

Notes for Guidance - Taxes Consolidation Act 1997

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Part 5 Principal Provisions Relating to the Schedule E Charge

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PART 5

PRINCIPAL PROVISIONS RELATING TO THE SCHEDULE E CHARGE

CHAPTER 1

Basis of assessment, persons chargeable and extent of charge

Overview

This Chapter provides for the basis of assessment in relation to income tax charged under Schedule E and describes who is chargeable and the extent of the charge. The Chapter also contains a special provision to cater for the taxation of perquisites arising as the result of an employer paying medical insurance premiums or long-term care insurance premiums of an employee.

112 Basis of assessment, persons chargeable and extent of charge

Summary

This section provides for the basis of assessment, in relation to income tax charged under Schedule E, and describes the persons chargeable and the extent of the charge to tax. Income tax under Schedule E is charged for each year of assessment on every person having or exercising an office or employment of profit mentioned in that Schedule, and in respect of every annuity, pension or stipend chargeable under that Schedule. The charge to tax covers all salaries, fees, wages, perquisites or profits whatever derived from the office, employment or pension for the year of assessment.

However, for **2018 and subsequent years**, Schedule E is generally chargeable on the amount of emoluments that a person is paid **in** the year of assessment i.e. the receipts basis of assessment.

Emoluments paid (i) to certain company directors and (ii) in respect of which a PAYE exclusion order has issued, remain chargeable to tax on the earnings basis of assessment.

Details

Income tax under Schedule E is charged on every person having or exercising an office or employment of profit referred to in that Schedule (see **section 19**) in respect of all salaries, fees, wages, perquisites and other profits derived by that person from the office or employment. It is also charged on any person to whom any annuity, pension or stipend chargeable under that Schedule is payable in respect of all salaries, fees, wages, perquisites and other profits derived by that person from the annuity, pension or stipend. The charge is computed on the total amount of all such payments for the year of assessment. (1)

This subsection keeps the emoluments within the charge to Schedule E and, for 2018 and subsequent years, the emoluments will be charged to tax in the year they are received i.e. on the receipts basis.

Where emoluments (that is, anything assessable to income tax under Schedule E) derived from an office or employment would be for a year of assessment in which the person in receipt of the emoluments does not hold the office or employment, then — (2)(a)&(b)

- if in the year of assessment the person has not yet held the office or employment, the emoluments are treated as emoluments for the first year of assessment in which the office or employment is held and are taxed accordingly, and (i)
- if in the year in question the person no longer holds the office or employment, the emoluments are treated as emoluments for the last year of assessment in which the office or employment was held and are taxed accordingly. (ii)

For **2018 and subsequent years**, the income tax to be charged in respect of emoluments to which Chapter 4 Part 42 applies (emoluments chargeable to tax under the PAYE system of deduction) is on the amount paid to the person **in** the year of assessment i.e. the receipts basis of assessment. (3)

The receipts basis of assessment will not apply to emoluments paid to proprietary directors or in respect of emoluments where an exclusion order is in place.

Where emoluments fall chargeable to tax for the year 2017 (on the earnings basis of assessment) but also fall chargeable to tax in the year 2018 or a subsequent year (on the receipts basis of assessment), an individual can apply to Revenue to have the emoluments for the year 2017 charged to tax on the basis of the actual emoluments paid to the individual in 2017 (i.e. on the receipts basis of assessment). (4)

In the case of the death of an individual, any emoluments due to be paid to the deceased person will be deemed to have been made to him or her immediately prior to death. (5)

The receipts basis of assessment does not apply to a proprietary director or in cases where an exclusion order is in place. The latter scenario includes for example, a payment of benefit made by the Department of Employment Affairs and Social Protection. (6)(i)
(6)(ii)

112A Taxation of certain perquisites

Summary

This section is concerned with the situation in which an employer pays medical insurance premiums or long-term care insurance premiums of an employee as part of the employee's remuneration (as a perquisite). As insurers would not be able to distinguish such payments from others made by employers on behalf of their employees, all premium payments by employers are treated in the same way, that is, the reduced premiums under the tax relief at source arrangements are payable in all cases. This section ensures that employees and employers are left in the same position as they would be under previous arrangements (i.e., prior to the introduction of tax relief at source) in relation to the taxation of the perquisite.

An employee is chargeable to income tax at his/her marginal rate on the value of the gross premium (as a taxable perquisite) but is given a credit for tax relief, at the standard rate, in respect of that premium in the calculation of the tax chargeable on that perquisite. In the case of medical insurance premiums paid by an employer under a "relevant contract" within the meaning of *section 470B*, renewed or entered into between 1 January 2009 and 31 December 2011, the employee is also given a credit for any age-related tax credit due under that section (subject to certain restrictions – see *section 470B(5)(c)*).

To recover the benefit obtained by the employer by way of the reduced premium paid, a payment equal to 20 per cent of the gross premium will have to be made by the employer to Revenue. This tax payment is allowed as a deduction in taxing the

employer’s profits so that, when added to the net amount of premiums actually paid to the insurer, the employer, as previously, gets a deduction for tax purposes equivalent to the gross premium.

In the case of medical insurance premiums paid by an employer under a “relevant contract” within the meaning of *section 470B*, renewed or entered into between 1 January 2009 and 31 December 2011, the payment the employer has to make to Revenue is to be calculated at 20 per cent of the gross premium net of any age-related tax credit due under *section 470B*.

Example

Gross premium payable	€2,200
Age-related tax credit	<u>€200</u>
	€2,000
Tax relief at standard-rate	<u>€400</u>
Net premium	€1,600

The employer must pay an amount equal to 20 per cent of €2,000 (€400) to Revenue. The employee will be chargeable to income tax on €2,200 at his or her marginal rate and will receive a tax credit of €2,000 x 20% and an age-related tax credit of €200.

Details

Definitions

A number of terms are defined by reference to *sections 470, 470A and 470B* – that is, the sections which, respectively, provide tax relief for medical insurance premiums, tax relief for long-term care insurance premiums, and age-related tax credit for medical insurance premiums. (1)

“employee” and “employer” have the same meanings, respectively, as in section 983.

Taxation of perquisite

Section 112 is applied by the section so as to tax the perquisite comprising the payment of medical insurance or long-term care insurance premiums of an employee by an employer as if the deduction of tax at the standard rate or age-related tax credit (see *section 470B*) had not been made. In other words, the employee will be charged to tax on an amount equal to the gross insurance premium with relief at the standard rate and age-related tax credit, (if any), due, being included in the charging calculation. (2) & (2A)

Charge on employer

Where an employer pays medical insurance premiums or long-term care insurance premiums as part of an employee’s remuneration (that is, as a perquisite) and deducts and retains income tax at the standard rate under the relief at source arrangements, a charge of income tax equal to the standard rate percentage of the gross premium (net of age-related tax credit, if any) is imposed on the employer. That tax liability is allowable as a deduction in charging the employer’s profits to tax so that the employer is left in the same overall position as in the pre-relief at source situation by getting a deduction equivalent to the gross premium. (3)

Payment of charge

The provisions of *subsections (3) to (6) of section 238*, modified as necessary, are applied in order to provide for the accounting for, and payment of, the charge (4)

imposed on the employer.

112AA Taxation of certain perquisites: employees of authorised insurers and tied health insurance agents

Summary

This section provides that where an employee of a medical insurer (or of a tied health insurance agent) receives a medical insurance policy in the course of their employment, any discount received on the policy shall be a taxable emolument for the employee.

Where a family member of an employee receives a free or discounted policy by way of their connection to the employee, the value of any discount received shall also be a taxable emolument for the employee.

The emolument is calculated by reference to the market value of the insurance policy inclusive of any tax relief at source (TRS) that would have been available had they paid for the policy personally.

Medical insurance relief rules will apply to affected employees in a manner that ensures the same relief is available to an employee where their employer provides medical insurance, regardless of whether they work for an insurance company or any other industry i.e. an employee is chargeable to income tax at his/her marginal rate on the value of the gross premium (as a taxable perquisite) but is given a credit for tax relief, at the standard rate, in respect of that premium in the calculation of the tax chargeable on that perquisite.

Details

Definitions

“authorised insurer” has the same meaning as section 470; (1)

“employee” includes an office holder and any person who is an employee within the meaning of section 983;

“emoluments” has the meaning assigned to it by section 983;

“relevant contract” means a contract of insurance for health expenses or dental expenses other than expenses in respect of routine dental treatment;

“relevant contract price” is the amount that would be payable, by an individual who is neither a relevant employee nor connected with a relevant employee for a similar insurance policy, inclusive of any Medical Insurance relief (generally granted by way of tax relief at source) that would generally be available

“relevant employee” means an employee of an authorised insurer, a tied health insurance agent or any person connected with such employers;

“tied health insurance agent” means any person who, directly or indirectly, enters into an agreement or arrangement with an authorised insurer—

- a) whereby that person undertakes to refer all proposals of insurance, made under a relevant contract, to that authorised insurer, or
- b) which restricts in any way that person's freedom to refer proposals of insurance, made under a relevant contract, to an authorised insurer other than the authorised insurer with whom an arrangement was made.

Application of section

This section applies where:

(2)

- employees of medical insurers (or of tied health insurance agents) receive medical insurance in the course of their employment, or
- family members of employees of medical insurers receive medical insurance by way of their connection to the employee

Charge on employer

Where this section applies to an insurance policy: (3)

- a) The difference between
 - the relevant contract price, and
 - the sum of any amount paid by the employee and/or connected person for the policyshall be a taxable emolument for the employee.
- b) the general benefit-in kind provisions of the TCA will not apply (Chapter 3 of Part 5) to any expense incurred by the employer in providing the insurance policy, and
- c) the general provisions for the taxation of insurance as a benefit-in-kind (s112A TCA 1997) will not apply to the provision of the policy.

Application of Medical Insurance Relief

Where a an employee of a medical insurer, a tied health insurance agent or a party connected to either a medical insurer or a tied health insurance agent (or a person connected to that employee) receives a free insurance policy in the course of the employment of the employee, section 470(3) shall not apply to this policy. (4)

Section 470(3) relates to tax relief at source. This section has been dis-applied as:

1. No payment is made by the employer or the employee for the insurance,
2. As a result, no party is able to deduct and retain the relievable amount when paying for insurance.

Instead, any emoluments for the purposes of section 112AA shall be deemed to be a payment made by the employee to which section 470(2) applies directly (notwithstanding that the deemed payment was made after the TRS provisions were introduced). This enables the employee to claim a credit equal to the relievable amount (20% of the policy value up to the first €1,000 for adults and €500 for children) where they receive an insurance policy for free, which is in line with the treatment of employees in other industries.

Example

Brian is an employee with a medical insurance company. His employer renews his policy on 1 January. The gross value of the policy is €2,300. Brian is charged to income tax, USC and PRSI under the PAYE system on the gross premium of €2,500.

Brian is entitled to a tax credit of €200 under section 470(2) in his tax credit certificate or to a repayment of €200 if he applies at the end of the year.

Where an employee of a medical insurer, a tied health insurance agent or a party connected to either a medical insurer or a tied health insurance agent (or a person connected to that employee) (or a connected person) makes a payment towards the cost of their insurance, section 112AA(5) operates to ensure the manner in which Medical Insurance relief is granted (20% of the policy value up to the first €1,000 for adults and €500 for children) is apportioned based on the amount actually paid by the employee (5)

or the connected person. This is in keeping with the treatment of employees in other industries in receipt of a medical insurance policy.

Example

A medical insurer offers a 75% discount on the relevant contract price to its employee. The employee owes the remaining 25%.

- Gross premium is €1,500
- Value of discount = €1,125 ($€1,500 \times 75\%$)
- Employee is charged to income tax, USC and PRSI on value of discount i.e. €1,125
- Tax relief related to employer share ($€1,000 \times 75\%$ (cap based on value of discount [section 112AA(5)(a)]) = €750 @ 20% = €150
- Credit available under 112AA(4) = €150
- Employee's share €375 ($€1,500 \times 25\%$)
- Employee received TRS when premium was paid of ($€1000 \times 25\%$ (TRS cap based on proportion actually paid [section 112AA(5)(b)]) = €250 @ 20% = €50

112B Granting of Vouchers

Summary

This section provides an exemption from tax where an employer provides a small benefit or voucher to an employee where the following conditions are met–

- a. it is not connected to a salary sacrifice arrangement,
- b. it cannot be converted to cash,
- c. the value does not exceed €500, and
- d. only one benefit or voucher can be granted in a tax year.

Details

Definitions

“benefit” means a real asset, but does not include cash. (1)

“qualifying incentive” means a voucher or a benefit that is given to an employee by their employer which meets the following conditions–

- a. the voucher or benefit is not part of a salary sacrifice arrangement;
- b. in relation to a voucher, it can only be used to buy goods or services and cannot be converted into cash;
- c. the value of the benefit or voucher does not exceed €500;
- d. only one benefit or voucher can be given to an employee in a tax year.

“salary sacrifice arrangement” means any arrangement whereby an employee forgoes part of their remuneration in return for the benefit or voucher .

The relief

A qualifying incentive is exempt from income tax and is not classed as income for the Income Tax Acts. As a consequence, it is exempt from USC also and is not liable for PRSI. (2)

CHAPTER 2

Computational provisions

Overview

This Chapter provides the computational rules applicable in calculating the emoluments derived from an office or employment and the amount of any annuity, pension or stipend.

113 Making of deductions

Any deduction from emoluments (that is, all salaries, fees, wages, perquisites or profits or gains whatever arising from an office or employment, or the amount of any annuity, pension or stipend) allowed under the Income Tax Acts for the purpose of computing a Schedule E assessment are to be made by reference to the amount actually paid or borne for the year or part of the year referable to the emoluments in respect of which the computation is made.

114 General rule as to deductions

The general rule as to the deductibility of expenses in computing the amount chargeable under Schedule E is that the expense must be wholly, exclusively and necessarily incurred by the holder of an office or employment in the performance of the duties of the office or employment.

115 Fixed deduction for certain classes of persons

The Minister for Finance may set a fixed sum for expenses which represents a fair equivalent of the average amount for a year of assessment of expenses incurred by any class of person in receipt of salary, fees or emoluments payable out of the public revenue. The expenses must be wholly, exclusively and necessarily incurred in the performances of the duties in respect of which such salaries, fees or emoluments are paid. The fixed sum may be deducted from the salary, fees or emoluments of a person of that class for the purposes of computing the charge to tax. Where a person incurs expenses in excess of the sum fixed by the Minister, the larger amount may be deducted instead of the fixed sum.

CHAPTER 3

Expenses, allowances and provisions relating to the general benefits in kind charge

Overview

This Chapter provides a scheme of taxation for payments of expenses and benefits in kind provided to directors and employees. The broad effect of the Chapter is to treat as taxable remuneration the amount of the expense payments made or the value of the benefit received. The Chapter does not affect the deduction of genuine business expenses of employees under *section 114*. The Chapter applies to directors and employees of companies and other bodies engaged in trade or in holding investments or other property and also to employees of partnerships and sole traders. It also applies to the spouses, family, dependants, servants and guests of such directors and employees.

116 Interpretation (Chapter 3)

Summary

This section gives the meaning of certain terms and sets out the rules for the construction of certain references used in the Chapter.

Details

“business premises”, “control”, “director” and “employment” are self-explanatory (1) defined terms.

“employee” includes the holder of an office.

“premises” includes land.

Anything provided by an employer for the spouse, civil partner, family, servants, dependants or guests of a director or employee is treated as a benefit provided for the director or employee. (2)

While company directors are within the scope of the Chapter without qualification as to the amount of income derived from their office, an employee is within the Chapter’s scope only where for the year of assessment his/her remuneration from the employment, including expenses payments and benefits in kind, but before any deduction of allowable expenses, is in excess of €1,905. (3)(a)

Where a person has 2 or more employments under the same employer, emoluments are aggregated for the purposes of the €1,905 limit. (3)(b)

Where there is a group of 2 or more bodies corporate one of which controls the rest, then, all directorships and employments within the group are treated as if they were held under the controlling body corporate. (4)

117 Expenses allowances

A charge to income tax under Schedule E arises under this section where expense payments are made to directors and employees of a body corporate which are not otherwise chargeable to tax. Such payments are treated as perquisites of the employment of the director or employee and are included in the assessable income of the director or employee for that year. However, this provision does not affect the deduction of allowable expenses (that is, expenses incurred wholly, exclusively and necessarily in the performance of the duties of the employment) under *section 114*.

118 Benefits in kind: general charging provision

Summary

Subject to certain exceptions, a charge to income tax arises under this section where certain benefits in kind (that is, living or other accommodation, entertainment, domestic or other services, or other benefits or facilities of whatever nature) are provided for a director or employee which are not otherwise chargeable to tax.

Details

The charge to tax

A charge to income tax arises in respect of the provision by a body corporate of certain benefits in kind (that is, living or other accommodation, entertainment, domestic or other services, or other benefits or facilities of whatever nature, (1)

provided for a director or employee) and which are not otherwise chargeable. The charge is limited to the amount of the expense incurred by the body corporate in providing the benefit.

Exemptions

Certain benefits are exempt from the charge. These are —

- office accommodation, supplies or services provided for the director or employee on the business premises and used by him/her solely in performing the duties of his/her office or employment, (2)
- living accommodation provided for an employee (but not a director) on the employer's business premises, if the employee is required to live there so that he/she can perform his/her duties properly, and either — (3)
 - the accommodation is provided in accordance with a practice which, since before 30 July, 1948, has commonly prevailed in trades of the class in question as respects employees of the class in question, or
 - it is necessary, in the particular class of trade, for employees of the class in question to live on the premises,
- meals in a canteen in which meals are provided for the staff generally, (4)
- pensions, gratuities, etc. provided on retirement or death, other than a contribution to a Personal Retirement Savings Account (PRSA). (5)
- monthly or annual bus or railway passes including passes on light railway systems such as Luas and Metro and passes for travel on commuter ferry services within the State provided by an employer to an employee in respect of scheduled licensed passenger transport services. The exemption covers integrated ticketing, i.e. tickets covering travel on the systems of more than one travel provider. The pass must be issued for a service for which the approved transport provider is contracted or licenced. (5A)
- mobile telephones which are provided by employers for employees for business use where private use is incidental. The exemption also applies to mobile phones provided in connection with a car or van notwithstanding that the vehicles themselves are liable to a BIK charge. For the purpose of the exemption a mobile telephone means a telephone apparatus which is not physically connected to a land line, and is not a cordless telephone. (5B)
- high-speed internet connection to an employee's home for business use where private use is incidental, the connection being capable of transmitting information at a rate equal to or greater than 250 kilobits per second. (5C)
- home computer equipment provided for business use where private use is incidental. In addition to a computer, the exemption applies to fax machines, printers, scanners, modems, discs, disc drives, and other peripheral devices and computer software. (5D)
- annual membership fees of professional bodies paid by the employer on behalf of an employee or paid by the employee and reimbursed by the employer, where membership of that body is relevant to the business of the employer. Membership of a professional body may be regarded as relevant to the business of the employer where it is necessary for the performance of the duties of the employee, or it facilitates the acquisition of knowledge which is necessary for, or directly related to, the performance of the duties of the employee, or would be necessary for, or directly related to, the performance of prospective duties of the employee with that employer. (5E)

Note this exemption ceased to have effect for the year of assessment 2011 and subsequent years of assessment.

- the private use of company vans where, subject to certain conditions, the only private use of the van by the employee is travelling to and from work. (5F)
- the first €1,000 expenditure incurred by an employer in the provision of a bicycle (bicycle includes pedal cycles or pedelecs but does not include motor cycles, scooters or mopeds) or bicycle safety equipment by an employer to an employee, where the bicycle/safety equipment is used by the employee for qualifying journeys (the whole or part of a journey to and from work or between work places). The exemption only applies where bicycles/safety equipment are made available generally to all employees. (5G)(a) & (b)
An employee may only avail of the exemption once in any period of 5 years commencing with the year in which the bicycle or safety equipment is first provided. (5G)(c)
- any expense incurred by an employer in the provision of electric vehicle charging facilities for employees and directors on the employer’s business premises, once all employees and directors can avail of the facility. This exemption applies from 1 January 2018. (5H)

Where only a part of an employer’s expenditure is in connection with any matter related to the provision of a benefit for a director or employee, only the appropriate proportion of the expenditure is treated as remuneration of the director or employee. (6)

Connected persons

Where an expense is incurred by a person connected with a body corporate which, if incurred by the body corporate itself, would be within the scope of this Chapter, then that expense is deemed to have been incurred by the body corporate. (7)

The circumstances in which a person is regarded as connected with any body corporate are where the person is a trustee of a settlement made by that body corporate or is itself a body corporate and would be regarded as connected with that body corporate under the rules set out in *section 10*. (8)

118A Costs and expenses in respect of personal security assets and services

Summary

This section provides, subject to conditions, for an exemption from a benefit-in-kind charge in circumstances where an employer incurs expense in providing a security asset or service for use by a director or employee.

In order to qualify for the exemption there must be a credible and serious threat to the physical personal safety of the director or employee, which arises wholly or mainly from his or her employment.

Details

The terms “asset” and “service” are defined for the purposes of the section. (1)

In order to qualify for the exemption there must be a credible and serious threat to the physical personal safety of the director or employee, which arises wholly or mainly from his or her office or employment. (2)

The section applies in respect of expense incurred by the company, or by the director or employee and subsequently reimbursed by the company, in relation to the provision or use of, or associated expenses connected with, an asset or service which is provided for or used by the director or employee to meet the threat to their personal physical security, and which was provided for the sole purpose of meeting (3)

that threat.

Subject to **subsections (6) and (7)**, a charge to benefit-in-kind under **section 118(1)** (4) shall not apply in respect of an expense to which this section applies.

Incidental usage of an asset provided by a company for the purpose of personal physical security, will be ignored for the purposes of determining whether a charge applies or not. (5)

Where the asset provided is intended for use only partly for the purposes of dealing with a threat to the personal physical security of the individual, then in such circumstances, the exemption from the charge to benefit-in-kind will only apply in relation to that portion which is for that intended use. (6)

The exemption will only apply in relation to a service provided where the benefit resulting to the director or employee consists wholly or mainly of an improvement in their personal physical security. (7)

Where the asset or service provided is permanently attached to a property, or the director or employee subsequently becomes entitled to that asset, or if there is a consequential benefit arising to a member of the family or household of the director or employee, this does not exclude the expense incurred by the company from coming within the provisions of the section. (8)

118B Revenue Approved Salary Sacrifice Agreements

Summary

This section copper-fastens the existing administrative salary sacrifice arrangements which have already been authorised by the Revenue Commissioners in relation to the operation of the “Travel Pass” Schemes approved under **section 118(5A)**, and salary sacrifices which are associated with the approved profit-sharing schemes set up by employers under **section 510**. The section puts beyond doubt the issue that such salary sacrifices are Revenue approved arrangements.

Details

Subsection (1) contains the relevant definitions necessary for this section. (1)

Salary sacrifice arrangements are only approved in relation to — (2)(a)

- the operation of the travel pass schemes with approved transport providers (**section 118(5A)**),
- approved profit-sharing schemes established under **section 510**, and
- the provision of bicycles/safety equipment by employers to directors and employees (**section 118(5G)**).

Any other benefits arising as a result of any salary sacrifice arrangement, and not specifically approved by Revenue as being exempt, are deemed to be payment of emoluments by an employer and chargeable to tax. (2)(b)

Where the exempt employee benefit is provided to a spouse, civil partner or connected person, rather than the employee, it will not be treated as an exempt benefit, but deemed to be payment of emoluments by an employer and will be taxed accordingly. (3)

Where an employee, as part of an arrangement, is provided with an exempt employee benefit and a compensating payment, this will be treated as an avoidance scheme. In such circumstances the exemption status conferred by **subsection (2)(a)** (4)

will not apply and the income subjected to salary sacrifice will be deemed to be payment of emoluments by an employer and taxed in full.

Where income is not paid during the year e.g. a bonus, commission or other income which only arises after the end of the year, such income cannot be taken into account for the purposes of salary sacrifice. (5)

119 Valuation of benefits in kind

Summary

This section provides rules for the valuation of benefits in kind. In general, the amount to be regarded under *section 118*, as remuneration is so much of the expense incurred by an employer in providing the benefit as is not made good by the employee or director.

Details

The initial cost of acquisition or production of an asset which remains the employer's property is not treated as remuneration of the person who has the use of it. (1)

Where the benefit to a director or employee takes the form of the transfer of an asset after it has been used or depreciated, its market value at the date of transfer and not the cost of acquisition to the employer is treated as the director's or employee's remuneration. (2)

Where an asset of the employer is used by a director or employee, the benefit to be assessed on the director or employee is, in addition to any current expenditure incurred by the employer in connection with the asset, the greater of — (3)

- the annual value of the use of the asset, and
- the amount payable in respect of any rent or hire of the asset.

The annual value of the use of an asset is taken to be —

(a) in the case of premises, the rent which might reasonably be expected to be obtained on a letting from year to year (the annual letting value), if the tenant undertook to pay all the usual tenant's rates and if the landlord undertook to pay the costs of repairs, insurance, etc necessary to maintain the premises in such state as to command that rent, and (4)(a)

(b) in the case of any other asset, 5 per cent of the market value at the time it was first provided by the employer as a benefit-in-kind. [NOTE: This provision operates with effect from 1 January, 2004. Prior to that the 5 per cent valuation operated on an administrative basis.] (4)(b)

120 Unincorporated bodies, partnerships and individuals

The benefit in kind charge to tax imposed by this Chapter applies, with suitable modifications, in relation to unincorporated societies, public bodies and other bodies as it applies in relation to bodies corporate. (1)

Likewise, the Chapter applies, with suitable modifications, in relation to any partnership and individuals carrying on any trade or profession. (2) & (3)

Where an expense is incurred by a public body in respect of the holder of an office or employment either in that public body or another public body, the provisions of *section 118(1)(a)* will apply as if the expense had been incurred by a body corporate (4)(a)

and the payment will be subject to tax accordingly.

For the purposes of this Chapter the expenses incurred are to be treated as if they were incurred by the public body in which the office or employment is exercised, and as if that public body was a body corporate. (4)(b)

For the purposes of this section “public body” means- (5)

- The Civil Service of the Government and the Civil Service of the State;
- The Garda Síochána; or
- The Permanent Defence Force.

120A Exemption from benefit-in-kind of certain childcare facilities

Summary

This section provides that certain childcare facilities provided by employers to employees on a free or subsidised basis are not to be charged to income tax as a benefit-in-kind. The exemption applies where the childcare service is either provided on premises which are made available solely by the employer, or where the service is provided jointly with other participants (e.g. other employers) on premises made available by one or more participants in a joint scheme. In the latter circumstances the employer must be wholly or partly responsible for both financing and managing the service. Where an employer is not involved in the management of the childcare facility the benefit-in-kind exemption is restricted to cases where the employer provides financial support for items of capital expenditure.

The exemption ceases to have effect for the year of assessment 2011 and subsequent years of assessment.

Details

Definitions

“childcare service” is any form of child minding service or supervised activity to care for children whether or not provided on a regular basis. (1)

“qualifying premises” are premises which are —

- made available solely by the employer, or
- made available by the employer jointly with other participants, or
- made available by other persons and the employer is wholly or partly responsible for financing and managing the childcare service, or
- made available by other persons and the employer is wholly or partially responsible for capital expenditure on the construction or refurbishment of the premises.

The premises must, where appropriate, meet the provisions of the Child Care (Pre-School Services) Regulations, 1996.

Exemption

Exemption from the general benefit-in-kind charging provisions of *section 118(1)* is granted in respect of any childcare service provided by an employer in a qualifying premises for a child of a director or an employee. (2)

Restriction

Where an employer provides financial support by way of capital expenditure only, (3)

then the exemption for the employee is restricted to the amount of such expenditure.

Cesser

The exemption ceases to have effect for the year of assessment 2011 and subsequent (4) years of assessment.

120B Certain benefits in kind: members of Permanent Defence Force

Summary

This section exempts from benefit in kind certain living accommodation and health expenses incurred by or on behalf of the Minister for Defence in respect of members of the Permanent Defence Force.

Details

Exemption from tax

Any expense incurred by or on behalf of the Minister for Defence in the provision of: (1)

- living accommodation on land occupied by, used by, or under the control (whether temporarily or otherwise) of the Permanent Defence Force, and
- health care

shall be exempt from a benefit in kind charge

Definitions

“health care” means prevention, diagnosis, alleviation or treatment of an ailment, injury, (2) infirmity, defect or disability, and includes care received by a woman in respect of pregnancy, but does not include:

- routine ophthalmic treatment, or
- cosmetic surgery or similar procedures, unless the surgery or procedure is necessary to ameliorate a physical deformity arising from, or directly related to, a congenital abnormality, a personal injury or a disfiguring disease.

“routine ophthalmic treatment” means the provision and repairing of spectacles or contact lenses.

Application

This section shall apply for the year of assessment 2018 and subsequent years.

CHAPTER 4 *Other benefit in kind charges*

121 Benefit of use of car

Summary

This section charges to income tax the benefit to directors and employees derived from the private use of motorcars provided by their employers. The charge to tax is based on “cash equivalent” of that benefit derived from the use of the car. This

“cash equivalent” is computed as a specified percentage of the original market value of the car. The cash equivalent of the original market value of the car is set at to 30 per cent. Contributions which the director or employee is required to make, and actually makes, to the employer in respect of the costs of providing or running the car are deductible from the cash equivalent. The change to using kilometres rather than miles is effective for years of assessment 2014 and subsequent years.

Relief known as “tapering relief” applies where business miles exceed 24,000 kilometres per year. Tapering relief reduced the cash equivalent of the original market value to 24 per cent of that amount where the annual business mileage is between 24,000 and 32,000 kilometres and progressively in bands of 8,000 kilometres until when the business mileage is 48,000 kilometres or greater where the cash equivalent of the original market value is reduced to 6 per cent.

As an alternative to tapering relief, a director or employee may opt to avail of a relief which will reduce the cash equivalent of the benefit of the car by 20 per cent provided he/she —

- travels at least 8,000 business kilometres per year,
- spends at least 70 per cent of his/her time away from the employer’s premises,
- works at least 20 hours per week, and
- keeps a detailed logbook.

Cars included in car pool arrangements are outside the scope of the section.

[Changes made by section 6 of the Finance (No. 2) Act 2008 provide for a new CO₂ based system of calculation of benefit in kind in respect of company cars provided for employees. These changes will only be effective from a date which will be determined by a Ministerial Order.]

Details

Definitions and construction

“business mileage for a year of assessment” is the total number of whole kilometres (1)(a) travelled by a person in a car or cars in the course of business use.

“business use” is travelling in a car which a person is necessarily obliged to do in the performance of the duties of his/her employment. This is similar to the normal Schedule E expenses test (**section 114**) and it follows that “home to office” travel does not constitute “business use”.

“car” means any mechanically propelled road vehicle constructed or adapted for the carriage of the driver alone or the driver and one or more passengers, but does not include a motor-cycle, a van (within the meaning of **section 121A**), or a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used.

“employment” is an office or employment the emoluments (within the meaning of **section 113**) of which are within the charge to tax. Employment, therefore, includes employees and directors chargeable to tax under Case III of Schedule D.

“electric vehicle” means a vehicle that derives its motive power exclusively from an electric motor.

“motor cycle” means a mechanically propelled vehicle with less than 4 wheels and an unladen weight not exceeding 410 kilograms.

“private use” is use other than business use.

“relevant log book” is a record maintained on a daily basis of a person’s business

use of a car for a tax year which —

- contains relevant details of distances travelled, nature and location of business transacted, and the amount of time spent away from the employer’s place of business, and
- is certified by the employer as being, to the best of employer’s belief, a true and accurate account.

A car made available to an employee by reason of his/her employment is treated as available for private use unless the terms on which it is made available prohibit such use and no such use is in fact made of the car. (1)(b)(i)(I)

A car made available to an employee by his/her employer or by a person connected with the employer is treated as made available by reason of his/her employment unless the employer is an individual and it can be shown that the car was made available in the normal course of his/her domestic, family or personal relationships. If, for example, a self-employed individual employs his/her child and the child is provided with a car purely for private purposes and the car is not regarded as a business asset for the purpose of claiming capital allowances or no expenses relating to the car are claimed as deductions in computing the individual’s taxable profits, then, the car is not regarded as made available to the child by reason of his/her employment and no charge to tax arises. (1)(b)(i)(II)

A car is treated as available for a person’s private use if it is available to a member or members of his/her family or household. (1)(b)(i)(III)

References to a person’s family or household are references to his/her spouse, his/her civil partner, sons and daughters and their spouses or civil partners, his/her parents and his/her servants, dependants and guests. (1)(b)(i)(IV)

Costs in relation to a car which are borne by a person connected with the employer are treated as having been incurred by the employer. (1)(b)(ii)

The original market value of a car is the price (including any customs duty, excise duty and value-added tax) which it might reasonably be expected to fetch if sold in the open market when new in the State in a single retail sale. (1)(b)(iii)

Application

The section applies in the case of a person in an employment (that is, a director or employee) for any year of assessment in relation to which a car is made available to the person, by reason of the employment, for his/her private use without any transfer to the person of the ownership of the car. (2)(a)

The charge to tax

In relation to such a car — (2)(b)

- the general benefits in kind charge (contained in **Chapter 3** of this Part) does not apply for that year in relation to the expense incurred in connection with the provision of the car, and (2)(b)(i)
- in place of that charge, the “cash equivalent” of the benefit of the car is charged to tax as an emolument of the employment by reason of which the car is made available, subject to a deduction being made from the cash equivalent in respect of any amount which the employee is required to contribute, and actually contributes, in respect of the costs of providing or running the car. Excluded from this deduction are amounts which are allowed to be deducted in computing the cash equivalent under **subsection (3)(a)**. (2)(b)(ii)

Example

An employee has the use of a company car the original market value of which is €30,000. The cash equivalent is €9,000 (30% of €30,000). The employee is required to pay and pays the employer €100 per week (€5,200 per annum) towards the cost of the car. The employee is, therefore, chargeable on the full cash equivalent of €9,000 less the contributions of €5,200, that is, on €3,800.

Where the car made available to the employee is an electric vehicle and is provided during the period 1 January 2018 to 31 December 2018, no amount shall be treated as emoluments. (2)(b)(iii)

Where an electric vehicle is made available to an employee during the period 1 January 2019 to 31 December 2021 and the original market value of the car does not exceed €50,000, no amount shall be treated as emoluments. (2)(b)(iv)

Where an electric vehicle is made available to an employee during the period 1 January 2019 to 31 December 2020 is an electric vehicle: (2)(b)(v)

- the original market value of the car exceeds €50,000, and
- the car was first made available to the employee during the period 10 October 2017 to 9 October 2018

no amount shall be treated as emoluments.

Where an electric vehicle is made available during the period 1 January 2019 to 31 December 2021 and the original market value of the car exceeds €50,000, the cash equivalent of the car shall be computed on the original market value of the car reduced by €50,000. (2)(b)(vi)

Cash equivalent of benefit of car

The cash equivalent of the benefit of a car for a year of assessment is a flat rate of 30 per cent of the original market value of the car. (3)(a)

Where a car is available to a person for part only of a year of assessment, the cash equivalent of the benefit is ascertained by apportionment on a time basis. This provision operates where a person — (3)(b)

- first obtains the use of a company car during the course of a year,
- ceases to have the use of a company car during the course of a year, or
- changes cars during the course of a year.

Example

An employee has the private use of a company car on which the employer meets all the running expenses. At the start of the year the employee has the use of car A which costs €30,000. On 1 August in the year the employee changes to car B which costs €36,000.

The employee is charged to tax for the full year in respect of the benefit derived from the private use of the cars as follows —

Car A: €30,000 x 30% x 7/12 = €5,250

Car B: €36,000 x 30% x 5/12 = €4,500
 €9,750

Tapering relief

Tapering relief is available for employees with high business mileage, that is, (4) business mileage in excess of 24,000 kilometres in a year of assessment. In relation to such employees, the cash equivalent of the benefit of the car for that year, instead of being the amount ascertained under *subsection (3)*, is the percentage of the amount applicable to the business mileage as set out in the Table below.

TABLE		
Business Mileage		Percentage
Lower Limit	Upper Limit	
(1)	(2)	(3)
Kilometres	Kilometres	Per cent
24,000	32,000	24
32,000	40,000	18
40,000	48,000	12
48,000	--	6

Example

Employee with private use of company car costing €36,000. All running expenses are met by the employer. Business mileage amounts to 42,240 kilometres. The cash equivalent of the car is €10,800 (30% of €36,000). However, the tapering relief due ensures that the cash equivalent is reduced to €4,320 (12% of €36,000).

Where a car is only available for part of the year the table above is to be revised so that the figure of 24,000 is replaced using a formula -

$$\frac{24,000 \times A}{365}$$

Where A is the number of days the car is available in the year, and each of the figures in the Table to this subsection are reduced in the same proportion to determine the cash equivalent of the benefit.

Alternative to tapering relief

Where in a year of assessment a person — (5)(a)

- spends more than 70 per cent of his/her working time away from his/her employer’s place of business, and
- travels at least 8,000 business kilometres in that year,

then, if the person so elects in writing to the inspector, the benefit to the person of the availability of the private use of a company car is, instead of being the cash equivalent of that benefit as reduced by tapering relief, the cash equivalent of the

benefit reduced by 20 per cent.

When requested by an inspector, a person who makes such an election for a year of assessment must submit to the inspector, within 30 days of the request, a relevant log book in relation to that year of assessment. (5)(b)

Relief under this subsection is not available where a person — (5)(c)

- fails to submit a relevant log book when requested to do so by the inspector, or
- works for less than 20 hours per week on average.

The appeal procedures set out in *subsection (7)(e)* apply to claims for relief under this subsection. (5)(d)

A person is obliged, in claiming relief under this subsection, to retain relevant log books for a period of 6 years or such shorter period as the inspector may allow. (5)(e)

Administrative matters

A person chargeable to tax in respect of the cash equivalent of the benefit of a car has a statutory obligation to deliver to the inspector in writing, within 30 days of the end of the year of assessment, particulars of the car, its original market value and the business mileage and private mileage for that year of assessment. (6)(a)

Where the person does not supply the required particulars or the inspector is not satisfied with the particulars delivered, the inspector may, for the purpose of calculating the amount of tax to which that person is chargeable, estimate the original market value or business mileage or private mileage to the best of his/her judgement. For the purposes of estimating the business mileage, the inspector may, in the absence of evidence to the contrary, estimate the business mileage by deducting from the total mileage 8,000 kilometres in respect of private use. Any such estimates may be amended by the Appeal Commissioners or the Circuit Court on the hearing or rehearing of an appeal against an assessment to income tax raised in respect of the employment in the performance of the duties of which the business mileage was travelled. (6)(b) & (d)

In computing, before the end of the year of assessment, for the purposes of an assessment to income tax or of the PAYE regulations, the amount of tax which an individual is liable to pay in respect of the private use of a company car, an inspector may estimate the individual's private mileage and the provisions of *section 926* (estimation of certain amounts), modified as necessary, apply to that estimate as they apply to an estimate under that section. (6)(e)

Car pools

An exemption from the benefit in kind charge applies where an inspector is satisfied (whether on a claim being made or otherwise) that a car has for any year been included in a car pool for the use of one or more employees. It is to be noted that this exemption does not reinstate a charge to tax under the general benefit in kind charging provision in *Chapter 3* of this Part. (7)(a)

A car is treated as part of a car pool where — (7)(b)

- the car is available to, and used by, more than one employee, and is made available to them by reason of their employment and is not ordinarily used by any one employee to the exclusion of the others,
- any private use of the car by any employee is merely incidental to its business use, and

- the car is not normally kept on or near the residence of any of the employees unless it is kept on premises occupied by the provider of the car.

Where these conditions are met, the car is treated for the year in question as not having been available for the private use of any of the employees. Consequently, none of the employees are chargeable to tax for that year in respect of the car. (7)(c)

One or more employees using a car during the course of the tax year, or their employer, may claim that the car is a “pooled” car. (7)(d)

The normal appeal procedures apply where an inspector decides that a car does not qualify as a “pooled” car. Where a person wishes to appeal against an inspector’s decision, he/she may do so by notifying the inspector in writing within 2 months of the inspector’s decision that he/she wishes the matter to be heard and determined by the Appeal Commissioners. Where such an appeal is made, the Appeal Commissioners hear and determine the appeal in the same manner as an appeal against an assessment to income tax. The provisions of the Income Tax Acts relating to an appeal against an assessment, including the provisions relating to the rehearing of an appeal before the Circuit Court and the statement of a case for the opinion of the High Court on a point of law, also apply in the case of such an appeal. All employees with an interest in an appeal may take part in the appeal and the decision of the Appeal Commissioners or the Circuit Court is binding on all of them, whether they have taken part in the proceedings or not. Once such an appeal has been heard and determined, any further appeal made in respect of the same car while in the same car pool for the same year is prohibited. (7)(e)

Changes provided for in section 6 of the Finance (No. 2) Act 2008 to give effect to emission based calculations of Benefit-in-kind

The changes made by section 6 of the Finance (No. 2) Act 2008 provide for a new CO₂ based system of calculation of benefit in kind in respect of company cars provided for employees.

This legislation will only be effective from a date which will be determined by a Ministerial Order.

Definitions and construction

When the changes are effective business mileage will refer to the number of whole kilometres travelled rather than miles travelled. (1)(a)

Cash equivalent of benefit of car

The time apportionment rules applicable where a car is only made available for part of a year will equally apply to cars using the emission based calculations as currently apply to existing cars. (3)

Tapering relief

The existing Table of decreasing rates of charge based on business mileage is amended from miles to kilometres, with a consequential change in the apportionment formula. The proposed Table for business mileage is set out below - (4)

TABLE

Business mileage Lower limit	Business mileage Upper limit	Percentage of original market value
(1)	(2)	(3)
Kilometres	Kilometres	Per cent
24,000	32,000	24
32,000	40,000	18
40,000	48,000	12
48,000	-	6

CO₂ based system of calculation

This new subsection provides for the charge to benefit-in-kind to be based on the CO₂ emissions vehicle category of the car, abated by reference to the business mileage travelled. **(4B)**

This paragraph determines the basic formula of the charge. **(4B)(a)**

The formula is –

$$\text{Original market value} \times \mathbf{A}$$

Where **A** is a percentage based on the vehicle category and business mileage in Table A set out below.

This paragraph provides for the appropriate percentage to be applied to the original market value of the car. **(4B)(b)**

TABLE A				
Business mileage		Vehicle categories	Vehicle categories	Vehicle categories
Lower limit	Upper limit	A, B and C	D and E	F and G
(1)	(2)	(3)	(4)	(5)
Kilometres	Kilometres	Per cent	Per cent	Per cent
-	24,000	30	35	40
24,000	32,000	24	28	32
32,000	40,000	18	21	24
40,000	48,000	12	14	16
48,000	-	6	7	8

This paragraph confirms the emission levels that are applicable to each vehicle category (Table B). **(4B)(c)**

TABLE B	
Vehicle category	CO ₂ emissions (CO ₂ g/km)
(1)	(2)
A	0 g/km up to and including 120 g/km
B	More than 120 g/km up to and including 140 g/km
C	More than 140 g/km up to and including 155 g/km
D	More than 155 g/km up to and including 170 g/km
E	More than 170 g/km up to and including 190 g/km
F	More than 190 g/km up to and including 225 g/km
G	More than 225 g/km

121A Benefit of use of van

Summary

This section charges to income tax the benefit to directors and employees derived from the private use of vans provided by their employers. The charge to tax is based on a “cash equivalent” of that benefit derived from the use of the van. This “cash equivalent” is computed as 5 per cent of the original market value of the van. Contributions which the director or employee is required to make, and actually makes, to the employer in respect of the costs of providing or running the van are deductible from the cash equivalent.

Details

Definitions

“van” means a mechanically propelled road vehicle which is designed or constructed for the carriage of goods or other burden, has a roofed area or areas to the rear of the driver’s seat, has no side windows or seating fitted in that roofed area or areas and has a gross vehicle weight not exceeding 3,500 kilograms. (1)

“gross vehicle weight” in relation to a vehicle means the laden weight which the vehicle is designed or adapted not to exceed when in normal use.

“electric vehicle” means a vehicle that derives its motive power exclusively from an electric motor.

Application

The section applies to employees and directors chargeable to tax in an employment for any year of assessment in respect of the private use of a company van without any transfer to the person of the ownership of the van. (2)(a)

The charge to tax

In relation to such a van —

- the general benefits in kind charge (contained in *Chapter 3* of this Part) does not apply for that year in relation to the expense incurred in connection with (2)(b)(i)

- the provision of the van, and
- the charge to tax is based on the “cash equivalent” of the benefit of the van, subject to a deduction in respect of any amount made good by the employee towards the cost of providing or running the van. (2)(b)(ii)

Example

An employee has the use of a company van the original market value of which is €18,000. The cash equivalent is €900 (5% of €18,000). The employee is required to pay and pays the employer €500 per annum towards the running costs of the van. The employee is, therefore, chargeable on the cash equivalent of €900 less the contributions of €500, that is, on €400.

Where the van made available to the employee is an electric vehicle and is provided during the period 1 January 2018 to 31 December 2018, no amount shall be treated as emoluments.

Where an electric vehicle is made available to an employee during the period 1 January 2019 to 31 December 2021 and the original market value of the van does not exceed €50,000, no amount shall be treated as emoluments.

(2)(b)(iii)

Where an electric vehicle is made available to an employee during the period 1 January 2019 to 31 December 2020 is an electric vehicle:

- the original market value of the van exceeds €50,000, and (2)(b)(iv)
- the van was first made available to the employee during the period 10 October 2017 to 9 October 2018

no amount shall be treated as emoluments.

(2)(b)(v)

Where an electric vehicle is made available during the period 1 January 2019 to 31 December 2021 and the original market value of the van exceeds €50,000, the cash equivalent of the van shall be computed on the original market value of the van reduced by €50,000.

(2)(b)(vi)

The tax charge to tax in respect of the private use of a company van will not apply where all of the following conditions are met: (2A)

- the van is necessary for the employee’s work,
- the employee is required by the employer to take the van home when not being used for work
- private use of the van other than travel to and from work is prohibited and there is no other private use, and
- the employee spends at least 80 per cent of his or her working time away from the premises of the employer to which the employee is attached.

Cash equivalent of benefit of van

The cash equivalent of the benefit of a van for a year of assessment is 5 per cent of the original market value of the van. (3)

122 Preferential loan arrangements

Summary

A charge to tax in respect of preferential loans arises where loans are made to employees at a rate which is either nil or at a rate lower than normal commercial rates. The charge to tax is on the difference between the amount of interest paid on the preferential loan and the amount of interest which would be payable if the loan had been subject to an interest rate of 4 per cent in the case of loans qualifying for mortgage interest relief under *section 244* or 13.5 per cent in all other cases. The charge arises for each year, or part of a year, for which the preferential loan is outstanding. The amount charged is treated as if it were interest actually paid by the employee and is eligible for relief subject to the normal restrictions on the eligibility of interest.

Details

Definitions and construction

“employee” is an individual employed by an employer in an employment which is assessable to tax under Schedule E or Case III of Schedule D. Where the employer is a company, a director of the company is also treated as an employee. (1)(a)

“employer”, in relation to an individual includes —

- a person of whom the individual or the spouse of the individual is or was an employee,
- a person who employs the individual after making a loan to the individual and while any part of the loan, or any part of a loan replacing that loan, is in existence (this enables an arrangement whereby an employer makes a preferential loan to a potential employee as part of a recruitment package before the start of the employee’s service contract to be brought within the scope of the section),
- a person who is connected with any person referred to above (this brings within the scope of the section a preferential loan made by, say, an associated company of the company employing the individual).

“loan” includes any form of credit or a loan which, directly or indirectly, replaces a loan (this ensures that a preferential loan is caught by the section irrespective of the guise in which it is made).

“preferential loan”, in relation to an individual, is a loan on which either no interest is paid or interest is paid at a preferential rate. The loan may be made, directly or indirectly, either to the individual or to his/her spouse, by the individual’s employer. Loans which are made by an employer to an employee at normal commercial interest rates are not preferential loans.

“preferential rate” means an interest rate which is less than the specified rate.

“qualifying loan” has the meaning assigned to it by *section 244(1)(a)*.

The “specified rate” can be one of 3 different rates depending on the circumstances-

- In the case of a preferential mortgage loan, where the interest on the preferential loan qualifies for relief under *section 244* or, if no interest is payable on the loan, would have qualified for relief under *section 244* had interest on the loan been payable, the specified rate is 4 per cent per annum

or such other rate (if any) prescribed by the Minister for Finance by regulations. This rate applies, therefore, only where the preferential loan is for the purchase, repair, development or improvement of the sole or main residence of the borrower, the former or separated spouse of the borrower or a dependent relative of the borrower.

- Where a preferential loan is made to an employee by an employer whose trade partly consists of making loans for a stated number of years at a fixed rate of interest to enable a borrower purchase a house as a residence, and the rate of interest on such loans (at the time the preferential loan was made) charged on non-employees in the normal course of business is less than 4 per cent or such other rate (if any) prescribed by the Minister for Finance by regulations, the specified rate is the rate charged by the employer on such loans to non-employees at the time the preferential loan is made to the employee.
- In any other case, the specified rate is 13.5 per cent per annum or such other rate (if any) prescribed by the Minister for Finance by regulations.

A person is connected with another person if the persons would be regarded as connected for the purposes of *section 250*. The meaning of “connected” in *section 250* as used in *subsection (5)(b)* of that section treats as connected persons a lender who lends money otherwise than in the ordinary course of business and the person to whom the money is lent. (1)(b)

So as to ensure that indirect methods of giving a preferential loan do not result in such a loan escaping the provisions of the section, a reference to a loan being made is broadened to include — (1)(c)

- a person who takes over the rights and responsibilities of a loan from the person who originally made it, and
- a person who has a part in arranging, guaranteeing or facilitating the making of a loan or the continuation of an existing loan.

Tax treatment of preferential loans

Where, for the whole or part of a year of assessment, there is outstanding in relation to an individual a preferential loan, the individual is regarded for the purposes of *section 112* or a charge to tax under Case III of Schedule D, as having received in that year a perquisite of his/her office or employment with the employer who made the loan. The amount of the perquisite to be so charged is the difference between the aggregate interest paid in that year and the interest which would have been payable if interest had been payable on the loan or loans at the specified rate. (2)

Where the individual’s income is assessed on his/her spouse in accordance with *section 1017*, the charge to tax is made on the spouse. (3)

Where the individual’s income is assessed on his/her civil partner in accordance with *section 1031C*, the charge to tax is made on the civil partner.

Anti-avoidance

Special rules apply where a loan is made, directly or indirectly, by an employer to an employee or by an employer to a person who subsequently becomes an employee at a rate superficially in excess of the specified rate but in practice at a lower rate or a nil rate due to the loan or any interest on the loan being entirely or partially

released or written-off. In such a case the employee is charged on the amount of the loan or interest that is so written-off or released. For example, a loan could be given, for say, a 20-year period at a rate of 18 per cent. The employer could then write-off all or part of the loan or, alternatively, release the employee from payment of further interest as a compensation for paying the interest in full over the first 5 years. Where this happens, the employee is charged to tax in the year of the release or writing-off in respect of the amount released or written-off. The amount so released or written-off is treated as a perquisite of the office or employment and assessed accordingly.

Application of section 244

An amount of interest charged to tax in accordance with **subsection (2) or (3)** may be allowed as a deduction from income under **section 244**. For any year of assessment in which any such amount is assessed on an individual, he/she is treated as having actually paid an equivalent amount of interest and, accordingly, the individual is entitled under **section 244** to obtain relief from tax to the extent that any such amount would be eligible for relief under that section. Relief under that section is available for certain interest paid on money borrowed to construct, purchase, repair or improve the sole or main residence of the borrower, the former or separated spouse of the borrower or a dependent relative of the borrower. (4)

Exceptions

Excluded from the application of the section are loans made by an individual employer in the normal course of his/her domestic, family or personal relationships. (5)

Employee allowance

Amounts brought into the charge to tax by this section are not regarded as emoluments for the purposes of the employee tax credit under **section 472**. This provision is necessary to avoid claims where, for example, the non-working spouse of the employee is the individual to whom the working spouse's employer actually makes the loan. Although the working spouse may be the one on whom the charge under the section is made, there might be a possibility, but for this provision, that the non-working spouse could claim that as he/she was being treated as having received an emolument he/she was entitled to the employee tax credit provided for by **section 472**. (6)

Regulations

The Minister for Finance may by regulations prescribe the specified rate. In any such case the usual provisions for the presentation of regulations to Dáil Éireann apply. (7)

122A Notional loans relating to shares, etc

Summary

This section is designed to counter a tax avoidance device whereby directors and employees, by reason of their employment, acquire shares in a company without having to pay the entire amount due on the allotment of such shares. This unpaid balance, known as a “call”, amounts to what is essentially an interest-free loan in the hands of the directors and employees. The section accordingly provides that:

- the “call” is deemed to be an interest free preferential loan (called a “notional loan”) for benefit-in-kind purposes,

- where the “call” (notional loan) is written off by the company in favour of the director or employee, the amount outstanding on the “call” is deemed to be an emolument of the director/employee, and
- where the shares are sold at above market value, the difference between the market value and the sale price is deemed to be an emolument of the director/employee.

The Revenue Commissioners are prepared to accept that where shares are acquired under —

- rights acquired between 6 April, 1986 and 28 January, 1992 under a share option scheme approved by them for the purposes of *section 10* of the *Finance Act, 1986*, or
- a share option scheme approved of in accordance with *Part 2* of *Schedule 11*,

the provisions of the section relating to a charge in respect of a notional loan or in respect of the deemed write off of a notional loan will not apply to such shares. However, the section will apply where such shares are disposed of at an over-value.

Details

Where, by reason of his or her employment, an employee (including a director) of a company acquires shares at undervalue in any company (whether the employer company or not), he or she is deemed to have the use of an interest-free loan (called a “notional loan”) and this loan is deemed to be a preferential loan to which the provisions of *section 122* apply. (2)

The section applies for any year in which an individual has a notional loan. Shares are acquired at undervalue where they are acquired without payment or for an amount which is less than the market value of fully paid up shares of the same class. The undervalue is the difference between market value of the shares and any payment made for them. (3)

The initial amount of the notional loan is the amount of the undervalue which is not chargeable to tax as an emolument. The loan remains outstanding until terminated. Subsequent payments in respect of the shares reduce the amount of the loan. (4)

A notional loan is terminated when: (5)

- (a) the amount of the call outstanding is fully paid,
- (b) the employee is no longer bound to account for the call,
- (c) the employee ceases to have a beneficial interest in the shares, or
- (d) the employee dies.

Where the employee ceases to have a beneficial interest in the shares or dies, *section 122(3)* is to apply as if an amount equal to the then outstanding amount of the notional loan had been released or written off from a loan within that section. (6)

Where shares are disposed of by an employee at above market value, the difference between the sale price and market value is deemed to be an emolument of the employee’s employment. (7)

Any charge to tax in respect of the release or writing off of a loan applies notwithstanding that the employment may have ceased. However, no such charge will arise after the death of the employee. (8) & (9)

Subject to specified modifications, the section applies where an individual acquires or disposes of an interest in shares which is less than the full beneficial ownership of those shares. (10)

A payment for shares includes giving any consideration or making any subscription (11) for the shares.

Commencement of section 122A

The section applies generally as on and from 4 March, 1998. Where shares were acquired before that date, a notional loan is deemed to have been made on that date in an amount equal to the amount of the loan then outstanding. [Section 15(2), Finance Act, 1998.]

CHAPTER 5

Miscellaneous charging provisions

Overview

This Chapter provides for the imposition of a Schedule E charge to tax on the receipt of certain payments, sums, benefits, shares, securities and assets which, but for the provisions of this Chapter, would not be chargeable to tax. The Chapter also outlines the tax treatment of convertible securities, restricted shares and forfeitable shares acquired by directors and employees.

123 General tax treatment of payments on retirement or removal from office or employment

Summary

Subject to the exemptions provided for in *section 201*, *section 123* imposes a charge to tax under Schedule E in respect of compensation payments for loss of office and certain other payments received on the termination of an office or employment or on a change in the functions or emoluments of an office or employment. *Section 123* is confined to payments which escape tax under the general law. *Section 201* may exempt from tax, depending on individual circumstances, all or part of such payments.

Details

Application

The payments charged to tax under this section are described by reference to the events in connection with which the payments are made. The charge is limited to payments “not otherwise chargeable to income tax”. The payments covered include payments on a change of functions or emoluments and commutation payments. Examples of the type of payments caught by the section, which would otherwise be treated as non-taxable, are — (1)

- compensation for loss of office,
- damages for breach of contract of service,
- a payment to obtain release from a contingent liability under a contract of service,
- a lump sum to commute a pension or pension rights,
- a gratuity on or after retirement entirely at the discretion of the employer, and
- redundancy, etc payments.

The charge to tax

Subject to the exemptions provided for in **section 201**, a charge to tax under Schedule E arises in respect of any payments to which this section applies which are made to holders or former holders of offices or employments, whether made by the employer or by a third party. Also included are such payments made to the executors or administrators of a deceased person. (2)

The charge to tax is extended to include payments made to the spouse, civil partner or any relative or dependant of the holders or former holders of offices or employments, or to any other persons on his/her behalf. It also provided that payments in kind are chargeable on their value at the time they are given.

When chargeable

Sums received in commutation of annual or periodical payments are chargeable for the year in which the commutation takes place and not the year in which the service ends. All other payments within the charge are treated as arising on the date of the termination of service or change of functions or emoluments in respect of which the payment is made. All such payments are treated as emoluments assessable under Schedule E. (4)

Deceased persons

An assessment may be made on a taxpayer's executors or administrators where the payment was made in the taxpayer's lifetime but he/she has died before an assessment was made on him/her. (5)

Information

A person making any payment chargeable under this section is required to give particulars of the payment in writing to the inspector within 14 days of the end of the year of assessment in which the payment is made. (6)

124 Tax treatment of certain severance payments

Summary

This section imposes a charge to tax under Schedule E on certain termination allowances and severance allowances paid to outgoing members of the Oireachtas and to former holders of ministerial and parliamentary offices.

Details

The section applies to — (1)

- a termination allowance, other than such part of a termination allowance consisting of a lump sum, payable under section 5 of the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992, and
- a severance allowance or a special allowance payable under Part V of the Ministerial and Parliamentary Offices Act, 1938.

These allowances are treated as profits or gains arising from an office or employment and, accordingly, are chargeable to tax under Schedule E. The tax chargeable is computed in accordance with the Schedule E basis of assessment (see **section 112(1)**), and the allowances are treated as emoluments to which PAYE applies (see **Chapter 4 of Part 42**).

124A Tax treatment of payments made pursuant to an order under section 2B of Employment Permits Act 2003

Summary

This section imposes an income tax charge on any payments made under a court order under Section 2B of the Employment Permits Act 2003. Any payments made under such an order are chargeable to tax under Schedule E and within the PAYE/USC system of tax deduction.

The payments shall not be treated as reckonable emoluments for the purposes of PRSI contributions.

Details

Any payments made under a court order under Section 2B of the Employment Permits Act 2003 are chargeable to tax under Schedule E and within the PAYE system of tax deduction. (1)

125 Tax treatment of benefits received under permanent health benefit schemes

Summary

A charge to tax under Schedule E is imposed on payments made to an individual under a permanent health benefit scheme approved by the Revenue Commissioners.

Details

“benefit” is a payment to a person under a permanent health benefit scheme in the event of loss or diminution of income due to ill health. (1)

“permanent health benefit scheme” is any scheme, policy, contract or other arrangement approved by the Revenue Commissioners which provides for periodic payments to an individual in the event of loss or diminution of income due to ill health.

A policy of permanent health insurance, sickness insurance or other similar insurance is a permanent health benefit scheme if it conforms either with a standard form of policy approved by the Revenue Commissioners or a form which varies from such a standard form where the variations are approved by the Revenue Commissioners and any conditions subject to which the variations are approved are met. (2)

Any benefits received by a person under a permanent health benefit scheme are treated as profits or gains arising from an employment and, accordingly, are chargeable to tax under Schedule E. The tax chargeable is computed in accordance with the Schedule E basis of assessment (see *section 112(1)*), and the benefits are treated as emoluments to which PAYE applies (see *Chapter 4 of Part 42*). (3)

The Revenue Commissioners may nominate any of their officers to perform and discharge any functions authorised by this section. (4)

126 Tax treatment of certain benefits payable under Social Welfare Acts

Summary

A charge to tax under Schedule E is imposed in respect of certain Social Welfare payments. Relief in the form of partial exemption is available in respect of unemployment benefit. In addition, any element of disability, unemployment or injury benefit payments which relate to amounts in respect of qualifying children is disregarded.

The payments listed in the Table to the Section are exempt from the charge to income tax from 1 January 2019 (section 6A) and previous years (section 6B). This puts the longstanding Revenue practice on a legislative footing.

Details

Definition

“the Acts” are the Social Welfare Acts.

“the Act of 2005 means the Social Welfare Consolidation Act 2005.”, (1)

The charge to tax

Payments of — (2)(a)

- widow’s (contributory) pension,
- orphan’s (contributory) allowance,
- retirement pension, and
- old age (contributory) pension,

are treated as emoluments to which *Chapter 4* of *Part 42* applies. As such these payments are chargeable to tax under Schedule E and are within the scope of the PAYE system.

From 1 July 2013 payments of – (2A)(a)&

- maternity benefit (b)(i)(ii)
- adoptive benefit and
- health and safety benefit

are treated as emoluments to which *Chapter 4* of *Part 42* applies. As such these payments are chargeable to tax under Schedule E and are within the scope of the PAYE system.

Any payment of an increase for a qualified adult under the State pension contributory, Pre 1953 State Pension Contributory, State Pension Transition or State Pension non-contributory shall be treated for all purposes of the Income Tax Acts as if it arises to and is payable to the beneficiary of the pension i.e. the pensioner who qualifies for the pension in the first instance. (2B)

Payments of — (3)(a)&(b)

- disability benefit,
- unemployment benefit,
- injury benefit which is comprised in occupational injuries benefit, and
- pay related benefit,

are treated as profits or gains from an employment and, accordingly, are chargeable to tax under Schedule E. The tax chargeable is computed in accordance with the Schedule

E basis of assessment (see *section 112(1)*), and the payments are treated as emoluments within the scope of the PAYE system (see *Chapter 4 of Part 42*). Excluded from the charge to tax, however, is the amount of any such payment, which is referable to a qualified child (within the meaning of section 2(3)(a) of the Social Welfare (Consolidation) Act, 2005).

Unemployment benefit payable in any period after 6 April 1997 to a person in short-time employment is exempt from tax. Short-term employment has the same meaning as in the Social Welfare Acts and, in effect, means a working arrangement where either — (3)(c)

- the number of days systematically worked in a working week is less than the number of days which is normal in a working week in the employment concerned – typically, a 3 days on and 2 days off arrangement, or
- the number of days systematically worked in a period of 4 consecutive weeks is less than the number of days which was normal in the employment before the reduction in the number of days worked, provided that the number of days worked is equal to at least one-half the number of days normally worked – typically, a week-on/week-off or fortnight-on/fortnight-off arrangement.

Exemptions

The first €13 of the aggregate of the amounts of unemployment benefit payable (other than amounts payable in respect of a qualified child within the meaning of section 2(3)(a) of the Social Welfare (Consolidation) Act, 2005) to a person for one or more days of unemployment comprised in an income tax week (that is, one of the successive periods of 7 days, beginning with the first day of an income tax year) is exempt from tax. (4)

The aggregate of disability benefit/injury benefit payable to an individual in respect of the first 18 days of claim (3 weeks – based on a 6 day week and excluding the 3 waiting days relating to each claim) in 1997–98 and 36 days of claim (6 weeks) in 1998–99 and subsequent years is exempt from income tax. (5)

This exemption has been removed for the year of assessment 2012 and subsequent years.

Ministerial orders

The taxation of disability benefit, unemployment benefit (other than unemployment benefit paid to individuals in short-term employment), injury benefit and pay related benefit payments comes into operation on such day or days as may be fixed by the Minister for Finance by order and different days may be fixed for different orders and for different categories of recipients. (6)(a)

Any order (bringing any benefit in whole or in part into charge to tax) which it is proposed to make must be laid before Dáil Éireann and may not be made until Dáil Éireann has approved the draft order. (6)(b)

Any DEASP payment made to an individual, listed in the Table paid on or after 1 January 2019, is exempt from the charge to income tax. (6)(A)

Any DEASP payment made to an individual prior to 1 January 2019, listed in the Table shall be treated as exempt from the charge to income tax in the year of assessment to which the payment relates. (6)(B)

TABLE

Description of payment (1)	Basis on which payment is made (2)
Basic supplementary welfare allowance	Section 189 of the Act of 2005
Back to education allowance	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Back to education allowance’
Back to work enterprise allowance	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Back to work enterprise allowance’
Back to school clothing and footwear allowance	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Back to school clothing and footwear allowance’
Carer’s support grant	Section 225 of the Act of 2005
Constant attendance allowance	Section 78 of the Act of 2005
Death benefit – funeral expenses	Section 84 of the Act of 2005
Death benefit – orphans	Section 83 of the Act of 2005
Direct provision allowance	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Direct provision allowance’
Disability allowance	Section 210 of the Act of 2005
Disablement gratuity	Section 75(8) of the Act of 2005
Domiciliary care allowance	Section 186F of the Act of 2005
Exceptional needs payment	Section 201 of the Act of 2005
Farm assist	Section 214 of the Act of 2005
Fuel allowance	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Fuel

	allowance’
Guardian’s payment (contributory)	Section 130 of the Act of 2005
Guardian’s payment (non-contributory)	Section 168 of the Act of 2005
Household benefit package	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Household benefit package’
Humanitarian assistance payment	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Humanitarian assistance payment’
Jobseeker’s allowance	Section 141 of the Act of 2005
Jobseeker’s transitional payment	Section 148A of the Act of 2005
Medical care	Section 86 of the Act of 2005
Part-time job incentive scheme	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Part-time job incentive scheme’
Rent allowance	Section 23 of the Housing (Private Rented Dwellings) Act 1982
Supplementary welfare allowance	Section 198 of the Act of 2005
Telephone support allowance	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Telephone support allowance’
Training support grant	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Training support grant’
Urgent needs payment	Section 202 of the Act of 2005
Widowed or surviving civil partner grant	Section 137 of the Act of 2005
Working family payment	Section 228 of the Act of 2005
Youth employment support scheme	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Youth

	employment support scheme’
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128F Key Employee Engagement Programme

Summary

This section provides for an exemption from income tax, USC and PRSI on any gain realised on the exercise of a qualifying share option under the Key Employee Engagement Programme (KEEP). The gain will however be subject to Capital Gains Tax on a subsequent disposal of the shares. KEEP is available to full time employees and directors of SME companies and is designed to support SMEs in Ireland in competing with larger enterprises in the recruitment and retention of key employees.

There are a number of conditions that must be satisfied for the relief to apply. For example, the share option must be granted at not less than market value on the date of grant, the share option must be held for a minimum period of one year before exercise (with limited exceptions) and the option must be exercised within ten years of grant. Monetary limits apply at both company and employee level. It applies to qualifying share options granted on or after 1 January 2018 and before 1 January 2024.

The commencement of this section is subject to a Ministerial Order.

Details

Definitions

‘connected persons’ shall be construed in accordance with section 10; (1)

‘control’ shall be construed in accordance with section 432;

‘EEA state’ means a state which is a contracting party to the EEA Agreement, which is the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement;

‘market value’ shall be construed in accordance with section 548;

‘qualifying share option’ means a right granted to an employee or director of a qualifying company to purchase a predetermined number of shares at a predetermined price, by reason of the individual’s employment or office in the qualifying company, where—

(a) the shares which may be acquired by the exercise of the share option are new ordinary fully paid up shares in a qualifying company, which carry no present or future preferential right to dividends or to a company’s assets on its winding up and no present or future preferential right to be redeemed. ‘Ordinary shares’ are shares forming part of a company’s ordinary share capital,

(b) the option price (which is a predetermined price at which an employee or director can purchase a share at some time in the future) at date of grant is not less than the market value of the same class of shares at that time,

(c) there is a written contract or agreement in place specifying—

(i) the number and description of the shares which may be acquired by the

exercise of the share option,

(ii) the option price, and

(iii) the period during which the share options may be exercised,

(d) the total market value of all shares, in respect of which qualifying share options have been granted by the qualifying company to an employee or director, does not exceed—

(i) €100,000 in any one year of assessment,

(ii) €250,000 in any 3 consecutive years of assessment, or

(iii) 50 per cent of the annual emoluments (which includes anything assessable to income tax under Schedule E) of the qualifying individual in the year of assessment in which the qualifying share option is granted,

(e) the share option is exercised by the qualifying individual in the relevant period,

(f) the shares are in a qualifying company, and

(g) the share option can not be exercised more than 10 years from the date of grant;

‘relevant period’ means a period of not less than 12 months beginning on the date a qualifying share option is granted to an employee or director of the qualifying company and ending on the date the share option is exercised by the qualifying individual;

‘qualifying individual’, in respect of a qualifying share option, means an individual who throughout the entirety of the relevant period—

(a) is a full time employee or full time director of the qualifying company, and

(b) is required to devote substantially the whole of his or her time to the service of the company, with a minimum requirement for the individual to work at least 30 hours per week for the qualifying company;

‘qualifying company’ means, subject to subsection (10), a company that—

(a) is incorporated in the State, or in an EEA state other than the State, and is resident in the State, or is resident in an EEA state other than the State and carries on business in the State through a branch or agency,

(b) exists wholly or mainly for the purpose of carrying on a qualifying trade (which are trading activities other than excluded activities) on a commercial basis with a view to the realisation of profit, the profits or gains of which are charged to tax under Case I of Schedule D,

(c) throughout the entirety of any relevant period—

(i) is an unquoted company none of whose shares, stock or debentures are listed in the official list of a stock exchange, or quoted on an unlisted securities market of a stock exchange other than—

(I) on the market known as the Enterprise Securities Market of the Irish Stock Exchange, or

(II) on any similar or corresponding market of the stock exchange—

(A) in a territory with which Ireland has a double tax treaty, or

(B) in an EEA state other than the State, and

(ii) is not regarded as a company in difficulty for the purposes of the

Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty¹

and

(d) at the date of grant of the qualifying share option –

(i) is a micro, small or medium sized enterprise within the meaning of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003² concerning the definition of micro, small and medium sized enterprises. This refers to enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding €50 million and/or an annual balance sheet total not exceeding €43 million, and

(ii) the total market value of the issued but unexercised qualifying share options of the company does not exceed €3,000,000;

‘excluded activities’ means—

(a) adventures or concerns in the nature of trade,

(b) dealing in commodities or futures in shares, securities or other financial assets,

(c) financial activities (as defined in section 488),

(d) professional services companies, which are services of a medical, dental, optical, aural, veterinary, architectural, quantity surveying, or surveying nature and related services, accountancy, auditing, taxation, finance, geological services, and services of a solicitor or barrister and other legal services,

(e) dealing in or developing land,

(f) building and construction,

(g) forestry, and

(h) operations carried out in the coal industry or in the steel and shipbuilding sectors.

Qualifying individual

In addition to the requirements of subsection (1), an individual shall not be a qualifying individual if his or her employment or office is not capable of lasting at least 12 months from the date on which the qualifying share option is granted. (2)(a)

An individual shall cease to be a qualifying individual if he or she (together with any connected person) acquires 15% of the ordinary share capital of the qualifying company. (2)(b)

Where the scheme rules permit, on the cessation of an office or employment an individual may avail of the preferential tax treatment of the section, provided the exercise of the share options occurs within 90 days of leaving the office or employment. (2)(c)

Relief

An exemption from income tax, USC and PRSI will apply to any gain realised on the exercise a qualifying share option granted on or after 1 January 2018 and before 1 January 2024. (3)

¹ OJ No. C249, 31.7.2014, p.1

² OJ No. L124, 20.5.2003, p.36

Direct holding companies

The definition of a qualifying company is extended to include an immediate parent company of a qualifying company, where the business of the parent company consists wholly of holding of shares in the qualifying subsidiary company. (4)

Relevant period

An exemption from the 12 month holding period applies in the case of a company reorganisation or sale, or on the death of the option holder, in certain circumstances. (5)

Capital Gains Tax

For capital gains tax purposes, the base cost of the shares (acquired by the exercise of the share option) on a subsequent disposal will be the price paid for the shares. (6)

Returns of information

A company will have an annual reporting requirement in respect of the share option scheme. The due date will be 31 March in the following year of assessment. (7)

A company on receipt of a request in writing from the Revenue Commissioners will be required to furnish certain information for publication purposes. The information required is the name, address and Companies Registration Office (CRO) number for the company, the principal economic sector of the company, the Region in which the company is located, the amount of tax advantage and details of share options exercised. (8)

No obligation as to secrecy imposed by section 851A shall preclude the Revenue Commissioners from publishing information obtained by them in accordance with this section. (9)

If a company does not comply with the reporting requirements set out in subsections (7) and (8), it will not be regarded as a qualifying company. (10)

Other

Subsection (11) includes a bona fide commercial test, which requires that the main purpose of granting the share option must be to recruit or retain employees. (11)

Where relief under this section applies, no relief will be given in respect of the Employment and Investment Incentive (Part 16). (12)