can be claimed under either ***section 383(5)*** or ***section 546(6)*** but cannot be claimed under both ***section 383(5)*** and ***section 546(6).*** ***(6)***

80 Taxation of certain foreign currencies

Summary

This section provides that a foreign currency exchange gain/loss arising to a company on a high coupon "***section 130***" loan denominated in a foreign currency is treated as a profit or gain or a loss, as the case may be, of the borrower's trade. By virtue of ***section 443(18)***, gains/losses treated by this section as profits/gains of the trade carried on by a company where they arise to a company whose trade qualifies for manufacturing relief are regarded as amounts receivable from the sale of goods and, accordingly, taxed at the 10 per cent corporation tax rate rather than at the standard rate of corporation tax or at the capital gains tax rate.

A "***section 130***" loan is a loan structured in such a way that, under the Corporation Tax Acts, the interest payable on the loan is regarded as a distribution of profits rather than an expense of the trade. As a result, the interest is not allowable for tax purposes in the case of the borrower and is not taxable in the hands of the lender. The funding costs of the lender, however, are available for off-set against the lender's other income. The tax advantage which the lender has in these circumstances is then shared with the borrower by way of lower interest rates. Over time these loans were developed so as to achieve even lower net interest rates. This was achieved by borrowing in high interest rate countries. The high rates of interest were offset by foreign exchange gains made by the borrower by forward-buying the currency needed to repay the loan and the interest on the loan. The correct tax treatment of such exchange gains was, before this section, unclear. In order to remove any ambiguity, and as certain approved borrowers involved in new manufacturing projects had been given undertakings that high coupon "***section 130***" loans would be available, this section provides that such exchange gains/losses are to be treated as profit/losses of the borrower's trade. By virtue of ***section 443(18)***, such profits are regarded as an amount receivable from the sale of goods and, accordingly, qualify for the 10 per cent rate of corporation tax.

Details

"relevant liability" is relevant principal (that is, "***section 130***" funding) denominated in a foreign currency the interest rate on which exceeds 80 per cent of a specified rate; in other words it is a high coupon "***section 130***" foreign currency loan. ***(1)***

"relevant principal" is "***section 130***" funding (that is, money advanced to a borrower by a lender whose trading activities include the lending of money and where the interest on the loan is, by virtue of ***subparagraph (ii)***, ***(iii)(I)*** or ***(v)*** of ***section 130(2)(d)***, regarded as a distribution). This definition is to be distinguished from the similar definition in ***section 133***. This definition is designed to include foreign sourced "***section 130***" loans as well as Irish sourced loans. ***Section 133*** on the other hand is concerned with limiting the Exchequer cost of "***section 130***" lending. For this reason it does not address foreign sourced "***section 130***" loans as these do not impose any cost on the Exchequer. The restrictions in ***section 133*** apply to Irish sourced loans and the definition of "relevant principal" in that section is, therefore, a narrow one. This section relaxes the tax treatment of exchange gains relating to "***section 130***" loans and, therefore, includes in its scope all loans, both Irish and foreign sourced.

"specified rate" is the "3 month European Interbank Offered Rate".

A profit or loss arising from a foreign exchange transaction connected with a "***section 130***" loan which, as respects a particular accounting period, is a high coupon "***section 130***" loan is deemed to be a profit or loss of the borrower's trade for which the "***section 130***" loan is used. ***(2)***

80A Taxation of certain short-term leases plant and machinery

Summary

This section provides an alternative taxing mechanism for lessors of certain short-term assets. Under existing rules, income of the lessor is calculated by treating gross lease payments as income and allowing capital allowances on the asset. Where the lease payments are received over say, 3 years but capital allowances are given over 8 years a timing mismatch occurs.

In the case of a finance lease, this section resolves this mismatch by allowing a lessor company to claim all such income computed for tax purposes under accounting rules rather than under existing tax rules. This will result in the "interest element" of lease payments being taxed but no capital allowances being available. It will not change the amount of tax paid but will allow a more even spread of the tax over the lease period.

In the case of an operating lease, the section allows a lessor company to elect to claim accounting depreciation in place of capital allowances. This treatment applies, in respect of accounting periods ("specified periods") commencing on or after 1 January 2010 and ending on or before 31 December 2014, only where there has been an increase in the total value of short life assets leased on an operating lease by a lessor group of companies and held by the group at the end of the accounting period preceding the accounting period for which the depreciation is first claimed.

For accounting periods ("specified periods") ending on or after January 2015, this section allows a lessor company to claim accounting treatment in respect of an operating lease. The amount of wear and tear allowance claimed is to be calculated by reference to the amounts of depreciation/impairment which has been charged, in the accounting period, to the Profit and Loss account of the lessor company in accordance with generally accepted accounting principles.

A claim may be made by the return date for an accounting period. Where such a claim is made, relevant leasing income on all assets purchased from the start of that accounting period will be subject to the rules.

The section applies, in respect of finance leases, for accounting periods ending on or after 4 February 2004 and in respect of operating leases, for accounting periods commencing on or after 1 January 2010.

Details

Definitions

"asset" means machinery or plant. ***(1)***

"fair value" is essentially the cost price of the asset on an arm's length basis at the inception of a lease.

"group limit" is defined by the formula-

$$\mathbf{A + (B \ X \ (C - D) / C)}$$

where-

A is the total value of capital allowances claimed by all group companies for the threshold period,

B is the total amount of depreciation charged to the profit and loss account for all group companies for the specified period,

C is the cost of "specified assets" owned by all group companies at the end of the specified period, and

D is the lesser of the cost of "specified assets" owned by all group companies at the end of the threshold period or C.

The purpose of the formula is to set a limit on the value of the allowances to be claimed under this section in respect of plant and machinery let under operating leases.

"inception of the lease" is the earlier of the date on which the leased asset is first brought into use or the date from which the first lease payment accrue.

"lease payments" are the payments made under a lease and includes any payment made at or after the end of the lease period where the payment is guaranteed by the lessee or a person connected with the lessee. If the payment is guaranteed by a third party who is not connected with the lessee, the payment is not to be regarded as a lease payment unless the guarantee is part of an arrangement between the lessee and any other person.

"normal accounting practice" means the accounting practice for the preparation of accounts for companies incorporated in the State.

"predictable useful life" is the useful life of the asset as estimated at the inception of the lease on the assumption that there will be normal usage of the asset.

"profit and loss account" has the meaning assigned to it by generally accepted accounting standards and includes an income and expenditure account prepared under International Accounting Standards.

"relevant period" is the period beginning at the inception of the lease and ending when the lessor has recovered 90 per cent of the investment in the asset.

"relevant short-term asset" means an asset the predictable useful life of which does not exceed 8 years and the expenditure on which is incurred during an accounting period.

"relevant short-term lease" means the lease of an asset the predictable useful life of which does not exceed 8 years, the expenditure on which is incurred during an accounting period and the relevant period of the asset does not exceed 8 years.

"specified assets" means short term assets which have been leased for a period which does not exceed 8 years on a lease other than a finance lease.

"specified period":

- in the case of companies which are members of a group where all the companies in that group have accounting periods that coincide, is the period of 12 months throughout which one or more group companies carries on a trade of leasing *"specified assets"* and ending at the end of the first accounting period which commences on or after1 January 2010, or ***(a)***
- in the case of companies which are members of a group where the companies in the group do not have coinciding accounting periods, is the period which is specified in a notice in writing made jointly by all of the companies in the group - that is a period of 12 months throughout which one or more group ***(b)***

companies carried on a trade of leasing "*specified assets"* and ending at the end of the first accounting period of a company which is a member of the group, which accounting period commences on or after1 January 2010.

Each subsequent period of 12 months commencing immediately after the end of the preceding "specified period" is also a "specified period". Effectively therefore a "specified period" is an accounting period of 12 months commencing on or after 1 January 2010.

"threshold amount" is defined as the aggregate capital allowances granted to all group companies in respect of expenditure on specified assets for the "threshold period".

"threshold period" is defined as an accounting period of one year ending on a date immediately preceding the date on which the first specified period commencing on or after 1 January 2010 begins.

Finance Leases

Subsection (2) applies to assets leased under a finance lease. A claim made under this subsection enables a lessor company to claim, at the time by which a tax return is due for an accounting period, to have all income from short-term assets leased under a finance lease, from the start of that accounting period, and all future such income, computed for tax purposes under accounting rules rather than under existing tax rules. ***(2)***

Operating leases

For accounting periods ("specified periods") commencing on or after 1 January 2010 and ending on or before 31 December 2014 the following applies to the wear and tear allowance claimed on operating leases under this Section.

Subsection (2A) apples to assets leased under an operating lease. ***Paragraph (a)*** provides that a reference to an amount of wear and tear allowance in s***ection 284*** (which is the section dealing with the granting of a wear and tear allowance for plant and machinery) shall be construed as if the references in that section to an amount of wear and tear allowance, is a reference to the amounts of depreciation/impairment which has been charged, in the accounting period, to the Profit and Loss account in accordance with generally accepted accounting principles. This paragraph is made subject to ***paragraph (c)***. ***(2A)(a)***

Paragraph (b) provides that the income from "specified assets" will not be treated as income from a trade of leasing for the purposes of ***section 403*** (this effectively ensures that profits from the leasing of short life assets cannot be sheltered by losses from the leasing of long life assets). ***(2A)(b)***

Paragraph (c) sets out the formula for allocating the group limit between the lessor companies in the group. It provides that the amount of the "wear and tear" allowance to be made to the company for any accounting period cannot exceed an amount to be calculated by the following formula: ***(2A)(c)***

E X F/G

Where-

E is the group limit,

F is the cost of "specified assets" owned by the company at the end of the accounting period, and

G is the cost of "specified assets" owned by all group companies at the end of the accounting period.

The purpose of the formula is to give the claimant lessor company a share in the group limit. The group limit represents the increase in the group's portfolio of assets compared to the previous year. The extent to which an individual company can claim this treatment in respect of their asset portfolio derives from the proportion of the groups assets held by the individual company.

Example

A group increased its portfolio of assets by €20M from €100M to €120M and Company RST, a member of the group, holds €60M of the group's total assets.

Formula: E X F/G

E in this case is €20M

F in this case is €60M

G in this case is €120M

€20M X (60M/120M) = €10M

Company RST can only claim accounting depreciation in respect of €10M worth of the leased assets.

The amount of depreciation charge which has not been used (in the example €50m), can be carried forward to the following accounting period. ***(2A)(d)***

The amount of the allowances to be attributed to each "specified asset" is to be calculated on a pro rata basis to the cost of the asset and the total cost of all "specified assets" owned by the company and in use for the purposes of the trade at the end of that accounting period. ***(2A)(e)***

Using the example above:

Asset Cost €m	Proportion of Total %	Amount of Wear and Tear attributable to each asset
5	8.33	833,000
10	16.67	1,667,000
20	33.33	3,333,000
18	30.00	3,000,000
17	11.67	1,167,000
60	**100.00**	**10,000,000**

Where no accounting period coincides with the "threshold period**",** the amount of allowances to be granted should be calculated on a just and reasonable basis. ***(2A)(f)***

There is no group limit in the case of new companies so in such cases, the threshold amount is deemed to be nil. ***(2A)(g)***

For accounting periods ("specified periods") ending on or after January 2015 the amount of wear and tear allowance claimed on operating leases under this section is to be calculated by reference to the amounts of depreciation/impairment which has been charged, in the accounting period, to the Profit and Loss account in accordance with generally accepted accounting principles. ***(2A)(h)***

Membership of a Group of Companies

Companies will be regarded as members of a group if one is a 51 per cent subsidiary of the other or both are 51 per cent subsidiaries of a third company. In determining whether this is the case, ownership of shares by a company dealing in the shares (i.e. where a profit on sale of the shares would be treated for tax purposes as a trading receipt) is to be ignored (under ***clause (i)***), as is indirect ownership of shares which are directly owned by a company dealing in the shares (under ***clause (ii)***). ***(2B)(a)***

In addition, any holding must be a "real holding". ***Sections 412* to *418*** are applied for the purposes of this section. Those sections require that in order to be regarded as having a certain percentage holding in a company, the person concerned must be entitled to not only that percentage of the shares, but also of any profits of the company for distribution and any share of the company's assets in the event of its winding up. ***Sections 412*** to ***418*** are constructed around a 75 per cent holding level. They are adapted for this section so as to apply to a 51 per cent holding level. ***Section 411(1)(c)*** is disapplied for the purposes of this section to ensure that its scope is not limited to companies resident in EEA Member States. ***(2B)(b)***

A company and all its 51 per cent subsidiaries are to be regarded as forming a group. However, if within a 51 per cent group there are 51 per cent subgroups, the group for the purpose of this section will be the bigger group. A company which is not a member of a group can be regarded as a group consisting only of itself. This ensures that the allowance is available to such a company if it meets the conditions of the section. ***(2B)(c)***

A group in the threshold period will be designated as the same group as the group in the specified period even though there may not be a perfect match of companies. The key issue is whether the group is under the control of any person or group of persons at both times. ***(2B)(d)***

Time limit for claim

A claim for relief must be made by the time at which a tax return is due for an accounting period. ***(3)***

CHAPTER 6
Computational provisions: general

81 General rule as to deductions

Summary

The general rule is that tax under Cases I and II of Schedule D is charged without any deduction other than a deduction authorised by the Tax Acts. Despite this the Acts do not, with a number of exceptions, indicate precisely what deductions may properly be made from the receipts in computing the income of a trade. This section provides that no deduction may be made for a range of specified items.

Details

Tax chargeable under Cases I and II of Schedule D is charged without deduction, other than such deductions as are specifically allowed by the Tax Acts. ***(1)***

Non deductible amounts

In computing the income of a trade or profession for tax purposes, no sum is allowed to be deducted for – ***(2)***

- any sum not wholly and exclusively laid out for the purposes of a trade or profession, ***(2)(a)***
- any sum expended for a private or domestic purpose, ***(2)(b)***
- the rent of any dwelling house or other domestic premises except such part as is used for the purposes of a trade or profession, ***(2)(c)***
- any sum expended on the repair of premises used for the purposes of a trade or profession, or on the repair of trade tools, etc, over and above the amount actually spent on such repairs, ***(2)(d)***
- any loss not connected with the trade or profession, ***(2)(e)***
- any capital withdrawn from, or any sum used or intended to be used as capital of, the trade or profession, ***(2)(f)***
- capital used in improving premises occupied for the trade or profession, ***(2)(g)***
- any interest which might have been made if any such sums had been laid out at interest, ***(2)(h)***
- any debts, except proven bad debts and doubtful debts to the extent that they are estimated to be bad (in the case of bankruptcy, the value of the debt is to be taken as the amount which may reasonably be expected to be received for it), ***(2)(i)***
- any average loss beyond the actual amount of the loss after adjustment, ***(2)(j)***
- any sum recoverable under an insurance contract or a contract of indemnity, ***(2)(k)***
- any annuity or other annual payment (apart from interest) payable out of the profits/gains of the trade or profession, ***(2)(l)***
- any royalty payable in respect the user of a patent, ***(2)(m)***
- any share-based consideration given by a company either for goods or services or to its employees or directors. The rule applies whether the shares are shares of the company itself or a connected company. The paragraph also requires that certain deductions which are currently tax deductible remain deductible. These include payments at market value made by a company to another company to issue shares to the first company's employees, the purchase of shares at arm's length by a company for its employees and the payment by a company to a connected company to issue share options to its employees. The latter deduction is subject to the rule that the expenditure must be incurred for genuine commercial reasons and not as part of any tax avoidance scheme, ***(2)(n)***
- any amount paid or payable under a contract to a connected person as compensation for a transfer pricing adjustment in another jurisdiction, ***(2)(o)***
- any taxes on income. ***(2)(p)***

This subsection maintains the status quo in relation to the tax deductibility of interest and of expenditure on research and development.

IFRS

It is specifically provided that interest payable by a company, and expenditure on research and development incurred by a company will not be prevented from being ***(3)(a)*** deductible in calculating taxable trading income simply because, under IFRS, it is included for accounting purposes in the cost of an asset. Under IFRS, such costs may have to be included in the cost of an asset rather than being treated as an expense. Consequently, they would not appear in the accounts as an expense in earning profits. The subsection ensures that they will continue to be deductible for tax purposes. Where expenditure on research and development is amortised, the deduction for tax purposes in respect of that expenditure will be made in accordance with the amortisation.

The application of this rule should not result in a double deduction. That could arise where an amount is included under IFRS as part of the cost of an asset but a deduction had already been given for that amount in an earlier accounting period in computing taxable income. In such a case, a second deduction will not be due. ***(3)(b)***

Impairment Losses

Doubtful debts to the extent that they are respectively estimated to be bad, referred to in (2)(i) is defined for corporation tax purposes as impairment losses calculated in accordance with generally accepted accounting practice as defined in **section 4** (interpretation of corporation tax acts). This subsection confirms that impairment losses calculated in accordance with IFRS or GAAP will be deductible for corporation tax purposes for accounting periods beginning on or after 1 January 2018. ***(4)***

Capital v Revenue

The accounting treatment of an item of expenditure will not automatically convert revenue expenditure into capital expenditure, or vice versa, for tax purposes. The fact that expenditure is charged to fixed assets may lend support to an argument that the expenditure is capital expenditure for tax purposes. However, if on tax principles the expenditure is of a revenue nature, charging it to capital does not make it capital expenditure for the purposes of tax.

Where expenditure which is revenue in nature and deductible for tax purposes is spread over the accounts of more than one year in accordance with relevant accounting standards, the tax deduction will also be spread in accordance with the accounting treatment.

The remaining sections of this Chapter provide for specific allowable deductions in computing the profits/gains of a trade. Moreover, further deductions are authorised by ***sections 102*** (deduction in respect of premium paid in respect of leased premises), ***127*** (restrictive covenants), ***324***, ***333***, ***345*** and ***354*** (double rent allowances for certain business premises), ***517*** (payments to trustees of profit sharing schemes), ***519*** (expenses incurred in establishing, and payments to the trustee of, an Employee Share Ownership Trust), ***758*** (fees and expenses incurred in obtaining, or extending the term of, a patent), ***764*** (expenditure on scientific research), ***768*** (expenditure on acquiring “know-how”) and ***774*** (contributions to approved superannuation schemes).

81A Restriction of deductions for employee benefit contributions

Summary

This section determines the timing of deductions, in computing an employer’s taxable profits for a chargeable period, for employee benefit contributions made by an employer through, for example, an Employee Benefit Trust (EBT). It aligns the timing of the tax deductions that are granted to employers in respect of contributions for such purposes with the time the benefit from those contributions becomes taxable in the hands of the employees. An employer is entitled to a deduction for employee benefit contributions made in any chargeable period *provided* that taxable benefits are received by employees during that period or within 9 months from the end of it. Otherwise, the employer will be granted the deduction for the period in which the benefits are eventually provided to employees. This restriction on the allowability of contributions does not apply in the case of employers' contributions to approved employee share schemes, approved pension arrangements or certain accident benefit schemes.

Details

"accident benefit scheme" identifies a type of employee benefits scheme which is *not* affected by the restricted allowability in respect of contributions imposed by this section; ***(1)(a)***

"chargeable period" is defined by reference to ***section 321***;

"employee benefit scheme" indicates the type of arrangement that is covered and specifically includes employee benefit trusts (EBTs);

"qualifying expenses" defines the expenses incurred by a "scheme manager" (such as a trustee of an EBT) that are qualifying expenses for the purposes of restricting deductions under ***subsection (3)***. These are expenses of operating the employee benefit scheme (but not the cost of the benefits themselves) which, had they been incurred directly by the employer, would have been allowed as a deduction in the calculation of the employer's taxable profits – essentially expenses incurred wholly and exclusively for the purposes of the employer's trade or business.

"scheme manager" means any person who administers an employee benefit scheme or any person to whom the employer makes a money payment or transfers an asset to keep or use for the provision of benefits under an employee benefit scheme to employees of the employer.

For the purposes of the section — ***(1)(b)***

(i) an employee benefit contribution is made if, as a result of any act or omission, any property is held, or may be used, under an employee benefit scheme, or where the total value of such property is enhanced. This covers, for example, contributions by an employer to an EBT or to any other intermediary but it also covers any other action that has the effect of creating or enhancing the value of employee benefit contributions.

(ii) qualifying benefits are provided where money is paid or assets are transferred (which involves an actual payment or transfer not a loan) and the recipient or someone else is (or would be if resident, ordinarily resident and domiciled in Ireland) chargeable to income tax on the benefits provided, and

(iii) a reference to a person's employee includes the holder of an office under the person.

Application

This section applies where — ***(2)(a)***

(i) there is a computation of a person's taxable profits to be charged under Case I or Case II of Schedule D for a chargeable period beginning on or after 3 February 2005, and

(ii) a deduction would (were it not for this section) be allowed for that period in respect of employee benefit contributions made, or to be made, by that person (the employer).

The section does not apply in regard to the deductions listed in ***subsection (7)***. ***(2)(b)***

Restriction on deduction

The deduction that would otherwise be allowed in respect of employee benefit contributions made by an employer for a chargeable period is restricted to the extent that the scheme manager (for example, a trustee of an EBT) — ***(3)(a)***

(i) provides qualifying benefits from the contributions, or

(ii) pays qualifying expenses from the contributions,

during that chargeable period or within 9 months from the end of it.

Any qualifying benefits provided (or qualifying expenses paid) by the scheme manager after that scheme manager obtains employee benefit contributions from the employer are to be treated as provided or paid “out of” those contributions in an amount up to the total of the contributions less any amount previously allowed. No account is taken of any other receipts and expenses of the scheme manager. ***(3)(b)***

Previously disallowed amount

Where a deduction for an employee benefit contribution has previously been disallowed (under ***subsection (3)***), such an amount will be allowed for a subsequent chargeable period to the extent that qualifying benefits are provided during that subsequent period. ***(4)(a)***

The limit on this amount is the total amount of contributions less amounts previously allowed under ***subsection (3)(a)*** or ***subsequent (4)(a)***. Again, in this regard, no account is taken of any other receipts and expenses of the scheme manager. ***(4)(b)***

Transfer of asset

This subsection is relevant where the qualifying benefit is the transfer of asset. ***(5)(a)***

The amount of the benefit is the total of — ***(5)(b)***

- the amount (if any) spent on the asset by the scheme manager, or where the asset is new shares in a company connected with the employer (or rights in respect of such shares) issued by the connected company, the market value of those shares or rights at the time of transfer,
  and
- where the asset is transferred to the scheme manager by the employer, the amount that would (but for this section) be allowed in respect of the transfer.

Where the amount arrived at under ***paragraph (b)*** is greater than the amount of which an income tax charge arises on an employee (which could happen due to a fall in value of the assets since the scheme manager obtained it from the employer), the allowable deduction under ***subsection (3)*** or ***subsection (4)*** is limited to the lower amount on which an employee is chargeable. ***(5)(c)***

Calculation of profits or gains – timing

Where an employer calculates profits or gains for a chargeable period and does so less than 9 months after the end of the period, the taxable profits are to be calculated by reference only to benefits provided, expenses paid or contribution made up to the date the calculation is made. Should qualifying benefits, etc., be made between that ***(6)*** date and the end of the 9 months period, the employer may adjust the calculation, as necessary, to reflect this position.

Deductions outside section

Particular allowable deductions to which the section does not apply are deductions — ***(7)***

- in respect of consideration for goods or services provided in the course of a trade or profession – this would cover payments made by employers for goods or services from which employees may benefit,
- in respect of contributions under an accident benefit scheme,
- under ***Part 17***, in respect of the provision of employee profit sharing and share ownership schemes, and
- under ***Part 30***, in respect of the provision of retirement benefits.

81B Equalisation Reserves for credit insurance and reinsurance business of companies

Summary

This section allows certain insurance companies to take a tax deduction for transfers into a specific EU statutory equalisation reserve when calculating their profits or losses for tax purposes. The provisions apply from 15 July 2006.

Credit insurance companies are required by the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. 485 of 2015) to set up an equalisation reserve. Similarly, Regulation 24 of the European Communities (Reinsurance) Regulations 2006, requires a reinsurance undertaking writing certain credit insurance to create, and maintain, an equalisation reserve.

Credit insurance broadly provides insurance against business to business payment default and the particular type of credit insurance risks covered under these Regulations are export credit, installment credit, mortgages and agricultural credit.

The section provides for a tax deduction for the transfer of any amounts into this equalisation reserve. It also provides that transfers out of this reserve will be treated as income for tax purposes thereby recouping the tax relief provided as the reserves are reduced. The section also contains a provision to claw back the tax relief in full where a company ceases to trade.

Details

Definitions

"credit insurance risks" is defined to mean risks included in class 14 of Section A of the Annex to the First Council Directive 73/239/EEC of 24 July 1973. Effectively, credit insurance is insurance against business-to-business payment default and the particular type of credit insurance risks covered are export credit, instalment credit, mortgages and agricultural credit. ***(1)***

Principal Regulations' means the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. 485 of 2015) as amended from time to time.

"Reinsurance Regulations" means the EC (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006).

"relevant rules" are certain calculation rules set out in point D (as inserted by Council Directive 87/343/EEC of 22 June 1987) to the Annex to the First Council Directive 73/239/EEC of 24 July 1973.

Application

Paragraph (a) provides that the section applies to an insurance company whose business has at any time been, or included, business in respect of which it was required, to establish and maintain an equalisation reserve by virtue of Regulation 24 of the "Reinsurance Regulations". This applies to reinsurance companies writing credit insurance. ***(1A)(a)***

Paragraph (b) provides that the section also applies to credit insurance companies that underwrite "credit insurance risks" and which are required by the "Principal Regulations" to set up an equalisation reserve. ***(1A)(b)***

Amounts calculated under the "relevant rules" referred to in ***subsection (3)***, can be taken into account by an insurance company, in the Schedule D Case I computation of profits or losses of an accounting period, where that company is required under Regulation 24 of the "Reinsurance Regulations" or, the "Principal Regulations" to create and maintain an equalisation reserve. ***(2)***

The rules to be applied for the purposes of ***subsection (2)*** above are: ***(3)***

(a) amounts, calculated under the "relevant rules", transferred into the equalisation reserve in a period are to be tax deductible in that period, ***(a)***

(b) amounts, calculated under the "relevant rules", transferred out of the equalisation reserve in a period are to be treated as receipts in that period, and ***(b)***

(c) it is to be assumed that these transfers which are required under the Reinsurance Regulations or the Principal Regulations to be made for any period are actually carried out in that period. ***(c)***

Where the company ceases to trade, the balance on the reserve immediately before cessation will be deemed to have been transferred out at that time and, accordingly, that amount will be treated as a trading receipt in that accounting period. ***(4)***

S***ubsection (2)*** will not apply to any transfer into the equalisation reserve which relates to arrangements entered into wholly or mainly for tax purposes. Accordingly, the amount will not be taken into account in profits or losses under Case I of Schedule D. ***(5)***

Arrangements are entered into wholly or mainly for tax purposes when the sole or main purpose is, or benefit might (apart from ***subsection (7)*** below) be, expected to be the reduction of any tax liability. ***(6)***

Where transfers are made in and out of the equalisation reserve over a period ("equalisation period") that is different from the accounting period for tax purposes, an apportionment of the amount transferred can be made based on the number of days in the equalisation period that are included in each of the accounting periods. ***(7)***

81C Emissions allowances

Summary

The EU Emissions Trading Scheme (ETS), established under Directive 2003/87/EC, is a scheme that enables reductions in EU emission of greenhouse gases, committed to under the Kyoto agreement, to be achieved in a cost-effective way. The scheme operates by setting an overall limit on the level of emissions allowed in the EU, allocating emission allowances to enterprises operating within the scheme and requiring these enterprises to surrender sufficient allowances each year to cover their emission levels. Within the overall EU limit, enterprises can buy and sell emission allowances depending on their current and projected needs. An emission allowance gives the holder the right to emit one tonne of CO_2 or the equivalent amount of another greenhouse gas.

Section 43 of the Finance Act 2012 introduced two new sections to clarify the direct tax implications of two important aspects of the scheme. ***Section 540A*** provides that where a permit holder sells, transfers or disposes of allowances acquired free of charge from the Environmental Protection Agency under the ETS scheme, or an interest in or rights over such allowances, the transaction will be treated as the disposal of an asset for capital gains tax purposes and chargeable to tax at the CGT rate – see ***Part 19***.

This new ***section 81C*** confirms that a tax deduction is available for expenditure incurred on the purchase of emission allowances under the EU scheme and that the consideration for the disposal by a company of such allowances, for the purposes of its trade, is deemed to be a trading receipt of the trade. For the purposes of the section emission allowances includes emission reduction credits issued under the Kyoto Protocol. These credits, known as certified emission reductions or CERs and emission reduction units or ERUs, are generated by emission-saving projects undertaken in third countries subject to a verification process under the Kyoto Protocol. These credits are traded in the carbon market and can be exchanged for EU allowances for the purposes of meeting a company's compliance obligations under the EU Scheme.

Details

Definitions

"Directive" has the same meaning as in ***section 540A***; ***(1)***

"emissions allowance" means an emissions allowance, emission reduction unit or certified emission reduction unit within the meaning of Article 3 of the Directive;

"profit and loss account" has the same meaning assigned to it by generally accepted accounting practice and includes an income and expenditure account where a company prepares accounts in accordance with international accounting standards.

This section provides that a tax deduction is available to a company for expenditure incurred for the purposes of the trade on the purchase of emissions allowances. ***(2)***

Subject to ***section 540A*** amounts received or receivable for the disposal of purchased emissions allowances shall be treated as trading receipts of the company's trade. ***(3)***

81D Deduction for stock exchange listing expenditure

Summary

Finance Act 2024 introduced section 81D into the TCA 1997 to provide for a corporation tax deduction for expenditure of up to €1 million relating to a first listing on an Irish, EU or EEA stock exchange.
The deduction is available for expenses incurred by a company wholly and exclusively for the purpose of admitting to trading the shares of that company on a regulated market or a multilateral trading facility. The relief is available to investment companies as an expense of management, or to trading companies as a trading deduction, in the accounting period during which the first successful stock

exchange listing occurs. Expenses incurred in the year of listing and the previous three years are allowable, subject to the overall €1 million cap.

A deduction is not available where:

- the listing expenses are allowable under another provision of the Tax Acts,
- the stock exchange listing does not actually take place,
- financial instruments other than shares are listed, or
- the shares of the company have previously been listed on a stock exchange in any jurisdiction in any accounting period.

Relief applies to initial public offerings (IPOs) that take place between 1 January 2025 and 31 December 2029.

Details

Definitions ***(1)***

"Directive" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU. This Directive is also known as the Markets in Financial Instruments Directive (MiFID II).

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

"EEA state" means a state which is a contracting party to the EEA Agreement. This consists of Ireland and all other Member States of the European Union, Iceland, Norway and Liechtenstein.

"investment company" has the meaning assigned to it by section 83(1). This means any company whose business consists wholly or mainly of the making of investments, and the principal part of whose income is derived from the making of investments.

"listing expenditure" means expenditure incurred by a company wholly and exclusively for the purpose of admitting to trading the shares of the company on a regulated market or a multilateral trading facility. Expenditure that has a dual purpose is not eligible for relief.

"multilateral trading facility" has the same meaning as it has in Article 4(1)(22) of the Directive:

> *'multilateral trading facility' or 'MTF' means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with Title II of this Directive.*

"reference date" means the date on which a company commenced trading or, if the company is an investment company, the date on which the company became an investment company.

"regulated market" has the same meaning as it has in Article 4(1)(21) of the Directive:

> *'regulated market' means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of this Directive.*

"relevant period" means an accounting period of a company plus the three preceding years. If a company only began trading or became an investment company in the preceding three years, then the relevant period applies from the reference date up until the last date of the accounting period.

Subsection (2) sets out the key requirements for when a tax deduction will be available for listing expenditure. Those requirements are as follows: ***(2)***

(a) the shares of a company are admitted to trading on a regulated market or a multilateral trading facility in an EEA state during an accounting period,

(b) the company incurs listing expenditure in relation to the admission to trading during the relevant period, and

(c) tax relief is not otherwise available under the Tax Acts in respect of that listing expenditure in any accounting period.

Where these requirements are met, then tax relief will be granted for the listing expenditure as follows–

(i) the listing expenditure will be allowed as a trading deduction in computing the amount of the profits or gains to be charged to tax under Case I or II of Schedule D, or

(ii) where the company is an investment company, the listing expenditure can be added to the expenses of management of the investment company for the purposes of subsections (2) and (3) of section 83.

Relief is given in the accounting period during which the shares of the company are admitted to trading.

Subsection (3) provides that the maximum amount of listing expenditure that can be relieved under subsection (2) is €1 million. ***(3)***

Subsection (4) provides that tax relief under this section only applies to initial listings (IPOs). Relief will not apply to a company where its shares were previously admitted to trading/ listed on a stock exchange in any jurisdiction in any accounting period. ***(4)***

Subsection (5) provides that the section only applies to listings on an EEA stock exchange on or before 31 December 2029. ***(5)***

82 Pre-trading expenditure

Summary

This section provides relief for expenditure (pre-trading expenditure) incurred for the purposes of a trade or profession before the trade or profession actually commences. Any such expenditure which is wholly and exclusively laid out for the purposes of the trade or profession in a 3 year period before commencement is allowed as a deduction in calculating the trading income of that trade or profession following commencement. Relief in respect of the expenditure is not available under any other provision of the Tax Acts. This section applies only in relation to trades and professions which have commenced on or after 22 January, 1997.

Where a company, other than the company who incurred the pre-trading expenditure, commences the trade, Revenue is prepared to treat such pre-trading expenditure as having been incurred by the company that commenced the trade. Such treatment is permitted where relief would be allowed under the provisions of ***section 400***, if the transfer had taken place after the commencement of the trade.

Details

The deduction for pre-trading expenditure is only available for the purposes of a trade or profession which is set up and commenced on or after 22 January, 1997. ***(1)***

A deduction is allowable for pre-trading expenditure in computing income under Cases I and II of Schedule D where — ***(2)***

- it is incurred in the 3 years before the commencement of the trade or profession,
- it is not, otherwise than by virtue of this section, an allowable deduction, but would have been allowable in computing income under Case I or II of Schedule D had the expenditure been incurred after the commencement of the trade or profession.

Pre-trading expenses related to a trade or profession may not be taken into account in calculating a loss to be set-off against other income whether under ***section 381*** in the case of income tax or under ***sections 396(2), 396A, 396B 420, 420A or 420B*** in the case of corporation tax. Any losses resulting from pre-trading expenses may only be carried forward for use against future income of the trade or profession. ***(3)***

If expenditure qualifies for relief under this section, relief may not be given in respect of the expenditure under any other provision of the Tax Acts. ***(4)***

83 Expenses of management of investment companies

Summary

In computing profits for corporation tax purposes, a deduction is available in respect of management expenses incurred by resident investment companies (including savings banks) in computing profits for corporation tax purposes.

Also, any unabsorbed management expenses and charges on income may be carried forward for set off against income of a subsequent accounting period.

Details

Definition

"investment company" is any company whose business is the making of investments and whose income derives from the making of investments. Savings banks are specifically included as investment companies. ***(1)***

Management expenses deductible in computing profits

Management expenses of a resident investment company (except any expenses deductible in computing income from rents, etc assessable under Case V of Schedule D) are deductible in computing profits for corporation tax purposes. The amount of management expenses available for deduction is restricted by the amount of any income of the accounting period derived from sources not charged to tax, apart from franked investment income (that is, the sum of a dividend or other distribution – see ***section 156***). ***(2)***

Carry forward of excess management expenses and charges

Where in an accounting period the aggregate of the management expenses and any charges on income paid wholly and exclusively for the company's business exceed the profits from which they are deductible, the excess may be carried forward for set-off against profits of subsequent accounting periods. ***(3)***

Lump sum redundancy payments and employers' superannuation contributions

Included as management expenses are any lump sums paid under the Redundancy Payments Act, 1967 and any employer's contributions under an approved superannuation scheme. ***(4)***

83A Expenditure involving crime.

Summary

This section denies a tax deduction in computing the amount of any income chargeable to tax under Schedule D for any payment if the making of the payment constitutes a criminal offence under Irish law. A deduction is denied also in the case of a payment made outside of the State where the making of the payment might not constitute a criminal offence in the State because it is made outside of the State. Deductibility is denied in the case of such a payment where the payment, if it were made in the State, would constitute a criminal offence.

Details

No relief

No deduction is available in computing income chargeable to tax under Schedule D for expenditure incurred in making a payment which constitutes the commission of a criminal offence in the State. The question of whether the making of a payment constitutes a criminal offence is a matter of law. For a deduction to be denied there does not have to be any conviction. The making of the payment has to constitute a criminal offence. The decision is to be made in the first place by the taxpayer under self-assessment. In the event of an audit, the taxpayer would have to be able to stand over any decision to take a deduction in respect of such a payment. ***(1)(a)***

A tax deduction is also unavailable for expenditure incurred in respect of a payment made outside the State, the making of which would constitute the commission of a ***(1)(b)*** criminal offence in the State if it were made in the State. This covers a situation where a payment might not constitute a criminal offence under Irish law because it is made abroad. The issue to be considered in relation to such a payment is whether, if it had been made in the State, it would constitute a criminal offence under Irish law. If it would, then no deduction may be made in respect of the payment.

Expenses of management

The type of payments mentioned in subsection (1) may not be included in computing expenses of management for the purposes of the Tax Acts. This would be relevant, for example, in the case of certain investment companies where expenses of management are deductible for tax purposes. ***(2)***

84 Expenses in relation to establishment or alteration of superannuation schemes

This section authorises the deduction, in the computation of the profits/gains of a trade or undertaking, of expenses (for example, actuarial, legal or accountancy fees) incidental to the establishment or alteration of superannuation schemes approved under ***section 772***.

85 Deduction for certain industrial premises

Summary

A person who owns and occupies an industrial building or structure (within the meaning of ***section 268***) for the purposes of a trade is entitled to a deduction in computing the profits/gains of the trade equivalent to five-twelfths of the rateable valuation of the premises. The deduction is only available where the capital expenditure on construction of the building or structure was incurred before 30 September, 1956.

Details

Definition

"premises" is an industrial building or structure within the meaning of ***section 268*** which is not a building or structure to which ***section 272*** applies. Accordingly, the section only applies to such premises where the expenditure was incurred before 30 September 1956. ***(1)***

Deduction

A deduction equivalent to five-twelfths of the rateable valuation of the premises is available in the computation of the profits/gains chargeable to tax under Case I of Schedule D. The premises must be owned by the person carrying on the trade and occupied by that person for the purposes of the trade. ***(2)***

A similar deduction is available in computing the profits/gains chargeable to tax by virtue Case I (b) of Schedule D (that is, profits from land, mines, quarries, etc – see ***section 18(2)***). ***(3)***

Apportionment

The rateable valuation is apportioned where the premises consists of units, some of which may qualify for the deduction and some which may not. ***(4)(a)***

Any apportionment is made by the inspector to the best of his/her knowledge and judgement. ***(4)(b)***

Any apportionment of the rateable valuation made by the inspector may be amended on the appeal of that assessment by the Appeal Commissioners. A certificate of the Commissioner of Valuation as to the amount of the rateable valuation of any property attributable to any part of the property is admissible as evidence of the value of that part. ***(4)(c)***

86 Cost of registration of trade marks

The cost incurred in obtaining for the purpose of a trade the registration or renewal of registration of a trade mark is allowable as a deduction in computing the profits/gains of a trade.

87 Debts set off against profits and subsequently released

Where a deduction in respect of any debt has been allowed in the computation of the profits/gains of a trade or profession and that debt is subsequently released, the amount of debt released is treated as a receipt arising in the period in which the release takes place. ***(1)***

The amount of the debt released is treated as a post-cessation receipt under ***section 91*** if the release occurred after the discontinuance of the trade or profession. ***(2)***

87A Deductions for gifts to Foundation for Investing in Communities

Section 87A (which was inserted by Finance Act 2001 ***section 84(1)–(2)*** with effect from 1 August 2000) deleted by Finance Act 2001 ***section 84(3)*** with effect from 6 April 2001.

87B Release of debts in certain trades

Summary

This provision, inserted by section 18 of the Finance Act 2013 applies to all individuals engaged in, or deemed to be engaged in, the trade of dealing in or developing land. Where an amount of any debt, which is incurred by the individual to fund the acquisition of land held as trading stock, is released, that amount is treated as a receipt of income in the year of release. Provision is made to ensure that the amount is chargeable even where the trade has ceased before the time of the release.

For the purposes of this section, "release" essentially means any form of debt forgiveness, whether formal or otherwise, including that associated with limited or non-recourse loans and the discharge of debt in the context of bankruptcy or insolvency. Carried forward losses of the trade will be available to reduce or eliminate any tax charge that may arise as a result of this measure. This provision applies to any such debt released on or after 13 February 2013.

Details

"specified debt" means any debt incurred by an individual to finance the purchase or development of land which is trading stock of a "specified trade"; ***(1)***

"specified trade" means a trade of dealing in or developing land or any activity, which is treated as such by virtue of section ***640(2)(a)*** and to which the rules contained in ***Chapter 1*** of ***Part 22*** apply.

If all or part of a specified debt is released (in this context "released" refers to any form of debt forgiveness) by the lender, the amount so released will be treated as a trading receipt of the specified trade in the tax year concerned. ***(2)***

Where the specified trade has ceased prior to the debt being released the amount released will be treated as a post cessation receipt chargeable to income tax under Case IV of Schedule D. ***(3)***

The date on which the specified debt is to be treated as released (in whole or in part) for the purposes of determining the tax year in which the charge to tax will arise will be the earliest of the following: ***(4)***

- the date on which the lender confirms to the borrower that the debt has been released,
- the date on which the lender and borrower first come to an agreement (either formal or informal) that the debt or part of the debt does not have to be repaid,
- in a case where the loan agreement provided for circumstances in which the debt or part of the debt would be released or not collected the date on which the relevant conditions are met (this refers to limited or non-recourse loans),
- in a case involving a discharge from bankruptcy or a discharge from debt under the Person Insolvency Act 2012, the date of discharge.

88 Deduction for gifts to Enterprise Trust Ltd

Section 88 repealed by Taxes Consolidation Act 1997 ***section 848A(13)*** (which was inserted by Finance Act 2001 section 45) with effect from 6 April 2001.

88A Double deduction in respect of certain emoluments

Note: This scheme and the relief under Section 472A has ceased for all employments commencing on or after 1 July 2013.

Summary

This section, together with ***section 472A***, provides tax incentives, for both employers and employees, to help the long term unemployed to return to employment. Employers may claim a double deduction in computing the profits of the trade or profession in respect of the first 3 years wages paid to qualifying employees. This double deduction may also be claimed in respect of the employers' PRSI contribution on such wages.

Both incentives apply in respect of individuals who have been unemployed for at least 12 months and in receipt of a specified social welfare payment or who are in a category approved of for the purposes of the scheme by the Minister for Social, Community and Family Affairs with the consent of the Minister for Finance.

Details

Definitions

"emoluments", "employment", "employment scheme", "qualifying employment" and "qualifying individual" have the same meanings as in ***section 472A***. ***(1)***

“qualifying period”, in relation to a qualifying employment, means the period of 36 months beginning with the date on which the employment commences.

Relief

In addition to the normal deduction, an employer who engages a qualifying employee is entitled to an additional deduction in respect of — ***(2)***

- the wages paid to the qualifying employee, and
- the employer’s PRSI contribution in respect of such wages.

This additional deduction is confined to the first 36 months of the qualifying employee’s employment but will not be available if either the employer or the employee is benefiting or has benefited under an employment scheme in respect of the employment for which the additional deduction is claimed. In this connection, FÁS (non apprenticeship) training courses, the Community Employment Scheme, the Job Initiative Programme, the “Workplace” 5 week job experience programme and the Back to Education Scheme administered by the Department of Social, Community and Family Affairs are not regarded as employment schemes.

This section will cease to have effect in respect of- ***(3)(a)&(b)***

- wages paid for an employment and
- the employer’s PRSI contribution in respect of such wages,

for all employments commencing on or after 1st July 2013..

CHAPTER 7

Special measures on discontinuance of, and change of basis of computation of profits or gains of, a trade or profession

89 Valuation of trading stock at discontinuance of trade

Summary

This section provides rules for valuing unsold trading stock on the discontinuance of a trade. With one exception, the rules apply to all trades which have discontinued or have been deemed to be discontinued by virtue of any provision of the Tax Acts. The exception is a trade which has been carried on by a single individual and is discontinued by reason of that individual’s death.

Closing stock at the date of discontinuance is valued at the price it is sold, or at the value of any other consideration given for its transfer, to a person who carries on or intends to carry on a trade in the State, provided the cost incurred by such a person is deductible as an expense in the computation of the profits/ gains of the trade carried on or intended to be carried on by that person. Closing stock otherwise disposed of is valued on its open market value.

Where the trader to whom the stock is transferred on discontinuance is connected with the trader transferring the stock it is not allowable to value the stock at less than “the lower of cost or net realisable value”.

Section 656 should be consulted concerning the valuation of trading stock of a discontinued trade in the case of farming.

Details

Definitions and construction

"trading stock" is all property, real or personal, that is sold in the ordinary course of the trade whether or not at the date of the discontinuance it is still in the process of being completed or matured. All materials employed in the manufacture, preparation or construction of such property are also treated as trading stock. ***(1)(a)***

Also included as trading stock are services, articles or material which, if the trade were a profession, would be treated as work in progress for the purposes of ***section 90***. ***(1)(b)(i)***

For the purposes of this section, two persons are connected with each other if they are connected with each other within the meaning of ***section 10***. That section provides a series of tests to determine whether persons are connected for the purposes of the Act in general. In addition, persons will be regarded as connected if — ***(1)(b)(ii)***

- one of them is a partnership and the other has a right to share in the partnership,
- one of them is a body corporate and the other has control of the body,
- both are partnerships and another person has a right to a share in each,
- both are companies or one is a company and the other a partnership, and another person has control of both.

The section applies not only to trades which have been actually discontinued but also to trades treated for tax purposes as having been discontinued. Expressly excluded, however, are cases of discontinuances occasioned by the death of a sole trader. ***(1)(c)***

Valuation of trading stock

Trading stock at the date of discontinuance of a trade is to be valued — ***(2)***

- where it is sold to a person who trades or is intending to trade in the State and the cost of the stock is deductible as an expense in computing profit/gains of the trade carried or to be carried on by the person, at the amount determined by ***subsections (3)*** and ***(4)***.
- in other cases, at the amount it would have realised if sold on the open market at that date.

In the case of transfers between persons who are not connected, the actual transfer price is to be the basis of valuation. ***(3)(a)***

In the case of a transfer between connected persons, an arm's length price should be taken as the basis of valuation. ***(3)(b)***

These two rules are, however, subject to ***subsection (4)*** and the special treatment set out in ***Schedules 16*** and ***17*** in relation to Building Societies and Trustee Savings Banks.

In the case of the rule applying to transfers between connected persons it is provided that, where the value of the stock as computed under ***subsection (3)(b)*** (i.e. the arm's length price) is greater than both the "acquisition value" of the stock and the actual transfer price, both parties can elect for the stock to be valued at the higher of its acquisition value and the actual transfer price. The election must be included by the person transferring the stock in that person's tax return for the year of discontinuance. ***(4)***

Acquisition value of stock

"Acquisition value" is the amount which would be deductible as representing the cost of the stock if it was sold at the time of discontinuance. This would generally be the cost of the stock but, in the event that the stock had been written down to its market value in a previous period, it would be the written down value brought forward. ***(5)(a)***

For the purposes of working out "acquisition value" of stock, the period for which the profits are to be considered begins immediately before the sale envisaged in ***paragraph (a)***. Thus, if the net realisable value of the stock had fallen before the time of "sale", the figure to be taken as acquisition cost will be the net realisable value at that time. ***(5)(b)***

The deemed transfer value of the stock used for the purposes of calculating the income of the person transferring the stock is also to be taken as the cost of the stock to the purchaser. ***(6)***

90 Valuation of work in progress at discontinuance of profession

Summary

This section deals with the tax treatment of "work in progress" at the discontinuance or deemed discontinuance of a profession. It only applies in cases where a valuation is taken of the work of the profession in progress at the discontinuance. It follows that it does not apply where work in progress is not taken into account (that is, where the profits of the profession have been computed on a "cash basis" or other basis which excludes work in progress).

The person engaged in the profession is given the option either to have subsequent receipts for the work in progress treated for tax purposes —

- as post-cessation receipts (***section 91***), or
- to have the value of the work in progress included at market value, or at the price obtained for it on transfer to another professional, in his/her final account.

Details

Work in progress at the discontinuance of a profession which is transferred to another professional person who can deduct the cost of it as an expense is to be valued at the price for which it is transferred or, if it is not so transferred, at the price it would have fetched on an arm's length transfer. ***(1)***

Where a profession has been discontinued, the person carrying on the profession immediately before the discontinuance has the option to elect that any excess of the value of the work in progress over its cost is not to be taken into account in computing the profits of his/her final period, but instead anything he/she receives for the transfer of the work in progress in excess of its cost is to be treated as a post-cessation receipt chargeable under ***section 91***. This election must be made in writing to the inspector within 24 months after the discontinuance. ***(2)***

The section applies where a profession is treated as discontinued for tax purposes in the same manner as it applies for an actual discontinuance. However, the section does not apply where a profession carried on by a single individual is discontinued by reason of that individual's death. ***(3)***

Work in progress at the discontinuance of a profession includes wholly or partially completed professional work and articles produced and materials used in undertaking such work. ***(4)***

91 Receipts accruing after discontinuance of trade or profession

Summary

A charge to tax under Case IV of Schedule D is imposed on the post-cessation receipts of a trade or profession which could not have been taken into account while the business was being carried on. It also applies to debts wholly or partially written off during the course of the business but recovered only after the business ceased. The charge also arises on sums received after a business ceases where the accounts are drawn up on a "conventional basis" (that is, a basis other than a full earnings basis). Post-cessation expenses, unrelieved losses and unused capital allowances are allowable deductions in arriving at the charge to tax in respect of such receipts.

Details

Post-cessation receipts

The section applies to sums arising from the carrying on of the business before the discontinuance which were not taken into account for tax purposes during the life of the business, whether or not the taxpayer was assessed on the earnings basis or on a conventional basis. Sums otherwise chargeable to tax (for example, royalties received by a person to whom the copyright may have been assigned) are excluded from the scope of the section. ***(1)***

Exclusions

The following are not treated as post-cessation receipts for the purposes of the section — ***(2)***

- foreign income arising to a non-resident person or to any person acting on such a person's behalf,
- a lump sum paid to personal representatives on the assignment of literary or other copyright,
- sums received for the transfer of trading stock belonging to a trade at the discontinuance of that trade or of work in progress of a profession at the time of discontinuance of the profession in a case where the profits/ gains of the profession had been computed on an earnings basis,
- sums which would have been exempt under ***section 195*** (exemption of certain earnings of writers, composers and artists) if they had been received by an individual who would have been entitled to exemption under that section had they been received before the discontinuance of that individual's profession.

Charging provision

A charge to tax under Case IV of Schedule D applies to the post-cessation receipts of a trade or profession, the profits of which, before the discontinuance, had been chargeable to tax under Case I or II of Schedule D. ***(3)***

Deductions

Post-cessation expenses (except any expenses arising from the discontinuance itself), unrelieved losses of the former business and unused capital allowances of the former business are allowable deductions in charging the post-cessation receipts. ***(4)***

Miscellaneous

The "earnings basis" of computing profits/gains is a basis where all credits and liabilities of a trade or profession accruing in any period are taken into account in computing the profits/gains for tax purposes. ***(5)(a)***

The "conventional basis" of computing profits/gains is any basis of computation other than the earnings basis. ***(5)(b)***

The section is also applied to the recovery of a bad debt written off during the life of a business. ***(5)(c)***

92 Receipts and losses accruing after change treated as discontinuance

Summary

This section applies where there is a change in the persons carrying on a trade or profession such that the undertaking is treated for tax purposes as if it has been permanently discontinued and a new one begun – see, for example, ***sections 69*** and ***1008***. The effect is to apply the tax treatment contained in ***sections 91*** and ***95*** to any post-cessation receipts (including bad debts recovered) of the discontinued trade. The section also provides that debts which are assigned to the person continuing the business and which subsequently prove irrecoverable are available for set off against profits/gains after the change.

Details

The section applies where as a result of a change in the persons carrying on a trade or profession the trade or profession is treated for tax purposes as if it had been permanently discontinued and a new trade or profession commenced. ***(1)***

The section applies ***section 91*** and ***95*** where there is any such deemed discontinuance of a trade. The effect of this is to apply the tax treatment set out in ***sections 91*** and ***95*** to any post-cessation receipts (including bad debts recovered) of such a discontinued trade. However, where the right to receive any such post-cessation receipts (including the right to recover bad debts) is transferred to the successor at the time of the change, ***section 91*** is not to be applied. In such cases, any such receipts are treated for tax purposes as receipts of the successor's business. For example, debts allowed to the predecessor as bad and doubtful under ***section 81(2)(i)*** but recovered by the successor (to whom the right to the debts was transferred at the time of the notional discontinuance) should be included as a receipt in computing the successor's profits. ***(2)***

Where a debt assigned to the persons carrying on the trade or profession after a change was credited for tax purposes before the change and subsequently proves to be irrecoverable, the appropriate deduction is to be given in computing the profits of the business after the change. Where a deduction has already been allowed under ***section 81(2)(i)***, the amount to be allowed after the change is limited to any excess of the irrecoverable debt over the deduction allowed before the change. ***(3)***

93 Cash basis, etc: relief for certain individuals

Summary

A measure of relief from the charge to tax on post-cessation receipts is available to individuals who on 6 April, 1970 were 51 years of age or older and who were assessed to tax on the cash basis.

Details

Definitions

"the net amount" with which a person is chargeable to tax in respect of post-cessation receipts under ***section 91*** is the amount so chargeable after allowing such deductions as are allowed by that section but before any relief which is given by this section. ***(1)***

"relevant date" is either the date of discontinuance (for the purposes of ***section 91***) or the date of change of accounting basis (for the purposes of ***section 94***).

The relief

The 3 conditions which must be satisfied for relief to be given under this section are — ***(2)***

- the individual must have been born before 6 April, 1919,
- he/she must have been engaged in the business on 4 August, 1970, and
- on 4 August, 1970, he/she must have been accounting for his/her profits on a conventional basis and must have continued to do so until the cessation or the change of basis which brought ***section 91*** or ***94*** into operation.

Where these conditions are met, the net amount on which the individual is to be charged to tax under ***section 91*** or ***94*** is reduced by multiplying that amount by the fraction specified by ***subsection (4)***.

Certain necessary modifications are made to ***subsection (2)*** where a charge arises under ***section 94*** on a change of accounting basis taking place on a date before 4 August, 1970. In such a case the conditions for relief to be given under this section are that — ***(3)***

- the individual must have been born before the 6th April, 1919, and
- he/she have been engaged in the business at the time of the change.

The fraction to be used for the purposes of giving the relief under ***subsection (2)*** is — ***(4)***

- 19/20ths (95 per cent) for an individual who was not 52 on 6 April, 1970,
- 18/20ths (90 per cent) for an individual who was 52 on 6 April, 1970, and so on, reducing by 1/20th (5 per cent) for each additional year of age up to the age of 64, or
- 5/20ths (25 per cent) for an individual who was 65 or over on 6 April, 1970.

94 Conventional basis: general charge on receipts after change of basis

Summary

A charge to tax under Case IV of Schedule D arises in respect of sums received after a change of accounting basis where such receipts were earned before the change and are not included in the accounts prepared on the new accounting basis.

Details

A charge to tax under Case IV of Schedule D is imposed on certain sums (described in ***subsection (2)***) accruing to a trade or profession after a change of accounting basis which are earned before the change but which would otherwise not be taken into account for tax purposes. The charge arises where there is a change from a conventional basis to an earnings basis, and where there is a change from one conventional basis to another such that the new basis is nearer the earnings basis. ***(1)***

The section applies to all sums arising from a trade or profession during any period before a change of accounting basis which have not been brought into account in the profits or gains of any period and are not otherwise chargeable to tax. The reference in ***subsection (2)*** to "value" in the phrase "their amount or value" is to be construed as enabling a deduction to be given for any expenses not otherwise allowable which would, but for the change in accounting basis, have been deducted in computing the profits/gains of the business. ***(2)***

On a change in accounting basis of a profession, the amount of work in progress debited in the new accounts which is not counterbalanced by a credit in the old accounts is to be treated as a receipt for the year of assessment in which the change in basis occurs and charged to tax in accordance with this section. ***(3)***

Work in progress for the purposes of this section has the same meaning as for ***section 90(4)***, that is, it includes, at the time of the change of basis, wholly or partially completed professional work and articles produced and materials used in undertaking such work. ***(4)***

There is a change from a conventional basis to an earnings basis at the end of a period if the profits/gains of the next period are computed by reference to earnings. Where the profits/gains of 2 successive periods are computed by reference to different conventional bases, a change of basis occurs at the end of the earlier period. ***(5)***

95 Supplementary provisions as to tax under *section 91* or *94*

Summary

This section is supplementary to the charge to tax provided for by ***section 91*** or ***94***.

Details

Where the right to a post-cessation receipt such as a bad debt is transferred in return for a consideration, the consideration is made chargeable to tax in the hands of the person assigning the right. If the right is not transferred at an arm's length price, it is to be valued for tax purposes as if it had been so transferred. The provision also applies to the transfer for value of sums chargeable under ***section 94*** as a result of a change of accounting basis. ***(1)***

Where, by virtue of ***section 91***, an individual is taxable on a post-cessation receipts and the profits/gains of the business to which the individual was entitled before the ***(2)*** discontinuance were treated as earned income, the individual is entitled to have any post-cessation receipts treated as earned income but after any reduction in those receipts allowed by ***section 93***.

A person receiving post-cessation receipts of his/her business, or receipts following a change of accounting basis, in a year beginning not later than 4 years after the cessation or change has the option to have the amount received taxed as if the receipt arose in the last year of his/her business or in the year of the change of basis instead of for the year in which the individual obtains the receipts. This option must be claimed within 2 years after the end of the tax year in which the receipts are obtained. Any unrelieved losses and capital allowances already deducted under ***section 91(4)*** (that is, in determining the assessable amount) cannot be claimed against the amended assessment which (as a result of the election) is to be made for the last year of the business or for the year of change of basis. The period of 4 years referred to is the period within which an assessment may normally be made for any earlier year of assessment (see ***section 924(2)***). ***(3)***

In the case of a profession, where work in progress at the discontinuance is sold for a lump sum on the discontinuance or the business is transferred and the successor completes the work in progress on behalf of the predecessor and pays over to him or her an appropriate sum, the person who was carrying on the business is charged to tax on whatever he/she receives as a post-cessation receipt under ***section 91***. It is to be noted that such a charge only arises where the accounts were prepared on a "cash" or other conventional basis which did not take work in progress into account. Where work in progress is taken into account at the discontinuance of a profession (that is, where the accounts were prepared on an earnings basis), a full valuation basis is provided in ***section 90*** and sums received for the transfer of the work in progress are excluded from ***section 91*** by ***subsection (2)(c)*** of that section. ***(4)***

No deduction is allowed ***section 91(4)*** for post-cessation expenses, unutilised capital allowances and unrelieved losses, where that amount has previously been allowed under any other provisions of the Tax Acts. ***(5)***

A double deduction under ***section 91(4)*** is prevented. Where amounts are chargeable in different years of assessment, any deduction in respect of a loss or capital allowance is given in an earlier rather than a later year. Furthermore, a deduction in respect of a loss is not to be made in any year preceding that in which the loss is incurred.

95A Change of basis of computation of profits or gains of a trade or profession

Summary

This section provides for the spreading of a tax charge over a 5-year period where the charge arises from a clarification of accounting treatment in relation to the value of certain work-in-progress.

The issue arises from the application of a statement know as "UITF Abstract 40", issued by the Urgent Issues Task Force of the Accounting Standards Board concerning the basis of valuation of work-in-progress in the case of contracts to provide services.

The statement clarifies that profits on such contracts, to the extent that the contracts are completed, should be taken into account in valuing work-in-progress. The effect of such inclusion is to increase the value of closing work-in-progress. This results in profits being recognised earlier than in the past. This earlier recognition of profits will result in a higher tax charge in the year of change than would arise in the normal course.

The section confirms that the uplift in the value of the work-in-progress is chargeable to tax and then provides that the additional charge is to be spread forward over a five-year period beginning with the year of change. One-fifth of the additional charge will be taxed in the year of change and one-fifth will be taxed in each of the following four years.

Details

Definitions

"Accounting Standards Board" is defined. ***(1)***

"Chargeable period" is given the same meaning that it has in ***section 321*** of the Taxes Consolidation Act 1997. In the case of an individual, it means a year of assessment. In the case of a company, it means an accounting period.

Application

Where for any year there is a change in the basis of valuation of work-in-progress and a different basis of valuation was used in the previous year, any uplift in the value of work-in-progress will be taxable in the year of change. Where there is a change (say) in 2005 the opening and closing work-in-progress will be valued on the new basis in the 2005 accounts. However, if the closing value of work-in-progress in the 2004 accounts is less than the opening value in the 2005 accounts, some profits could fall out of the charge to tax. The provision ensures that this will not happen. ***(2)***

Change in basis of work in progress

Two criteria are to be met if the charge to tax is to apply. The first of these is that there is a change in the basis of valuing work-in-progress for the purposes of computing profits or gains of a trade or profession. A reference to ***section 94(3)*** ensures that there can be no double charge to tax. Any charge to tax that is covered by ***section 94(3)*** will not be charged again under ***section 95A***. ***(2)(a)***

The second criterion to be met if the charge to tax is to apply is that the opening work-in-progress on the new valuation basis for the year of change is allowed as a deduction in computing profits or gains for tax purposes. That is the case where opening work-in-progress on the new valuation basis is added to purchases for the year. ***(2)(b)***

The charge to tax is imposed in the year of change to the extent that no counter balancing credit in connection with the work-in-progress is taken into account in computing profits or gains for tax purposes in the previous year. This means that the charge will apply if the closing work-in-progress for the previous year is lower than the opening work-in-progress for the year of change.

Partnerships

A charge arising by virtue of ***subsection (2)*** in the case of a partnership trade of profession is to be treated for tax purposes as profits or gains of that trade or profession. ***(3)***

Spreading of charge

The charge to tax is to be spread over a number of years where the conditions in ***subsection (4)*** are met. The spreading applies where the change in the basis of valuation of work-in-progress arises by virtue only of the guidance in UITF Abstract 40 and the change is made in the 2 years beginning on 22 June 2005. (UITF Abstract 40 is a guidance statement issued on 10 March 2005 by the Urgent Issues Task Force of the Accounting Standards Board.) ***(4)***

Where the spreading applies, the full charge is not to be made in the year of change. Where the taxpayer is an individual, the charge is spread on the following basis: ***(4)(a)***

- one-fifth of the amount is to be charged in the year of change and one-fifth is to be charged in each subsequent year until the amount has been fully accounted for; but
- if any of those years is the year of discontinuance of the trade, any remaining charge will be taxed in that year.

Where the taxpayer is a company: ***(4)(b)***

- the charge is to be spread over accounting periods falling into the 5 year period beginning at the start of the accounting period in which the change in basis of valuation is made, and
- if any of those accounting periods is the last accounting period in which the company carried on a trade or profession, any remaining charge will be taxed in that accounting period.

CHAPTER 8

Taxation of rents and certain other payments

Overview

This Chapter provides for the charging to tax under Case V of Schedule D of income arising from rents in respect of land or premises situated in the State and receipts in respect of easements. The Chapter provides rules for the computation of Case V income (***sections 97***, ***105*** and ***106***) and for the treatment of certain premiums as rent (***sections 98*** and ***98A***). It also imposes a charge to tax on certain assignments of leases and on certain sales (***sections 99*** and ***100***), gives certain deductions/reliefs (***sections 101***, ***102*** and ***103***) and provides for the deduction of tax at source in respect of certain rents and other payments (***section 104***).

The provisions of ***section 1041*** should be consulted where rents are payable to non-residents.

96 Interpretation (*Chapter 8*)

Summary

This section defines various terms used in the Chapter. It also provides rules for determining the duration of a lease.

Details

Definitions

"easement" is given a substantially extended meaning to include any right, privilege or benefit in, over or derived from premises. ***(1)***

“lease” is also given an extended meaning to include an agreement for a lease and any tenancy, but does not include a mortgage. In relation to a given lease, “lessor” includes a successor in title of the person by whom the lease was granted, and “lessee” includes a successor in title of the person to whom the lease was granted.

“the person chargeable” is the person entitled to the profits/gains arising from rent in respect of premises and receipts in respect of easements. A debtor (within the meaning of the Personal Insolvency Act 2012) who transfers property to a person to hold in trust for the benefit of creditors under a Debt Settlement Arrangement or a Personal Insolvency Arrangement, in accordance with that Act, is treated as ‘the person chargeable’ in respect of rents and easements arising while the property is held in trust. This means, in effect, that the debtor is chargeable to tax under Case V in respect of such rents and easements.

“premises” is any lands, tenements or hereditaments in the State. The effect of this is to confine the scope of the Case V charge to property in the State. By virtue of section 12 of and the Schedule to, the Interpretation Act, 1937, the word “land” includes messuages, tenements, and hereditaments, houses and buildings, of any tenure.

“premium” includes any sum similar to a premium, whether payable to the immediate or a superior lessor or any person connected with such a person.

“rent” includes any payment in the nature of rent and also any contribution by the tenant to the cost of maintenance or repair of the premises for which the landlord is responsible.

“rented residential premises” is a residential premises in respect of which any person is entitled to a rent or receipt from any easements.

“residential premises” is a building or part of a building used or suitable for use as a dwelling together with any outoffice, yard, garden or other land appurtenant to or usually enjoyed with the building or part of the building.

Duration of a lease

The duration of a lease is normally the period for which it is granted. However, where the terms of a lease (including a lessor’s or lessee’s “break” clause or any other circumstance) render it unlikely that the lease will actually run its course and the premium is not substantially greater than it would have been if the term of the lease actually expired on the earlier likely date, then, in determining the duration of the lease, the lease is not to be treated as having been granted for a term longer than a term ending on that earlier date. Where, however, the terms of a lease include provision for its extension beyond a given date by notice given by the lessee, account may be taken, in determining the duration of the lease, of any circumstances making it likely that the lease will be so extended. Where a lessee or a person connected with the lessee is or may become entitled to a further lease, whenever commencing, of the same premises or of a part of the same premises, the term of the first lease may, in determining the duration of the lease, be taken as not expiring before the end of the term of the further lease. ***(2)(a)***

Example 1

A grants a 51 year lease to B for a premium of €20,000 and a rent of €5,000 per annum for the first 10 years. Under the lease B is required to demolish and rebuild the premises at the end of the 10 years when he would be permitted to occupy the new premises at a full commercial rent. If B does not demolish and rebuild, the lease is forfeit. As it is unlikely that B would demolish and rebuild the premises and then pay a full commercial rent for it, the lease is to be treated as having been granted for 10 years.

If, however, the premium was €200,000, the rent €500 a year for the first 10 years and the terms of the lease allowed B to renew it for a further 41 years at a rent of €5,000 per annum, the premium is obviously substantially greater than it would have been for a 10 year lease. Thus, such a lease would not be treated as a 10 year lease.

Example 2

If A grants a one year lease of a factory to B for a premium of €1,000,000 and a rent of €100 and under the terms of the lease B has the right to extend his lease for a further 56 years without a premium but at an annual rent of €100 the duration of the lease would be treated as 57 years as B would be likely to exercise his right to the extension of the lease.

The above rules are applied by reference to all the facts known or ascertainable at the time the lease is granted or at the time when a contract for varying or waiving the lease is entered into. In applying the rules it is also to be assumed that all parties to a lease agreement acted at arm's length. If, under the terms of the lease or in connection with the granting of the lease, benefits are conferred (other than vacant possession and beneficial occupation of the premises or the right to receive rent at a reasonable commercial rent for the premises) or payments were made which would not be expected in an arm's length agreement without some other benefit having been conferred, then it is to be further assumed (unless it is shown that the benefits were not conferred or payments made so as to secure a tax advantage) that the benefits would not have been conferred nor the payments made had the lease been for a period ending on the earlier date. In other words, for the purposes of comparing the premium payable in the open market for the lease for the likely shorter period, no account is to be taken of any terms of the lease (or sub-lease) or any other arrangements the purpose of which was to inflate the open market premium. ***(2)(b)***

A lease may include terms (a "break clause") which would entitle the lessee, on a "break", to —

- a new lease on such favourable terms as to make the "break" likely,
- a lease of more attractive property,
- the right to a refund of the premium with or without interest.

Under this provision the onus of showing that any such abnormal elements were not introduced for the purpose of securing a tax advantage by manipulation of the "duration rules" falls on the person claiming the advantageous period.

Mortgages

Where the estate or interest of a lessor in any premises is the subject of a mortgage and the mortgagee or a receiver appointed on the mortgagee's behalf is in possession or in receipt of the rent from the premises, the mortgagee is chargeable to tax as if the mortgagee were the lessor. The mortgagee's tax liability is computed as if the mortgagor was still in possession or no receiver had been appointed and as if the amount of the liability of the mortgagor was being computed. ***(3)***

Information

Where an inspector has reason to believe that a person may be able to furnish information relevant to the ascertainment of the duration of a lease, the inspector may ask for such information to be supplied within 21 days or such longer period as the inspector may allow. ***(4)***

97 Computational rules and allowable deductions

Summary

This section provides the principal rules for the computation of profits/gains chargeable under Case V of Schedule D. Also set out are the deductions allowable against Case V income.

By virtue of section 75(4), expenses incurred in the letting of a premises on a uneconomic basis are not deductible.

Details

Computational rules

Income chargeable to tax under Case V of Schedule D is computed on the gross amount of any rent receivable. The amount of the surplus or deficiency from each rental source is calculated separately by making the deductions authorised by this section. The total Case V income in any year is the aggregate of the surpluses so computed reduced by the aggregate of the deficiencies so computed. ***(1)***

Deductions

In determining the income chargeable under Case V of Schedule D, the following deductions are allowed: ***(2)***

- rent payable on the property by the person chargeable,
- rates payable on the property by the person chargeable (either in accordance with the terms of a lease or as an expense of the agreement under which the rent/receipts were received),
- the cost of goods provided and services rendered by the person chargeable in relation to the letting of the property (where such person is either legally bound under the lease to provide such goods and services or the provision of such goods and services constitute an expense of the agreement under which the rent/receipts were received),
- the cost of maintenance, repairs, insurance and management of the premises borne by the person chargeable and which constitute an expense of the agreement under which the rent/receipts were received, but excluding any capital expenditure,
- interest on money borrowed to purchase, improve or repair the premises.

Deductible expenses are only allowable to the extent to which they would be allowable under the provisions of Case I of Schedule D if the receipt of rent were treated as the carrying on of a trade during the currency of the lease or during the period which the lessor was entitled to the rent. For this purpose, the currency of a lease includes a period after the end of a lease and before the commencement of a new lease, where the lessor was not in occupation of the premises but was entitled to possession of the premises. ***(3)***

Restriction of relief for interest on borrowed money

Relief was not allowed for any year in respect of interest on borrowed money employed on or after 23 April 1998 to purchase, improve or repair premises if at any time in that year the premises was residential premises (subject to ***subsections (2B) and (2C)***). ***Subsection (2G)*** restored relief on such interest accruing on or after 1 January 2002. However, ***subsection (2J)*** reintroduced, between 7 April 2009 and 31 December 2018, an interest restriction for rental income from residential premises. ***(2A)***

Non-application of restriction of relief for interest

The restriction of relief for interest on borrowed money employed on or after 23 April 1998 did not apply to — ***(2B)***

- borrowed money employed on or before 31 March 1999 to purchase a residential premises where the premises is purchased in pursuance of a contract evidenced in writing before 23 April 1998.

- borrowed money employed in the improvement or repair of premises which on 23 April 1998, or at any time in the preceding 12 months, were rented residential premises and the person chargeable owned the property on 23 April 1998, or had entered into a contract which was evidenced in writing before 23 April 1998 to purchase it and the purchase money was paid over before 31 March 1999.

- borrowed money used to purchase, improve or repair —

  - qualifying holiday cottages/apartments located in the designated seaside resorts – Chapter 4 of Part 10, sections 352 and 353;

  - any premises, other than premises located in the designated seaside resorts, the site of which is wholly within a qualifying rural area as defined in Schedule 8A;

  - holiday cottages/apartments, other than those coming within designated seaside resorts or qualifying rural areas, which are registered with Fáilte Ireland or listed in a Regional Tourism Guide and where planning permission – which must have been applied for before 23 April 1998 – restricts use to short term residential use not exceeding two months at any one time by any one person;

  - properties converted into multiple residential units before 1 October 1964 ("pre-1963 property").

Site and construction costs

Where a person does not purchase a residential premises in its entirety but has or acquires a site and then arranges for the construction of a dwelling on the site, the money employed is deemed to be the purchase of a residential premises. Where this deeming provision applies, ***subsection (2B)(a)*** will only apply where the borrowed money is used by 31 March 1999 and where — ***(2C)***

- any contracts for the purchase of the site and the construction of the dwelling have been evidenced in writing before 23 April 1998, or

- if there is no contract for the construction of the dwelling, the foundation for the dwelling was laid in its entirety before 23 April 1998.

Apportionments

Where rents arise from a mixed commercial/residential premises, any relief in respect of interest on borrowings relating to the commercial portion – which is not restricted – will be on a "just and reasonable" basis. ***(2D)***

Change of use of principal private residence

Where a house which is used as a person's sole or main residence at any time on or after 23 April 1998 is subsequently rented out, no relief against rental income will be granted for any year or part of a year after it becomes a rented property irrespective of when the money was applied. ***(2E)***

Interest relief in relation to "pre-1963 property"

Interest relief is available on borrowings to purchase, improve or repair rented properties converted into multiple residential units before 1 October 1964 ("pre-1963 property"). The conditions attaching to the relief are as follows: ***(2F)***

- the property must have been converted into multiple residential units prior to 1 October 1964, the commencement date of the Local Government (Planning and Development) Act 1963 ("a pre-1963 property");

- the property must have been acquired under a contract evidenced in writing on or after 5 January 2001;

- in the event of an alteration to the premises taking place after the date of acquisition, the number of units in the property cannot, subject to the following condition, be reduced to less than 50% of the number that were originally in the property when purchased by the chargeable person;

- the property must at all times consist of a minimum of three residential units;

- at all times, except for the periods of temporary vacancy during the change of tenants, at least 50% of the property must be either —

  - let to a local authority or tenants designated by that local authority, or

  - let to tenants qualifying for Social Welfare Assistance payments and at a rent that falls within limitations imposed by the Social Welfare Consolidation Act 2005; and

- the property must meet certain statutory requirements in relation to —

  (i) standard of upkeep of the property,

  (ii) providing rent-books for tenants and keeping records of rent paid, and

(iii) registration of the rental property.

For the purposes of ***subsection (2F)*** there are specific definitions of "local authority" and "residential unit".

"Local authority" means the council or corporation of a county or other borough or the council of an urban district in whose functional area the premises is located. By virtue of section 3(2) of, and Schedule 2 to, the Local Government Act 2001, reference in any other enactment to "county borough corporation", "borough corporation" (not being a county borough corporation), "council of a county" and "council of an urban district", and to similar or analogous expressions, are now to be construed as references to "City council", "Borough council of a borough mentioned in Chapter 1 of Part 1 of Schedule 6 to the Local Government Act 2001", "County council" and "Town council of a town mentioned in Chapter 2 of Part 1 of Schedule 6 to the Local Government Act 2001", respectively.

"Residential unit" means a separately contained part of a residential premises used or suitable for use as a dwelling.

Restoration of interest relief

Interest relief is restored as a deductible expense in the calculation of tax on rental income arising from residential property. The restoration of the relief applies to interest on borrowed money which is employed in the purchase, improvement or repair of rented residential accommodation where the interest accrues on or after 1 January 2002. ***(2G)***

Transfer of property between spouses or civil partners

Relief is disallowed, as respects interest accruing on or after ***(2H)***

- 6 February 2003 where the let residential premises was purchased from the spouse of the person chargeable in respect of the rental income.
- 27 July 2011 where the let residential premises was purchased from the civil partner of the person chargeable in respect of the rental income.

The disallowance of interest relief does not apply where the rented property is purchased from

- a spouse in the case of legally separated or divorced persons.
- a civil partner when the civil partners are separated under a deed of separation or other legally enforceable arrangement, or where the civil partnership has been dissolved.

Restriction of interest relief

With effect from 1 January 2006 relief is denied in respect of interest on borrowed money applied in the purchase, improvement or repair of rented residential properties unless the person making the claim can show that the registration requirements of Part 7 of the Residential Tenancies Act 2004 have, in the year for which the relief is claimed, been complied with in respect of all tenancies which existed in relation to that premises in that year. ***(2I)(a)***

Where evidence of registration of a tenancy is required by the Revenue Commissioners for a claim under this section, a written communication from the Private Residential Tenancies Board will meet that requirement. ***(2I)(b)***

In circumstances where the property is owned by a company this restriction takes effect for accounting periods beginning on or after 1 January 2006.

Restoration of full loan interest deductibility for residential property

Section 5 Finance Act 2009 introduced a restriction or limit of 75% on the amount of interest that would otherwise be deductible where a loan is used to purchase, improve or repair a residential property. ***(2J)***

Finance Act 2016 provided for the incremental restoration of full interest deductibility by way of annual 5% increases, commencing from 1 January 2017, with full restoration by 2021.

Finance Act 2018 restored full deductibility of interest on loans used to purchase, improve or repair a residential property from 1 January 2019 by removing the restrictions that had been provided for 2019 and 2020.

For the purposes of the restriction, interest is treated as accruing on a daily basis. The restriction does not apply to loans taken out to finance non-residential property and the full amount of interest is deductible in such cases. There is provision for a just and reasonable apportionment of interest in the case of mixed residential and non-residential properties. Where a person arranges for the construction of a dwelling, the combined cost of site acquisition and construction is treated as being incurred on the purchase of a residential premises. The restriction also applies to residential properties constructed under some of the property-based incentive schemes, i.e., registered holiday cottages, nursing home residential units and "section 23" properties, including student accommodation.

Non-application of subsection (2J) for lettings to qualifying tenants ***(2K)***

A person chargeable who rents residential property for a period of three years to tenants in receipt of social housing supports (qualifying tenants) may, notwithstanding ***subsection (2J)***, which restricts the deduction for interest on borrowings used to purchase, improve or repair rented residential property, deduct all of the interest accruing during that three-year period when computing their taxable rents from the property in question. The manner in which the additional deduction is given is set out in ***paragraph (g)*** below.

A number of terms are defined for the purposes of this subsection ***(2K)(a)***

"Lease**"** means any lease or tenancy in respect of residential premises which is required to be registered by the person chargeable with the Private Residential Tenancies Board (PRTB), now the Residential Tenancies Board (RTB).

"Qualifying lease" is any lease or tenancy in respect of residential property granted by the person chargeable to a qualifying tenant;

"Qualifying tenant" means a tenant who

- qualifies for social housing support from the housing authorities, under Part 4 of the Housing (Miscellaneous Provisions) Act 2014 or section 19 of the Housing (Miscellaneous Provisions) Act 2009, or
- is entitled to rent supplement payable by the Department of Employment Affairs and Social Protection.

"Relevant borrowings" are borrowings used in the purchase, improvement or repair of rented residential property which is rented to a qualifying tenant at some stage during the period when interest is accruing on the borrowings. This definition helps narrow the calculation of "relevant interest" (i.e., the additional interest deduction allowed by this subsection) to the interest arising on the residential premises, or the part of the residential premises, that is let to qualifying tenants;

"Relevant interest" is the amount of the additional interest that a person chargeable who rents residential property for a continuous period of three years to qualifying tenants and who satisfies the other conditions of this subsection may deduct under ***subsection (2)(e)*** in computing their taxable rent from the property in question.

Subsection (2)(e) allows a deduction for interest on borrowings used to purchase, improve or repair rented property in computing the taxable rents from the property. ***Subsection (2J)*** restricted the amount of the deduction on such borrowings insofar as they relate to residential property. This subsection restores the 100% deduction where the person chargeable meets the necessary conditions.

The "relevant interest" for a three-year period (referred to as a "specified period") is the difference between the aggregate amount of deductions for interest on borrowings in respect of residential property over the three-year period computed as if all of the interest is deductible and the aggregate amount of the actual interest deductions for the same period having regard to the appropriate restriction imposed by ***subsection (2J)***.

For example, a person chargeable (who is an individual) undertakes to rent a residential property to a qualifying tenant for a three-year period ending on 31 December 2018. The interest on borrowings used to purchase the property is €1,000 in each of the tax years 2016 – 2018 inclusive.

The aggregate amount of the interest on the borrowings over the three-year period, computed as if all of the interest is deductible is €3,000, while the aggregate amount of the deductions having regard to ***subsection (2J)*** is €2,400*. The amount of the increased interest deduction is €600, i.e. the difference between the two computations.

*€2,400 (€750 + €800 + €850):

- 2016: €1,000 x 75% = €750 (in respect of interest accrued on or after 1 January 2016 up to and including 31 December 2016).
- 2017: €1,000 x 80% = €800 (in respect of interest accrued on or after 1 January 2017 up to and including 31 December 2017).
- 2018: €1,000 x 85% = €850 (in respect of interest accrued on or after 1 January 2018 up to and including 31 December 2018).

"Relevant undertaking" means an undertaking given by a person chargeable to the PRTB (now the RTB) in respect of the letting of a residential property to a qualifying tenant. A relevant undertaking is described in ***paragraph (b)*** below.

"Specified period" is defined as a continuous three-year period commencing at any time on or after 1 January 2016 but not later than 31 December 2019 and allows a person chargeable grant qualifying leases to qualifying tenants at any time during that period. The period of four years ending on 31 December 2019 allows a person chargeable who enters into, or is treated as entering into, a qualifying lease in respect of residential property in 2016 (for that year and the two subsequent years) the option of entering into a further qualifying lease for a three year period commencing in 2019. As relief under this subsection is predicated on a three year lease, the option of a further qualifying lease is not available where lettings to qualifying tenants commence for the first time in 2017 or later.

A person chargeable who intends claiming relief under this subsection must submit an undertaking in such form and containing such information as the Minister for the Environment, Community and Local Government (now the Minister for Housing, Community and Local Government may prescribe. The person chargeable must commit to renting a residential property to qualifying tenants for a period of three years commencing on — ***(2K)(b)(i)***

- the date of the lease, where it commences on or after 1 January 2016, or
- in any other case, 1 January 2016, provided the person chargeable is renting the property in question to qualifying tenants on that date.

The PRTB/RTB must register a relevant undertaking in the register of private residential tenancies which it maintains under Part 7 of the Residential Tenancies Act 2004. Subject to any modifications, Part 7 of that Act applies to any information relating to a relevant undertaking included in the register as it relates to a residential tenancy in the register. ***(2K)(b)(ii)***

Timelines are set out within which a relevant undertaking must be submitted to the PRTB/RTB as follows: ***(2K)(b)(iii)***

- where a lease commences on or after 1 January 2016, the undertaking must be submitted at the same time as the person chargeable is required to register the tenancy in accordance with section 134 of the Residential Tenancies Act 2004 (i.e. within one month of the start of the tenancy).
- in all other cases, the undertaking must be submitted by 31 March 2016.

Subparagraph (b)(iv) is concerned with the situation where a person chargeable submits a relevant undertaking to the PRTB in respect of a specified period and, following the end of that period, submits an undertaking in respect of a further 3-year period. A person chargeable who enters into a qualifying lease during 2016 in respect of a residential property will have the opportunity to enter into a further qualifying lease for the property during 2019. ***(2K)(b)(iv)***

Firstly, this subparagraph provides that the date on which the second specified period commences (which must be in 2019) is:

(A) the date of a qualifying lease which commences on or after the date following the end of the first specified period, or

(B) the day immediately following the end of the first specified period where the new qualifying lease commences prior to the end of that period.

For example, a first specified period ends on 31 December 2018. If a new lease commences on 1 February 2019, the second specified period will commence on 1

February 2019. However, if a qualifying lease is still ongoing at 31 December 2018, the second specified period will commence on 1 January 2019, i.e. the day after the end of the first specified period.

Secondly, it provides that the relevant undertaking for the second specified period in respect of a qualifying lease commencing after the end of the first specified period must be submitted to the PRTB at the same time as the person chargeable is required to register the new tenancy with that Body. Otherwise, the undertaking must be submitted within 3 months after the second period commences.

A lease which commences before 1 January 2016 and which would be regarded as a qualifying lease if it were to commence on that date is treated as a qualifying lease commencing on 1 January 2016 where a relevant undertaking is submitted to, and registered by, the PRTB. This provides certainty for a person who, on 1 January 2016, is renting residential property to a qualifying tenant under a lease which commenced before that date, as to when that lease is deemed to have commenced for the purposes of this subsection and is of particular relevance for ***paragraph (d)***, which deals with scenarios where qualifying leases terminate before the end of a specified period. ***(2K)(c)***

This paragraph is concerned with the situation where a qualifying lease terminates during a specified period where, for example, the tenant leaves the property and the person chargeable is unable to find a replacement qualifying tenant to occupy the property immediately following the termination of that lease. ***(2K)(d)***

Subparagraph (i) provides that the term of a qualifying lease includes the period between the first lease and the replacement lease where

- at the end of the intervening period between both leases, the person chargeable grants a new lease in respect of the property to a qualifying tenant, and
- during the intervening period, the property (or any part of it) is not
    - let to a tenant who is not a qualifying tenant,
    - occupied by the person chargeable, or
    - occupied by a person connected to the person chargeable, for example, a relative.

In these circumstances, the first lease, the intervening period and the new lease are taken together and treated as one lease for the purposes of ascertaining if the property has been let to social tenants for the specified period in question.

Subparagraph (ii) provides that more than one replacement lease may be granted in respect of a property in the circumstances of ***subparagraph (i)***.

Where a tenant ceases to be a qualifying tenant during a specified period, for example, where his or her circumstances improve, the lease continues to be treated as a qualifying lease (i.e. a lease between the person chargeable and a qualifying tenant) for so much of the period as the tenant continues to reside in the property under the lease. ***(2K)(e)***

The conditions that must be met in claiming relief under this subsection are: ***(2K)(f)***

- a residential property is let under a qualifying lease (which is a lease between a person chargeable and a qualifying tenant) for one or more specified periods. Given the definition of “specified period” there can be no more than two such periods in respect of a property, and

- a relevant undertaking in respect of the property for each specified period is submitted to, and registered by, the PRTB.

A person chargeable who satisfies the conditions in ***paragraph (f)*** in relation to a residential property may, after the end of the specified period to which the claim relates, make a claim to Revenue to have the deduction provided for in ***subsection (2)(e)*** in respect of interest on borrowings used to purchase, improve or repair the property in question computed having regard to the amount of the relevant interest for that period. ***(2K)(g)***

For the purposes of computing the appropriate deduction for interest in accordance with this subsection, relevant interest is treated as accruing on the day after the specified period ends. This ensures that as far as possible the undertaking to let the property to qualifying tenants for a 3 year period is fully met before a claim for the additional relief can be made.

For example, take the case of a person chargeable who is an individual where the specified period in relation to a property ends on 31 December 2018. In this scenario, the relevant interest is deemed to accrue on 1 January 2019 and is taken into account, along with the actual interest accrued in 2019, in computing the taxable rents from the property in question of that year.

Subsection (2J), which restricts the deduction for interest on borrowings on residential property, does not apply to relevant interest.

The relevant interest of a specified period is not taken into account in computing the relevant interest of a subsequent specified period.

A claim for relief under this subsection must: ***(2K)(h)***

- include a statement to the affect that the conditions of ***paragraph (f)*** are met, and
- be submitted electronically in the manner provided for by the Revenue Commissioners.

Where a residential property is let partially under a qualifying lease (which is a lease between a person chargeable and a qualifying tenant) and partially under another lease, the deduction for interest on borrowings under ***subsection (2)(e)*** is computed by apportioning the interest between the respective leases on a just and reasonable basis. ***(2K)(i)***

The retention period for records and linking documents provided for in ***section 886*** (which is concerned with the obligation on taxpayers to retain certain records) commences on the last day of the specified period in respect of which a claim is made under this subsection. As a claim will not be made earlier than year 4 after the beginning of a specified period, the retention period for records relating to the claim would, in the absence of this measure, be substantially reduced. ***(2K)(j)***

Miscellaneous

Where an amount for which a deduction is authorised by subsection (2) is payable in respect of more than one premises, the inspector is authorised to make such ***(4)(a)*** apportionments as are necessary to determine the appropriate amount of any deduction to be allowed in respect of any premises.

Where a part of a premises is retained for common use by persons occupying other parts of the premises, payments made for the use of a common area are treated as having been made in respect of those other parts of the premises. ***(4)(b)***

Prohibition on double deduction

A deduction is not allowed under this section if a deduction has already been allowed for the same amount in the computation of a person's income for tax purposes. ***(5)***

97A Pre-letting expenditure in respect of vacant premises

Summary

Expenses incurred on a vacant residential premises prior to it being first let after a period of non-occupancy are authorised as a deduction against rental income from that premises.

The section applies to expenditure on a premises which is let between the date of the passing of the Finance Act 2017 and 31 December 2027.

For premises which were let between the date of the passing of the Finance Act 2017 and before 1 January 2023 and which were vacant for at least 12 months, expenditure incurred in the 12 months before the premises were let as a residential premises may be deducted against rental income from that premises. The expenditure must be such as would be allowed against rental income if it had been incurred during the period of letting. The deduction allowed is capped at €5,000 per vacant premises.

For premises which are let between 1 January 2023 and 31 December 2027, the deduction for pre-letting expenses is available where a premises has been vacant for at least 6 months. The deduction is capped at €10,000 per vacant premises for such premises.

If the person who incurs the expenditure ceases to let the property as a residential premises within 4 years of the first letting the deduction will be clawed-back in the year of cessation. Amounts allowed as a deduction under this section cannot also be allowed under another section of the Act.

Details

The section contains a number of definitions including— ***(1)***

'specified day' means the day on or after the passing of Finance Act 2017 (25 December 2017) on which a vacant premises is first let as a residential premises after the end of the period during which it was not occupied.

'specified period' in relation to a vacant premises, means the period of 12 months ending on the day before the specified day.

'vacant premises' means any premises that is not occupied for the entire 6 months before the 'specified day'. For first lettings that began before 1 January 2023, a vacant premises was one that was not occupied for 12 months before the specified day.

Subject to subsection (3) the section applies to expenditure incurred on a vacant premises by the person chargeable on or before 31 December 2024. ***(2)***

Where a person incurs expenditure on a vacant premises during the 12 months prior to first letting, and this expenditure would be authorised as a Case V deduction under section 97(2) if it had been incurred on or after the first day the premises was let, then it is authorised as a Case V deduction. The subsection applies notwithstanding the restrictions that would otherwise be imposed by section 105 and is subject to subsections (4) and (5). ***(3)***

The deduction for pre-letting expenditure shall not exceed €5,000 in respect of each vacant premises. With effect from 1 January 2023, the cap on the deduction for pre-letting expenditure increased to €10,000 ***(4)***

Where the person who incurred the pre-letting expenditure has obtained a deduction under this section and ceases to let the premises as a residential premises within a period of 4 years from the first letting, the deduction granted shall be clawed-back in the year of cessation. For the purposes of the clawback, the amount of the deduction is deemed to be profits or gains under section 97(1) and is assessed accordingly. ***(5)***

Expenditure allowed under this section may not also be allowed under any other section of the Acts. ***(6)***

97B Deduction for retrofitting expenditure

Summary

Section 97B provides a tax incentive for small-scale landlords who undertake retrofitting works while the tenant remains in situ, which has the aim of attracting and retaining small-scale landlords in the private rental sector. The section provides for a tax deduction against rental income for certain retrofitting expenses incurred by landlords on rented residential properties. The expenses that qualify for deduction are those in respect of which the landlord has received a home energy grant from the Sustainable Energy Authority of Ireland (SEAI).

There is a clawback of the deduction in circumstances where, during the 2-year period following the end of the year in which the retrofitting works are completed, the landlord serves a notice to quit on the tenant or where the landlord ceases to let the premises. However, where a tenant voluntarily leaves or where a landlord serves a notice to quit because the tenant has failed to comply with their obligations (for example, failing to pay rent or engaging in anti-social behaviour) the deduction will not be clawed back provided that the landlord is actively seeking a tenant for the property.

Details

Definitions

Terms used in the section are defined. These include "approved retrofitting grant", "qualifying expenditure", "qualifying premises", "relevant amount" and "relevant period". ***(1)***

"Approved retrofitting grant" means—

- The Individual Energy Upgrade Grant,
- The One Stop Shop Service, and
- Any other grant administered by SEAI which has been designated by the Revenue Commissioners as an approved qualifying grant.

"Qualifying expenditure" means expenditure incurred by a landlord during the relevant period on qualifying works and for which the landlord has received an approved retrofitting grant.

"Qualifying premises" means a residential property, located in Ireland, owned by a landlord and—

- Occupied by a tenant under a tenancy registered with the Residential Tenancies Board,
  or
- Occupied by a tenant and is a property Part II of the Housing (Private Rented Dwellings) Act 1982 applies

and which is let continuously during the time the property is being retrofitted.

"Relevant amount" means the amount of the qualifying expenditure or €10,000, whichever is the lesser.

"Relevant period" is the period from 1 January 2023 to 31 December 2025.

The Revenue Commissioners may add to the list of grants that come within the definition of "approved retrofitting grant" where they find that another SEAI grant is similar to those currently within that definition. ***(2)***

The SEAI must notify the Revenue Commissioners where they set up a new grant scheme similar to those already covered in the definition of "approved retrofitting grant". ***(3)***

Where a landlord has incurred qualifying expenditure, he or she is entitled to a deduction in calculating her/his rental profits. The amount of the deduction will be the lower of €10,000 or the amount of the qualifying expenditure incurred. Qualifying expenditure is expenditure incurred between January 2023 and December 2025 on improving the energy efficiency of a rented residential property and in respect of which the landlord has received a retrofitting grant from the SEAI. ***(4)***

The number of properties in respect of which a landlord can claim a deduction under this section is limited to two. ***(5)***

The amount of a deduction that can be claimed under this section is capped at the "relevant amount", which is defined in subsection (1) as the lower of the qualifying expenditure incurred and €10,000. ***(6)***

Subsections (7) and (8) set out the circumstances that will result in a clawback of the deduction claimed. Such circumstances are, where within a period of two years following the end of the year in which the qualifying works are completed, — ***(7)&(8)***

- the landlord breaches her/his obligations under Part 3 of the Residential Tenancies Act 2004,
- the premises is no longer subject to a residential tenancy,
- the tenant terminates their tenancy of the property, or
- the landlord issues a notice of termination because the tenant has breached her/his obligations.

Subsections (9) and (10) explain that a clawback will not arise where, following the ending of a tenancy the landlord secures another residential tenant for the property or the landlord is actively seeking a residential tenant for the property on fair terms and conditions. ***(9)&(10)***

Subsection (11) sets out how a clawback of the deduction will operate. In any of the circumstances where a clawback will take effect, the amount of the deduction will be deemed to be profits of the landlord in the year of assessment in which the event resulting in the clawback takes place; the year in which the landlord breaches their her/his obligations under Part 3 of the Residential Tenancies Act 2004, the year in which the property ceases to be let as a residential property or the year in which the tenancy voluntarily leaves and the property is not actively marketed for rent by the landlord as set out in subsection (10). This section also provides that assessments will be made or amended to account for the clawback of the deduction. ***(11)***

To claim the deduction under this section, the landlord must include the following information on his Form 11— ***(12)***

- The unique identification number for the qualifying premises, assigned to that premises for LPT purposes,

- Eircode for the premises,
- The amount of the approved retrofitting grant received and confirmation of payment from SEAI,
- Amount of "qualifying expenditure" and "relevant amount" for each qualifying premises,
- Name, business address (including Eircode), tax reference number and VAT registration number of the qualifying contractor,
- confirmation that the premises is a qualifying premises, as defined in this section, and

any other information that Revenue may require.

No other relief under the Tax Acts or Capital Gains Tax Acts is available in respect of the expenses to which this deduction relates (e.g. capital allowances or other forms of relief/deduction cannot be claimed). ***(13)***

Any expenses incurred, directly or indirectly by the State, any Board established by statute or any public or local authority will not be regarded as having been incurred by the landlord. The expenses to which the SEAI grant relate will therefore not be treated as having been incurred by the landlord. ***(14)***

A landlord must be complaint with their LPT obligations to claim the deduction under this section. ***(15)***

A landlord must also have tax clearance to claim the deduction under this section. ***(16)***

Subsection (17) explains how a number of terms used in the section are to be construed where there is more than one owner of a "qualifying premises", to apportion relief under the section and indicate responsibility for certain requirements. ***(17)***

98 Treatment of premiums, etc as rent

Summary

Where a short lease (that is, a lease which does not exceed 50 years) requires the payment of a premium, a portion of the premium is treated as rent for the purposes of a charge to tax under Case V of Schedule D. The amount so treated is the premium reduced by 2 per cent for each complete period of 12 months, other than the first such period, comprised in the lease. Thus, in the case of a premium of €100,000 for a 41 year lease, the part of the premiums treated as rent is [€100,000 – (€100,000 x 2% x (41 – 1))] €20,000.

The section treats as the payment of a premium —

- a lump sum paid in place of full rent,
- a sum paid nominally for the surrender of a lease,
- a sum paid for the variation or waiver of any term of a lease, and

It should be noted that capital gains tax may arise on the part of the premium not treated as rent (see ***section 566*** and ***Schedule 14***).

Details

Treatment of premiums as rent

Where a premium is payable under the terms of a lease or otherwise under the terms under which a lease is granted and the duration of the lease is 50 years or less, a portion of the premium is to be treated as rent. The lessor is treated as becoming entitled to the amount so treated as rent on the date the lease is granted. The amount to be so treated is the amount of the premium reduced by 2 per cent for each complete 12 month period of the lease, excluding the first 12 month period. ***(1)***

Deemed premiums

Where the terms of a lease imposes on the lessee an obligation to carry out any work on the premises, the amount by which the lessor's interest in the premises at the time the lease is granted would be increased if the work had been carried out at that time is treated as the payment of a premium. Excluded is the cost of work which, if carried out by the lessor, would be an allowable deduction in computing rent chargeable to tax under Case V of Schedule D (for example, ordinary maintenance or repairs). ***(2)***

Also treated as the payment of a premium are — ***(3) & (4)***

- sums paid where the terms of a lease require that a sum be paid by the lessee in place of the whole or part of the rent,
- sums paid where under the terms of a lease a sum becomes payable as consideration for the surrender of the lease, and
- sums paid as consideration for the variation or waiver of any term of a lease.

For the purposes of determining the proportion of such sums which are to be charged as rent, the duration of the lease is to be taken as the period for which the payment is made or, in the case of a variation or waiver of the terms of a lease, the period for which such variation or waiver has effect. The liability to tax under these provisions arises for the year in which the sum is payable or, in the case of a variation or waiver of a lease, for the year in which the contract for the variation or waiver is entered into, and not, as in the case of an actual premium on a lease, the year in which the lease is granted.

Premiums to persons other than lessor

Where any premium (***subsection (1)***) or any amount deemed (***subsection (3)*** or ***(4)***) to be a premium is due to a person other than the lessor (for example, a superior lessor), those subsections do not apply. Instead, the amount is treated as profits/gains of that other person and is chargeable to tax under Case IV of Schedule D. However, where the payment is in connection with the variation or waiver of the terms of a lease (***subsection (4)***), the charge to tax under Case IV does not arise unless that other person is connected with the lessor. ***(5)***

Miscellaneous

Any sum other than rent paid in connection with the granting of a lease is to be treated as the payment of a premium, except where it can be shown that sufficient consideration has been given. ***(6)***

Where, for the purposes of ascertaining the duration of a lease, a lease is looked at together with a further lease for the same premises or for premises including the whole or part of the same premises, any premium or an appropriate part of any premium paid in respect of one lease may be attributed to the other lease if this is where the premium or that part of it properly belongs. ***(7)***

Instalments

Where a premium is payable by instalments, any tax due under this section may be paid by instalments where the taxpayer can satisfy the Revenue Commissioners that it would cause undue hardship if the payment were to be made in one sum. The tax payment may be spread over a period of up to 8 years from what would otherwise have been the due date for the payment. ***(8)***

Non-cash consideration

The value of any non-cash consideration is also treated as a sum paid or payable. ***(9)***

98A Taxation of reverse premiums

Summary

This section clarifies the taxation of reverse premiums. Generally, a reverse premium is a payment or benefit received by a person as an inducement to enter into a lease as a lessee.

Firstly, a reverse premium is treated as a revenue receipt. A reverse premium will be assessable as rent unless it is to be assessed as a receipt of a trade or profession or it is to be deducted from the amount treated as expenses of management of a life assurance company which is not charged to tax under Case I of Schedule D.

Secondly, a reverse premium is charged in the first relevant chargeable period where two or more of the persons who enter into the lease and the accompanying arrangements are connected and the terms of those arrangements are not what would be expected if those persons were dealing at arm’s length. Where an assurance company, which is not charged to tax under Case I of Schedule D, is involved, a reverse premium reduces the expenses of management of the company for the chargeable period in which the premium is received. Otherwise a reverse premium is charged in accordance with the accepted principles of commercial accounting.

Finally, there are a number of situations outlined where these provisions do not apply to a payment or benefit received.

The section applies from 7 June 2001 in respect of reverse premiums received on or after that date.

Details

Definitions

“chargeable period” means an accounting period of a company or a year of assessment; ***(1)***

“first relevant chargeable period” means the chargeable period in which a relevant transaction is entered into or, if a relevant transaction is entered into, by a person who receives a reverse premium for the purposes of a trade or profession which that person is about to carry on, then the first relevant chargeable period is the chargeable period in which the person commences to carry on the trade or profession;

“relevant arrangements” means a relevant transaction and any arrangements entered into in connection with it, whether before, at the same time or after it;

“relevant transaction” means a transaction under which a person is granted an estate or interest in, or a right in or over, land;

"reverse premium" means a payment or other benefit received by a person by way of inducement in connection with a relevant transaction being entered by that person or by a person connected with that person;

"sale and lease-back arrangement" means an arrangement under which a person disposes of the full estate or interest held by that person in land to another person and the terms subject to which the disposal is made provide for the grant of a lease of an interest in, or a right in or over, the land concerned to the person who is making the disposal, by the person who is making the acquisition.

For the purposes of the section, persons are connected with each other if they are connected, within the meaning of ***section 10*** at any time during the chargeable period or periods when the relevant arrangements are entered into. ***(1)(b)***

Tax treatment of reverse premiums

A reverse premium is regarded as a receipt of a revenue nature for the purposes of the Tax Acts. ***(2)***

The amount or value of a reverse premium is to be treated as if it were an amount of rent. This provision is subject to the provisions of ***subsections (4)*** and ***(6)***. ***(3)***

Where a relevant transaction is entered into by a person who receives a reverse premium and for the purposes of a trade or profession which that person carries on or is about to carry on, then the amount or value of the reverse premium is treated as if it were a receipt of that trade or profession, when computing the profits of the trade or profession under Case I or II of Schedule D. ***(4)***

Connected persons

The whole amount or value of a reverse premium is treated as arising in the first relevant chargeable period for the purposes of treating a reverse premium as rent under ***subsection (3)*** or as a receipt of a trade or profession under ***subsection (4)***, where: ***(5)***

- two or more of the persons who enter into relevant arrangements are connected, and
- the terms of those arrangements are not what would reasonably have been expected if those persons were dealing at arm's length.

Assurance company carrying on life business

A reverse premium will reduce the expenses of management of an assurance company carrying on life business, in respect of which it is not charged to tax under Case I of Schedule D, for the chargeable period in which the premium is received. "Assurance company" and "life business" have the same meanings as in ***section 706***. ***(6)***

Exclusions

The section does not apply to a payment or benefit: ***(7)***

- received by an individual in connection with the grant of an estate or interest in, or a right in or over premises occupied or to be occupied by that individual as his or her only or main residence,
- to the extent that it is consideration in relation to the sale of land which constitutes the sale in a sale and lease-back arrangement, provided that the terms of that arrangement at the time the arrangement is entered into are on bona fide commercial terms, or

- to the extent that, apart from this section, it is taken into account as a receipt in computing the profits or gains of a trade or profession under Case I or II of Schedule D.

99 Charge on assignment of lease granted at undervalue

Summary

Where a short lease (that is, a lease which does not exceed 50 years) is granted at undervalue, a charge to tax under Case IV of Schedule D arises on any subsequent assignment of the lease. A lease is treated as having been granted at undervalue if, having regard to values prevailing at the time it was granted, it could have required a higher premium than the premium (if any) obtained at that time. In determining the amount that could have been obtained, it must be assumed that the negotiations for the lease were at arm's length.

Details

Where a short lease is granted at undervalue and the lease is subsequently assigned, tax is charged by reference to the amount by which the consideration paid for the assignment exceeds the original premium (if any) for the lease. On the next assignment of the lease, tax is charged by reference to the amount by which the consideration for that assignment exceeds the consideration for the previous assignment of the lease and so on in respect of each such assignment. Where the consideration paid for the first assignment does not exceed the original premium, or where the consideration paid for a second or subsequent assignment does not exceed the consideration for the previous assignment, no charge arises on the assignment. ***(1)***

In the case of each assignment, tax is assessed on the assignor on the amount which would have been assessed under ***section 98(1)*** had the excess payment been a premium or an additional premium for the grant of the lease (that is, it is to be written down at 2 per cent for each year of the original duration of the lease except the first).

Where the aggregate excess amounts taken into account equal the amount foregone on the original grant of the lease, that is, the premium which the lessor could have obtained on the original grant of the lease (or, where the original lease was granted at a premium, the additional premium which could have been obtained), no further liability arises.

Example

A grants to B for €50,000 a 21 year lease at a nominal rent. The lease in reality is worth €1,000,000. A is taxable under ***section 98(1)*** on €30,000 (€50,000 reduced by 40%). B then assigns the lease to C for €500,000. B is chargeable under ***section 99*** on €270,000 (€500,000 less €50,000 reduced by 40%). C then assigns the lease to D for €450,000. This transaction is left out of account as the consideration does not exceed the consideration on the previous assignment. D then assigns the lease to E for €1,400,000. The excess is €950,000 but D is chargeable under this section as follows —

	€
Value of lease at time of grant	1,000,000
Premium actually paid	50,000
Excess of value over premium (the amount foregone)	950,000

Less excess of B's assignment to C over original premium	450,000
Balance of amount foregone	500,000
Less 40%	200,000
Amount chargeable	300,000

In computing the profits of a dealer in land, any trading receipts which are chargeable under this section are excluded. ***(2)***

100 Charge on sale of land with right to reconveyance

Summary

Where a landowner sells land subject to a condition that it is to be (or may be required to be) sold back to him/her subsequently for a lower price, a charge to tax under Case IV of Schedule D arises for the year in which the original sale takes place. The amount chargeable depends on the earliest date on which the reconveyance can take place.

Details

Where land or an interest in land is sold on terms providing that it is to be, or may be required to be, reconveyed (that is, sold back) to the vendor at a future date or to a person connected with the vendor, the vendor is charged to tax under Case IV of Schedule D on the excess of the sale price over the price fixed for the reconveyance less, where the earliest date on which it could be sold back is 2 years or more after the sale, 2 per cent for each year (excluding the first year) between the sale date and the date of the reconveyance. ***(1)***

Where the date of the reconveyance is not fixed and the price on reconveyance varies with the date, the price to be taken in ascertaining the excess amount chargeable to tax is the lowest possible price under the terms of the reconveyance. If the actual reconveyance takes place at a date later than the date used to calculate the tax liability, the taxpayer may (notwithstanding the general time limit for making a claim for a repayment of tax contained in ***section 865***) make a claim within 4 years of the actual date of reconveyance, to have the assessment recalculated and any excess tax paid refunded. A claim for the repayment of the excess tax paid must be a valid claim within the meaning of ***section 865(1)(b)***. (The meaning of a valid claim is dealt with in ***section 865***). ***(2)***

Where the sale of land provides for the leaseback of the land to the vendor or a person connected with the vendor, the preceding provisions apply as if the grant of the lease were a reconveyance at a price equal to the sum of the premium (if any) for the lease and the value, at the date of sale, of the right to receive a reconveyance of the reversion (that is, the superior interest to the lease) immediately after the lease begins to run (as a lease may be granted to take effect from a future date, the date of the grant of the lease is not necessarily the same as the date when it begins to run). However, excluded from this provision are sale and leaseback agreements where the lease is granted and commences to run within 1 month of the sale. ***(3)***

Where the vendor is a dealer in land, the vendor's trading receipts taxable under Case I of Schedule D are to be reduced by the amount on which tax is charged under this section. Such a trader may at some stage claim under ***subsection (2)(b)*** to have ***(4)*** his/her charge to tax under this section recalculated by reference to the actual date of reconveyance or leaseback. In such cases the Schedule D Case I assessment for the relevant period is revised to take account of the recalculated Schedule D Case IV charge.

100A Appeals against determinations under sections 98 to 100

Summary

This section outlines the method for determining the taxable amount of a premium or similar payment under a lease where the determination of the inspector may affect the liability to tax of more than one person.

Details

Before making a determination of any amount on which a person may become chargeable to tax in accordance with ***section 98, 99 or 100***, in circumstances where the inspector considers that the determination may affect the liability of any other person, the inspector must send a written notice of the proposed determination to the first-mentioned person and the other persons and allow them 30 days after the date of the notice to object to the proposed determination. Objections must be in writing and contain the reason(s) for the objection. ***(1)***

An inspector may, by way of a written notice, request a person to provide information to inform the inspector's decision on whether a notice under ***subsection (1)*** is required. The information must be provided within 21 days of the notice unless the inspector has provided for a longer period. ***(2)***

On consideration of any objections received within the 30 day limit provided for in ***subsection (1)(b)***, the inspector may make whatever determination he/she considers appropriate and send the determination to all parties affected. ***(3)***

A person who has not been sent the determination referred to in ***subsection (3)***, but who may be affected by it, may request a copy of the determination from the inspector. ***(4)***

A person aggrieved by the determination referred to in ***subsection (3)***, may appeal the determination to the Appeal Commissioners. The appeal must be made by notice in writing within 30 days of the date of the determination. ***(5)***

Where a determination made under ***subsection (3)*** is appealed, nothing in ***subsections (4) or (5)*** shall prevent other parties affected by the determination, and who have not been sent the determination, from applying to the Appeal Commissioners for a direction under ***section 949F*** to be joined to that appeal. ***(6)***

Where the Appeal Commissioners determines an appeal against a determination referred to in ***subsection (3)***, each person to whom the determination was sent or who was made a party to the appeal (and their successors in title) shall be bound by the Commissioner's determination. ***(7)***

A notice issued under ***subsection (1)*** may, notwithstanding confidentiality or disclosure of information provisions, state the inspector's reason(s) for the proposed determination. ***(8)***

101 Relief for amount not received

Where a person chargeable to tax by virtue of this Chapter proves that any amount in respect of which he/she is so chargeable is irrecoverable, or that the payment had been waived without consideration and the waiver was reasonably made in order to avoid hardship, the person chargeable is treated as if he/she was not entitled to receive the amount, and all necessary adjustments will be made to assessments, by way of repayment (notwithstanding the general time limit for making a claim for a repayment of tax contained in ***section 865***) or otherwise. However, if the amount is subsequently realised, the person's liability to tax for all relevant years of assessment is readjusted by amended assessment or otherwise.

102 Deduction by reference to premium, etc paid in computation of profits for purposes of Schedule D, Cases I and II

Summary

Where income tax has been charged by virtue of ***section 98***, ***99*** or ***100*** on a lessor in respect of a premium (or a deemed premium) paid by a lessee and the premises in question are occupied for business purposes, the lessee is treated as paying rent over the term of the lease (in addition to any actual rent) of an amount equal to the amount of the premium on which the lessor has been charged. This additional amount treated as rent is eligible for deduction as a business expense.

Details

"the relevant period" is, effectively, the period over which the lessee is granted a deduction in his/her Case I or II of Schedule D tax computation for that part of the premium which the lessor, assignor or vendor is chargeable to tax. In the case of a lessor (chargeable under ***section 98***), the relevant period is the duration of the lease. Where a lessor assigns a lease at undervalue (***section 99***), the relevant period is the duration of the lease remaining at the date of assignment. Where a lease is granted with a right to reconveyance or leaseback (***section 100***), the relevant period is the period beginning with the sale and ending on the date fixed under the terms of the sale as the date of reconveyance or leaseback or, if that date is not so fixed, ending on the earliest date that the reconveyance or leaseback could take place under the terms of the sale. ***(1)***

Where during any part of the relevant period a lessee wholly or partly occupies leased premises for the purposes of his/her trade or profession, and the lessee has paid a premium in respect of the lease which is chargeable to tax on the lessor under ***subsection (1)***, ***(2)***, ***(3)***, ***(4)*** or ***(5)*** of ***section 98*** or under ***section 99*** or ***100*** or which would be so chargeable but for ***section 103(3)*** or any exemption from tax, the lessee is entitled, in computing his/her charge to tax under Case I or II of Schedule D, to a deduction in respect of rent, in addition to any rent actually paid, of an amount equal to the amount so chargeable on the lessor. This notional rent is deemed to accrue from day to day and, accordingly, the part of it referable to any trading period is to be determined by apportionment on a time basis for the purposes of computing the amount deductible in the Case I or II computation. ***(2)***

Where —

- the terms of a lease requires the lessee to carry out any work on the premises and the lessor is treated as having received a premium equal in amount to the increase in value of the lessor's interest in the property, and ***(3)***
- the expenditure on the work carried out qualifies for capital allowances under ***Part 9***,

then, to avoid a double allowance, the amount of any such expenditure is to be disregarded for the purposes of this section. In other words, the lessee is not entitled to a deduction under this section in respect of that part of the premium represented by such expenditure.

The relief allowed under this section is adjusted where, in a case of a sale of land with a right to reconveyance or leaseback, the liability to tax of the vendor under ***section 100*** is adjusted in accordance with ***subsection (2)(b)*** of that section. ***(4)***

103 Deduction by reference to premiums, etc paid in computation of profits for purposes of this Chapter

Summary

Where a lessee sub-lets premises under a short lease (that is, a lease not exceeding 50 years) and he/she has paid a premium, he/she is entitled in computing Schedule D Case V income to a deduction representing part of that premium. The amount of the deduction is calculated by reference to the amount of the premium (if any) received under the sub-lease or the amount of the rent charged under the sub-lease.

Details

"the relevant period" is, effectively, the period over which the lessee is granted a deduction in his/her Case V of Schedule D tax computation for that part of the premium which the lessor, assignor or vendor is chargeable to tax. The amount of the deduction is spread over the duration of the relevant period. In the case of a lessor (chargeable under ***section 98***), the relevant period is the duration of the lease. Where a lessor assigns a lease at undervalue (***section 99***), the relevant period is the duration of the lease remaining at the date of assignment. Where a lease is granted with a right to reconveyance or leaseback (***section 100***), the relevant period is the period beginning with the sale and ending on the date fixed under the terms of the sale as the date of reconveyance or leaseback or, if that date is not so fixed, ending on the earliest date that the reconveyance or leaseback could take place under the terms of the sale. ***(1)***

Where a person obtains a lease of, or other interest in, premises for a premium or other sum in respect of which the recipient (that is, the lessor) has become chargeable to tax under ***subsection (1)***, ***(2)***, ***(3)***, ***(4)*** or ***(5)*** of ***section 98***, or under ***section 99*** or ***100***, and that person then sub-lets the premises, that person is entitled, in computing the profits from the sub-letting, to be treated as having paid rent (in addition to any actual rent paid) for the duration of the period for which that person has obtained the superior lease, or other interest. The amount to be treated as rent for this purpose is an amount which bears the same proportion to the amount charged under ***section 98***, ***99*** or ***100*** as the period for which the person has obtained the superior lease bears to the relevant period. The effect of this is to give the person a deduction in respect of this notional rent under ***section 97(2)*** in computing his/her Case V income from any sub-lease. The notional rent is deemed to accrue from day to day and, accordingly, the part of it referable to any period is determined by apportionment on a time basis for the purposes of calculating the amount deductible in the Case V computation for that period. ***(2)***

The section also caters for the situation where the intermediate landlord becomes chargeable under ***subsection (1)***, ***(2)***, ***(3)***, ***(4)*** or ***(5)*** of ***section 98*** or under ***section 99*** or ***100*** by reason, for example, of having obtained a premium on the grant of a sub-lease. Where this happens, the charge on the intermediate landlord in respect of the premium is the amount represented by the excess of the amount so chargeable over the appropriate fraction of the amount of any premium, etc charged on the ***(3) & (5)***

superior landlord. The appropriate fraction of the premium charged on the superior landlord is a sum which bears the same proportion to that amount as the duration of the sub-lease bears to the duration of the superior lease.

Example

A gets a premium of €100,000 on a 20 year lease of a shop granted by her to B. A is chargeable under ***section 98*** on €62,000 (that is, €100,000 less 100,000 * 19 * 2%). B on granting a 10 years sub-lease of the shop 2 years later gets a premium of €50,000. Without this section B would be liable to tax on €41,000 (that is, €50,000 less 50,000 * 9 * 2%). The section, however, secures that the charge on B is confined to the excess of €41,000 over the appropriate fraction of €62,000. In this example the relevant period for the superior lease is 20 years and the relevant period for the sub-lease is 10 years. The appropriate fraction is therefore 10/20ths. Accordingly, B is to be charged under ***section 98*** on €41,000 less €31,000 (that is, 10/20ths of €62,000), that is, €10,000. If the chargeable portion of the premium received by B (€41,000) had been less than 10/20ths of the chargeable portion of the premium received by A (€61,000), there would be no charge on B under ***section 98***.

Where a part only of the premises is sub-let, the amount on which the person is chargeable is the excess of the premium over so much of the appropriate fraction of the premium of the superior landlord as is attributable to that part of the premises.

Where relief is given under ***subsection (3)***, only so much (if any) of the amount of the premium paid to the superior landlord as remains unrelieved is to qualify for relief under ***subsection (2)***. In the example cited B would not be entitled to any relief under ***subsection (2)*** during the currency of the sub-lease. Where part only of the premises covered by the superior lease is included in the sub-letting, appropriate apportionments are to be made. ***(4) & (5)***

Where — ***(6)***

- the terms of the superior lease requires the lessee to carry out any work on the premises and the lessor is treated as having received a premium equal in amount to the increase in value of the lessor's interest in the property, and
- the expenditure on the work carried out qualifies for capital allowances under ***Part 9***,

then, to avoid a double allowance, the amount of any such expenditure is to be disregarded for the purposes of this section. In other words, the lessee is not entitled to a deduction under this section in respect of that part of the premium represented by such expenditure.

The relief allowed under this section is adjusted where, in a case of a sale of land with a right to reconveyance or leaseback, the liability to tax of the vendor under ***section 100*** is adjusted in accordance with ***subsection (2)(b)*** of that section. ***(7)***

104 Taxation of certain rents and other payments

Summary

Where rent is payable in respect of premises or easements used in connection with any of the concerns chargeable to tax under Case I(b) of Schedule D (for example, quarries, mines, waterworks, docks, tolls, railways, bridges, ferries – see ***section 18(2)***), the payment is chargeable under Case IV of Schedule D and is subject to deduction of tax at source by the person making the payment. The charge also extends to certain annual payments reserved or charged on premises which are not rents or payments for easements.

Details

The section applies to the following payments, namely, any rent, toll, duty, royalty or annual payment or periodical payment in the nature of rent in respect of any premises or easements used, occupied or enjoyed in connection with any of the concerns listed in Schedule D Case I(b). These concerns are those which derive their profits/gains from quarries, mines, etc. The section also extends to yearly interest, annuities and certain annual payments reserved or charged on premises which are not rents or payments for easements. ***(1)***

These payments are chargeable to tax under Case IV of Schedule D, if not otherwise chargeable to tax under any other Case of Schedule D. They are also treated as if they are royalties paid in respect of the user of a patent and as such are subject to the deduction of tax at source rules which apply to such royalties (see ***sections 81(2)(m)***, ***237*** and ***238***). ***(2)***

105 Taxation of rents: restriction in respect of certain rent and interest

No deduction is available in computing a charge to tax under Case V of Schedule D for rent paid in respect of premises or interest paid on loans used for the purchase, improvement or repair of premises, where such payments arose before the first occupation of the premises by the lessee for the purposes of a trade or undertaking or for use as a residence.

106 Tax treatment of receipts and outgoings on sale of premises

Summary

In certain circumstances a liability to tax under Case V of Schedule D is adjusted between the vendor and purchaser when premises are sold. This applies only where the contract for sale requires, as it would normally do, that income and outgoings for a period overlapping a particular date (normally the date fixed for the completion of the sale) are to be apportioned between the vendor and the purchaser.

Details

Where, on a sale of premises (including an interest in premises) — ***(1)***

- rent becomes due after the making of the contract but before the date of completion,
- under the contract the rent is due to be apportioned between the vendor and the purchaser, and
- the part due to the purchaser is in fact received by the vendor in trust for the purchaser,

the amount received in trust by the vendor is not to be taken into account in computing his/her Case V income. Instead that part is treated as part of the purchaser's Case V income. Similarly, where an outgoing is paid by the vendor on behalf of the purchaser, the purchaser is treated for the purposes of the charge to tax under Case V as if the purchaser had actually incurred the outgoing.

The above rule applies in the same way where, under a contract for the sale of a premises (including an interest in premises), rent or outgoings become due before the making of the contract. For this purpose, the contract is treated as having been made before the rent or outgoing became due. ***(2)***

Where on a sale of premises (including an interest in premises) the vendor is apportioned part of a receipt or outgoing which becomes receivable or payable by the purchaser after the apportionment, then, when the amount receivable is due or the amount payable is paid by the purchaser that amount is reduced by so much of it as was apportioned to the vendor. The part apportioned to the vendor is then taken into account in computing his/her Case V income. ***(3)***

Any reference to a party to a contract is construed as including a person to whom the rights and obligations of that party under the contract have passed by assignment or otherwise. ***(4)***

106A Transfer of rent

Summary

This section counters a tax avoidance scheme to reduce exposure to the higher rate of income tax on rental income of certain individuals. Under the scheme a person who is entitled to a flow of rental income transfers the right to receive the income to a company in return for the receipt of a capital sum from the company. The scheme was designed to achieve a situation whereby the income flow to the company from the right to receive the rent would be taxable at the 25% rate – or, if received by a financial institution, at the 12% corporation tax rate as trading income.

This section addresses both sides of the avoidance transaction. Firstly, it provides that the capital sum is to be taxed as income in the hands of the individual when he or she become entitled to receive it (or when it is actually received, if that is earlier). Secondly, the section clarifies that the rental income flow to the company will be chargeable as Case V rental income, and therefore will be taxed at the 25% corporation tax rate.

Details

Definitions

"relevant transaction" is defined as any scheme, arrangement or understanding under which — ***(1)(a)***

- a person becomes entitled to receive a capital sum, and
- the consideration given for the entitlement to receive the sum consists wholly or mainly of the direct or indirect transfer to another person of a right to receive rent which, otherwise, could reasonably have been expected to accrue to the person who received the capital sum.

The scheme involves two persons, the person to whom the rent is transferred and the person who receives the capital sum. These can be individuals or companies. The consideration given for the receipt of the capital sum is to consist ***wholly or mainly*** of the transfer of the rent. This means that the right to receive rent must amount to more than 50% of the total consideration given. The right to receive the rent can be transferred directly or indirectly. Finally, the rent concerned is rent which, in the absence of the scheme, could reasonably have been expected to accrue to the person who received the capital sum or to a connected person.

"rent" is defined as any sum which is chargeable under Case V of Schedule D or would be so chargeable if it arose from a source in the State. Case V is the charge on rental income from property in the State. Where property is outside of the State, the rental income from it would be charged under Case III as income from a foreign possession. The definition ensures that all rental income is covered by the section.

The meaning of a "relevant transaction" is extended so that the grant of a lease comes within the scope of the section in certain circumstances. This arises where a lease is granted by a person if in connection with the lease — ***(1)(b)***

- the person is entitled to a capital sum,
- rent is payable to another person, and
- the consideration given for the capital sum is wholly or mainly the grant to the other person (or a connected person) of a right to receive rent under the lease.

This ensures that the main provision cannot be avoided by the creation of a lease.

Tax treatment of recipient of the capital sum

The capital sum received under the scheme is to be treated as income chargeable under Case IV of Schedule D. Consequently, it will be subject to income tax at the person's marginal rate. It is to be charged in the earlier of — ***(2)(a)***

- the year of assessment in which the person becomes entitled to the sum, or
- the year of assessment in which they actually receive the sum.

This treatment only applies to a person other than a company.

This rule does not apply if the transaction is a securitisation transaction, i.e. the asset given (being the right to receive rent) is a "qualifying asset" acquired by a "qualifying company" within the meaning of ***section 110*** of the Taxes Consolidation Act. This disapplication of the rule does not apply, however, if the person receiving the capital sum is an individual. ***(2)(b)***

Treatment of the person who receives the rent

The rental flow to the person who acquires the right to the rent is to be taxed under Case V of Schedule. Where such income arises to a company, it will be subject to corporation tax at the 25% rate. This rule is disapplied where the rent is transferred as part of a securitisation, i.e. the right to receive the rent is a "qualifying asset" acquired by a "qualifying company" within the meaning of ***section 110*** of the Taxes Consolidation Act, 1997. This disapplication does not apply, however, if the right to receive the rent was acquired from an individual. ***(3)***

CHAPTER 9
Miscellaneous provisions

107 Apportionment of profits

This section permits the apportionment, division or aggregation of profits/ gains/losses in order to charge tax under Case I, II or IV of Schedule D for any year of assessment or other period. Any such apportionment is made on a time basis.

108 Statement of profits

Every statement of profit charged to tax under Schedule D made by a person, on his/her own behalf or on some other person's behalf and for whom he/she is chargeable or who is chargeable in his/her name, is to include every source of income so chargeable.

109 Payments in respect of redundancy

Summary

Redundancy payments (including lump sums, weekly payments and resettlement allowance) which employers are liable to pay to redundant employees under the Redundancy Payments Act, 1967 are allowable deductions in computing the profits of the employer for tax purposes. Such sums are exempt from income tax in the hands of the employees by virtue of ***section 203***.

Redundancy payments are, in general, an allowable business expense (for instance, where the employer's trade is continuing). However, this section provides that statutory redundancy payments, if not otherwise allowable, qualify for relief in computing business profits for tax purposes to the extent they are borne by the business and not by the Redundancy Fund established under the Redundancy Payments Act, 1967.

Details

Definitions

The terms "lump sum" and "rebate" used in the section have the same meanings as in the Redundancy Payments Act, 1967. ***(1)***

Expenses of a trade/profession

A deduction is given in computing profits of a trade or profession for redundancy lump sums paid to employees where a deduction would not otherwise be allowed. The deduction is, in effect, limited to the amount of the lump sum ultimately borne by the employer. This is achieved by treating any rebate receivable from the Redundancy Fund as if it were a trading receipt. Where a lump sum is paid by an employer after ceasing to trade, the net amount (after deducting any rebate) is regarded as having been paid on the last day of trading. ***(2)***

Management expenses

A similar deduction is available in the case of an employer entitled to relief in respect of management expenses under ***section 83*** or ***707***. Such employers include certain assurance companies, investment companies, savings banks and industrial and provident societies. ***(3)***

Case V expenses

A similar deduction is available where a lump sum is paid by an employer in respect of employment in maintaining or managing premises where the expenses of managing and maintaining the premises were deductible under ***section 97***. ***(4)***

Prevention of double relief

An employer is not entitled to relief more than once in respect of the same payment. This would arise where, for example, an employer had 2 trades and an employee was performing duties in each of the trades. An apportionment of the net amount of the redundancy payment is made where an employee is employed in different capacities so that different parts of the employee's remuneration is treated for tax purposes in different ways. Whether any part of the net payment as so apportioned is allowable depends on the tax provisions applicable to the capacity to which it relates. For example, where an employment includes duties in a trade such as retail ***(5)*** selling and also domestic duties in the employer's household, the part of the net lump sum which is apportioned to the domestic employment is not an allowable deduction in the computation of the trading profits of the retail trade.

Payment of lump sums by Minister

The Minister for Enterprise, Trade and Employment may pay the whole or part of a lump sum for which the employer is liable but has neglected or refused to pay. In such a case the employer is not allowed a deduction but, if the Minister is subsequently reimbursed by the employer, the lump sum is treated as having been paid by the employer thus allowing relief under this section to be given. ***(6)***

110 Securitisation

Summary

This section deals with the taxation of securitisation and other structured finance transactions. The profits of a qualifying company falling with the ambit of ***subsection (1)*** are chargeable to tax at a rate of 25% (the rate which applies to investment companies) but are computed by reference to the rules applicable to trading companies. This means that a qualifying company under this section will be allowed deductions which would not be allowed to an investment company (including deductions for bad debts).

This section ensures, therefore, that the qualifying company is essentially tax neutral. This is achieved by treating the income arising to a qualifying company as assessable under Case III of Schedule D but in doing so it is given the same deductions as would apply if the company were actually trading and its income were assessable under Case I of Schedule D.

In addition, in certain circumstances, any income remaining in the company after the interest on the loan notes has been paid may be paid as interest to certain holders of securities without triggering the distribution rules which would otherwise be triggered. The result is that the qualifying company gets a tax deduction for the interest paid which it would not otherwise get thereby ensuring that the company is effectively tax neutral.

In all cases a de minimis asset value limit of €10m. is imposed in respect of the first transaction carried out by a qualifying company.

Details

Definitions

"authorised officer" is defined for the purposes of ***paragraph (f)*** of the definition of "qualifying company". ***(1)***

"carbon offsets" means

- an allowance, permit, licence or right to emit during a specified period, a specified amount of carbon dioxide or other greenhouse gas emissions as defined in Directive 2003/87/EC of the European Parliament and of the Council of October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC of 24 September 1996.

- a forest carbon offset issued pursuant to the United Nations Reducing Emissions from Deforestation and Forest Degradation process.

The allowance, permit, licence or right to emit can be issued-

- under an approved scheme by a Government, inter-governmental, or supra-national institution,

- under a voluntary scheme sponsored by a State, inter-governmental or commercial enterprise where the allowance, permit, licence or right to emit is subject to independent monitoring and reporting.

"commodities" means tangible assets (other than currency, securities, debts or other assets of a financial nature) which are dealt in on a recognised commodity exchange.

The definitions of "financial asset" and "qualifying asset" set out the type of asset which may be used for the purposes of a transaction under the section. Essentially any asset which, broadly, could be considered as a financial asset qualifies. The Finance Act 2011 extended the definition of qualifying asset to plant and machinery and commodities.

"qualifying company" defines the type of company involved.

Paragraph (f) in the definition of "qualifying company" provides that the company must provide the information required by the prescribed form (Form S.110), which may include the following :

(i) the type of securitisation transaction that the "qualifying company" is entering into;

(ii) a description of the assets being acquired;

(iii) details of who was the originator of the assets acquired;

(iv) whether the transaction was an intra-group transaction;

(v) whether the securitisation transaction was with connected parties.

The prescribed form must be sent to the "authorised officer"::

in respect of a "qualifying company" that met the conditions in ***paragraph (e)*** prior to 31 December 2016 within 8 weeks of 1 January 2017;

in respect of a "qualifying company" that met the conditions in ***paragraph (e)*** after 1 January 2017 within eight weeks of the date of when the conditions were met.

Where the details required on the prescribed form are not available at the time the notification is sent to the "authorised officer" the information should be sent to the "authorised officer" as soon as it becomes available.

"quoted Eurobond" is given the same meaning as in ***section 64*** (i.e. a bond which is issued on a recognised stock exchange and carries a right to interest).

"return agreement" is defined, in relation to a "qualifying company", as a specified agreement whereby payments due under the specified agreement are dependent on the results of the company's business or any part of that business.

"significant influence" means a person's ability to participate in the financial and operating policy decisions of a company.

"specified instrument" is defined as a quoted Eurobond or a wholesale debt instrument.

"specified person" is defined in relation to a "qualifying company" as:

(a) a company that directly or indirectly -

(i) controls the "qualifying company",

(ii) is controlled by the "qualifying company", or

(iii) is controlled by a third company which also directly or indirectly controls the "qualifying company",

or

(b) a person or persons who are connected with each other:

(i) from whom the qualifying assets were acquired,

(ii) to whom the company has made loans or advances,

(iii) to whom loans or advances held by the qualifying company were made, or

(iv) with whom the qualifying company has entered into specified agreements,

where the total value of assets, loans or agreements represents not more than 75% of the total value of qualifying assets of the company;

"specified agreement" is defined as any agreement, arrangement or understanding that provides-

(a) for the exchange of payments based on the value, rate or amount of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures or other financial or economic interest or property of any kind, or any interest therein,

and which

(b) transfers to the person with whom the agreement was made, or to a person connected to that person, in whole or in part, the financial risk associated with a future change in any such value, rate or amount without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred.

"wholesale debt instrument" is given the same meaning as in ***section 246A***.

Tax treatment of qualifying companies

Qualifying companies are chargeable to tax under Case III of Schedule D. In other words, any profits arising to such a company will not be treated as trading income and will be taxable at the 25 per cent rate applicable to passive income. ***(2)***

However, the profits of the company are computed having regard to the rules applicable to trading companies (that is, Case I) rather than investment companies despite the qualifying company being subject to tax as an investment company (that is, Case III). Bad debts which might arise in respect of a transaction are explicitly made deductible from the profits of the company and transfer pricing rules are specifically disapplied with respect to deductions taken by a qualifying company in relation to securities referred to in subsection (4).

Losses and group relief

A qualifying company is not entitled to surrender any tax relief it is entitled to under the group relief provisions. However, losses accruing to a qualifying company may be carried forward and relieved against future profits of the company. ***(3)***

Non-application of distributions rules

Normally where a company pays interest in the course of its trade, it is entitled to deduct that interest as an expense of the trade. However, where the interest payable is in excess of a commercial rate or is to any extent dependent on the results of the business, ***section 130(2)(d)(iii)*** deems such interest to be a dividend. The effect is that the company cannot take an expense deduction for the payment. ***(4)***

Subsection (4) provides that the rules in ***section 130(2)(d)(iii)*** are disapplied in certain circumstances. Where the subsection applies, it enables a qualifying company to pay profit-dependent interest without the interest being designated as a dividend. The effect of this is to allow the company to pay such profit dependent interest without penalty.

Subsections (4A) and ***(5)*** clarify the circumstances in which the provisions of ***subsection (4)*** apply. These provisions were introduced by section 40 of the Finance Act 2011.

Application of subsection (4)

Subsection (4A) was introduced by section 40 of the Finance Act 2011. It provides that where interest is paid to a person <u>other than:</u> ***(4A)(b)***

- A person who is resident in the State or, if not so resident, is otherwise within the charge to corporation tax in the State in respect of that interest or distribution, or ***(4A)(b)(i)***

- A person (not being a "specified person") who is a pension fund, government body or other person resident in a "relevant territory" who, under the laws of that territory, is exempted from tax which generally applies to profits, income or gain in that territory, ***(4A)(b)(ii)***

subsection (4) shall **only** apply where:

- the interest is, under the laws of a "relevant territory", subject (without any reduction computed by reference to the amount of the interest) to a tax which generally applies to profits, income or gains received in that territory, by persons, from sources outside that territory, or ***(4A)(b)(I)***

- withholding tax at the standard rate has been deducted from the interest in accordance with ***section 246(2)*** (i.e. where the interest is paid to a non-treaty country and an exemption from withholding tax does not apply to that interest). ***(4A)(b)(II)***

Paragraph (c) sets out an exception to the "subject to tax" rules introduced in ***paragraph (b)***. The exception applies where the interest or other distribution is paid ***(4A)(c)***

in respect of a quoted Eurobond or wholesale debt instrument – provided the interest on the Eurobond or debt instrument is not paid to a "specified person" and, at the time the instrument was issued, the qualifying company is not aware or in possession of information (including information about any arrangement or understanding in relation to ownership after that time) that the interest is not subject (without any reduction computed by reference to the amount of the interest) to a tax which generally applies to profits, income or gains, received persons, in that territory from sources outside the territory.

Payments under a return agreement

A qualifying company is not entitled to deduct a payment made under a return agreement where an interest payment would be non-deductible in similar circumstances. Effectively the subsection aligns the treatment of payments under a return agreement with that applied to profit-dependent interest. It does this by imposing a hypothetical interest comparison - a test to see what tax treatment would apply if the payment under the swap were treated as interest for all of the purposes of the Taxes Acts. ***(4B)***

The reference to ***section 246(2)*** prevents the swap being considered as if it were interest paid under deduction of tax. The reference to "specified instruments" disregards Eurobond interest in the hypothetical interest comparison condition.

Anti-Avoidance

Subsection (5) is an anti-avoidance provision and is designed to prevent abuses of the relief given by ***subsection (4)***. ***(5)***

It provides that ***Subsection (4)*** will only apply where it would be reasonable to consider that the payment, or the security to which the payment relates, is for bona fide commercial reasons and does not form part of a scheme or arrangement, the sole or main purpose of which is the avoidance of tax.

Subsection (5A) is an anti-avoidance provision which is designed to prevent the use of relief given by ***subsection(4)*** to shelter profits from Irish distressed debt. ***(5A)***

Definitions ***(5A)(a)***

'CLO transaction' is defined as a securitisation transaction, within the meaning of CRR (Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012), where the debt is either listed on the main exchange or the GEM and the transaction is carried out in accordance with the prospectus or listing particulars, or where the debt is not listed, it is carried out in conformity with a similar legally binding document. Those documents must set out the investment criteria on the type and quality of assets to be acquired. If those documents provide for a warehousing period, during which time the qualifying assets are being acquired prior to listing, that warehousing period should not exceed 3 years. Where one of the main purposes of the qualifying company was to acquire distressed Irish debt then it will not be a CLO transaction.

'CMBS / RMBS transaction' is defined as a securitisation transaction where:

(a) the company which itself or through related entities, directly or indirectly, created the loans which are the subject of the securitisation retains the net economic interest in the credit risk of the securitisation as required by CRR; or

(b) where the securitisation is put in place by a company which purchased the debts, that company must retain the net economic interest in the credit risk and it must be a credit institution (being an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account) or a financial institution (within the meaning of CRR), or an institution outside of the EEA recognised by the EC as equivalent.

'Loan origination business' is defined as the making of a loan:

(a) by the qualifying company itself, or

(b) where the loan is acquired by the qualifying company at or about the time of its creation.

It does not include the issuing of a PPN to a borrower that has a specified property business. The novation or refinancing of a specified mortgage will not generally fall within this definition, unless it can be shown that it was done for bona fide commercial reasons and not for the purposes of avoiding subsection (5A).

'Specified mortgage' is defined as

(a) a loan which is both

- secured on and
- derives its value or the greater part of its value from,

either directly or indirectly, land in the State;

(b) a specified agreement (other than a loan) which derives its value, or the greater part of its value, from land in the State;

(c) the portion of the PPN treated as attributable to the specified property business by this subsection; and

A loan or a specified agreement which derives its value from a business which would not be a specified property business is excluded from (a) and (b) of this definition.

'Specified property business' is defined as being the whole or part of the business of the qualifying company that involves the holding, managing or holding and managing of

(a) specified mortgages,

(b) units in an IREF (within the meaning of Chapter 1B of Part 27,

(c) shares that derive their value, or greater part of their value, from land in the state.

"Specified property business" does not include

(i) a CLO transaction

(ii) a CMBS / RMBS transaction

(c) a loan origination business

(d) a sub-participation agreement, or

(e) any activities preparatory to (i) to (iv).

Where a qualifying company is seeking to claim that a CLO transaction or CMBS / RMBS transaction is not part of a specified property business then that qualifying company must carry on no other activities (i.e. it must be a single purpose vehicle).

Section 20 Finance Act 2017 amended the definitions of 'specified mortgage' and 'specified property business". The changes introduced by Section 20 Finance Act 2017 will apply to interest which became payable on or after the 19th October 2017.

'Specified security' is defined as a security to which subsection (4) would apply, in most cases being a PPN.

'Sub-participation transaction' is defined as the acquisition of an economic interest in a loan in the ordinary course of a bona fide syndication to one or more lenders where the originator of the loan is a credit or financial institution (all within the meaning of CRR). The originator must remain a lender of record and must retain a material net economic interest of at least 5% in the credit risk of the loan.

When determining whether or not the shares referred to in paragraph (c) of the definition of 'specified property business', a loan or specified agreement derives its value from land in the State: ***(5A)(b)***

- Any arrangements put in place to manipulate the value of the asset (e.g. flooding with cash) will be ignored. ***(i)***
- The gross value of the assets will be used, with no account taken of any associated debt ***(ii)***

The profits from the specified property business will be treated as a separate Case III source of income. The profits of that separate business will be calculated by apportioning all relevant income and expenses. ***(5A)(c)***

For the purposes of calculating the profits of the specified property business, subsection (4) is disapplied (meaning no deduction is available for profit participating interest) except in the following circumstances: ***(5A)(d)***

a) the interest is paid either to an individual who is both resident in Ireland and within the charge to income tax or to a company within the charge to corporation tax ***(i)(I)***

(b) the interest is paid to a pension scheme or PRSA, or an equivalent in an EEA member State ***(i)(II)***

(c) the interest is paid to an individual who is a national of an EEA state, or a company formed under the laws of an EEA state where that person is subject to tax on receipt of the interest in any EEA state. The charge to tax in that EEA state must be in relation to income received (rather than capital received) and must be under laws that generally apply to the receipt of interest from outside of that EEA state. The person must be subject to tax on the interest without any deduction: ***(i)(III)***

- calculated with reference to the interest itself;
- for any imputed, deemed or notional expenses calculated with reference to any debt, equity or hybrid financing of that person.

Furthermore, if it is reasonable to consider that the holding of the specified security by the resident of an EEA State was for the purposes of avoiding tax and that EEA resident does not carry out genuine economic activities which are relevant to the holding of the specified security, then no deduction will be allowed.

(d) the interest is paid to an IREF (Chapter 1B of Part 27) ***(i)(IV)***

(e) the interest is paid to a widely held investment undertaking ***(i)(V)***

(f) the interest which, when the specified security was first entered into, represented a reasonable commercial return for the use of the principal and which is calculated as non-profit participating. ***(ii)***

(g) any interest from which tax is correctly withheld under section 246, and which is not refundable. ***(iii)***

Subsection (5A) applies for accounting periods commencing on or after 6 September 2016. Where an accounting period spans the 6 September 2016 then one accounting period will be deemed to have ended on 5 September and a new one commenced on 6 September 2016. ***(5A)(e)***

Application of accounting rules in the computation of profits

This subsection permits qualifying companies to compute their taxable income on profits based on Irish generally accepted accounting principles that applied in 2004. This will enable them to retain tax neutrality. ***(6)***

This subsection provides that the rules in ***section 76A*** are to apply to transactions under this section as if GAAP meant Irish GAAP as it was effective for a period of account ending on 31 December 2004.

A qualifying company will be permitted to irrevocably opt out of this treatment and base its taxable income on IFRS or current Irish GAAP by giving notice to its Inspector of Taxes. Essentially, this allows such companies to compute their income for tax purposes unaffected by changes in accounting standards that are first applied to their accounts for accounting periods ending after 2004.

Where such notice is given, the transitional rules of ***Schedule 17A*** will apply.

Control ***(7)***

Subsection (7) provides the definition of control for the purposes of this section. It outlines that a person has control of a company where that person has –

(a) the power to secure that the affairs of the company are conducted in accordance with their wishes ***(7)(a)***
  (i) either by holding shares or possessing voting powers in that or any other company,
  (ii) the power to secure by way of any powers conferred by the constitution, articles of association or other documentation regulating that or any other company, or

(b) significant influence over the company and holds directly or indirectly more than 20 per cent of the issued share capital of the company, 20 per cent of the principal value of any securities referred to in ***subsection (4)*** which have been issued by the company or the right to hold 20 per cent of the interest or other distributions payable in respect of any securities referred to in ***subsection (4)*** issued by that company. ***(7)(b)***

111 Allowance to owner of let mineral rights for expenses of management of minerals

Summary

The owner of rights to work minerals in the State who leases such rights is entitled to a deduction in respect of expenses incurred wholly, exclusively and necessarily in managing or supervising those minerals.

Details

The relief

The lessor of rights to work minerals in the State is entitled, for a year of assessment, to claim a deduction in respect of expenses wholly, exclusively and necessary incurred in managing or supervising those minerals in that year. The deduction is allowed in the tax year against the actual rent or royalties received in that year. The allowance is made by repaying the tax which the lessor has paid (whether by deduction or otherwise) in respect of the rent or royalties. ***(1)(a)***

The lessor is not entitled to repayment of tax — ***(1)(b)***

- unless he/she proves that tax has been paid on the aggregate amount of the rent or royalties, or
- if, or to the extent that, the expenses have otherwise been allowed as a deduction in computing income for the purposes of income tax.

Claims

A claim under this section must be submitted in writing within 24 months of the end of the relevant tax year. ***(2)***

Where the inspector objects to such a claim, the taxpayer has the right to appeal the objection to the Appeal Commissioners. The appeal is made via notice in writing to the Appeal Commissioners. The appeal must be made within 30 days after the date of the notice of Revenue's objection. The appeal is heard and determined by the Appeal Commissioners in the manner provided for in Part 40A. ***(3)***