

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

## **Finance Act 2018 edition**

### **Part 8 Annual Payments, Charges and Interest**

**December 2018**



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## **PART 8** **ANNUAL PAYMENTS, CHARGES AND INTEREST**

### CHAPTER 1 *Annual payments*

#### **Overview**

This Chapter provides for the collection of tax at source from annual payments —

- at the standard rate of income tax in force for the year in which the annual payment is due where the payment is made out of profits/gains wholly within the charge to income tax (*section 237*), and
- at the standard rate of income tax in force at the time the payment is made where the payment is made out of profits/gains not within or not wholly within the charge to income tax (*section 238*).

The deduction at source provisions, however, do not apply in respect of annual payments made in return for the receipt of consideration which is not liable to income tax (*section 242*).

#### **237 Annual payments payable wholly out of taxed income**

##### **Summary**

This section provides for the effective collection of tax at source (that is, at the point of payment) from annuities and other annual payments and patent royalties payable wholly out of profits/gains brought into charge to income tax. By virtue of *section 104*, the provisions of this section are also applied to similar payments paid in respect of certain mines, quarries, etc. Under this section income tax may be deducted from the payment by the payer at the standard rate of income tax applicable for the year in which the amount payable becomes due.

It is to be noted that by virtue of *section 24(1)* this section cannot apply to payments of annuities and other annual payments made by an Irish resident company.

##### **Details**

##### ***Annual payments made out of taxed income – tax treatment***

Where an annuity or other annual payment is made wholly out of profits/gains within the charge to income tax — **(1)(a) & (b)**

- the person liable to pay the annuity or annual payment is charged to income tax on the profits/gains out of which the payment is to be made, and
- that person is entitled on making the payment to deduct and retain the income tax on the payment at the standard rate of income tax in force for the year in which the payment becomes due.

The meaning of “annual payment” has been established by case law and is generally taken as meaning payments which are “pure income profit” in the hands of the recipient. This arises where the recipient is not required to incur some expense or to provide goods or services or give some other consideration in return for the annual payment.

It is to be noted that the payer is entitled but not obliged to deduct income tax from

the payment. However, the entitlement given by this section to deduct and retain income tax at the standard rate out of the payment is the only method of obtaining tax relief in respect of the payment. Consequently, if the tax is not deducted and retained out of the payment, the cost of the tax will have to be borne by the payer without relief.

[As this section applies to annual payments paid wholly out of profits/gains brought into charge to income tax it follows that annual payments made out of exempt income or paid by persons exempt from income tax are not made out of income within the charge to income tax. Such annual payments are, in general, caught by *section 238*.]

The person entitled to the payment has no right to the amount deducted and retained by the payer under this section. The recipient must also allow the deduction so that the obligation of the payer to the recipient is discharged in full once the net amount of the payment is paid. (1)(d)&(c)

### ***Patent royalties***

A similar entitlement to deduct and retain a sum representing income tax at the standard rate of income tax for the year in which the payment becomes due applies in the case of any royalty or other sum paid in respect of the user of a patent wholly out of profits/gains brought into charge to income tax. (2)

### ***Excluded payments***

Excluded from the section are — (1) & (3)

- yearly interest of money, and
- rents and similar payments charged to tax under Case V of Schedule D.

## **238 Annual payments not payable out of taxed income**

### **Summary**

This section provides for the deduction of tax at source from annuities and other annual payments charged with tax under Schedule D where the annual payment is not payable or not wholly payable out of profits/gains brought into charge. The deduction is at the standard rate of income tax in force at the time of the payment.

Both this section and *section 237* apply to similar type payments (that is, annuities, other annual payments and patent royalties). However, this section applies only where the payments are not payable or not wholly payable out of profits/gains “brought into charge”. The reference to “brought into charge” is a reference to brought into charge to income tax. In the case of a person chargeable to income tax, this section applies to such annual payments, etc to the extent that the total of such payments made by a person in a tax year exceeds the income of the person chargeable to income tax for that year.

The section also applies to annual payments, etc made out of exempt income or paid by persons exempt from income tax, as such payments are made from income which is not within the charge to income tax. In addition, the section applies to annual payments, etc made out of capital.

As a company within the charge to corporation tax cannot be within the charge to income tax it follows that the section also applies to annual payments made by a company chargeable to corporation tax.

The section is extended by —

- **section 104** to certain rents and similar payments paid in respect of certain mines, quarries, etc,
- **section 683(3)** to capital payments made to non-residents for the sale of scheduled mineral rights, and
- **section 757(2)** to capital payments made to non-residents for the sale of patent rights.

Excluded from the scope of the section are —

- yearly interest of money, and
- rents and similar payments chargeable to tax under Case V of Schedule D, other than such payments made to non-residents – see **section 1041**.

## Details

### ***Annual payments not made out of taxed income – tax treatment***

Where an annuity or other annual payment charged to tax under Schedule D is not paid or is not wholly paid out of profits/gains brought into charge to income tax, the person who makes the payment (including a company chargeable to corporation tax), or the person making the payment on another person’s behalf, is obliged to deduct out of the payment a sum of income tax representing income tax at the standard rate of income tax in force at the time the payment is made. This requirement also applies in the case of patent royalties which are not paid or not wholly paid out of profits/gains brought into charge to tax. (2)

The person making the deduction is required to deliver without delay an account to the inspector (being such inspector as the Revenue Commissioners may direct) of the payment, or of so much of the payment not made out of profits/gains brought into charge to tax, and of the income tax deducted from it. On receipt of this account, the inspector is required to assess and charge the payment on the payer so as to enable the income tax deducted to be demanded. (1) & (3)

Where such an account is not made to the inspector or the inspector is not satisfied with the account, he/she may make an estimated assessment. (4)

### ***Application of income tax “collection” provisions***

The various mechanisms for the charging, assessing, collection and recovery of income tax are applied for the purposes of this section. 5)

A person aggrieved by an assessment made under this section may appeal the assessment by notice in writing to the Appeal Commissioners. The appeal must be made within 30 days after the date of the notice of assessment. The Appeal Commissioners will hear and determine an appeal in the manner provided for in Part 40A of the Act. (5A)

A person may not appeal if they have not filed a self assessed return and paid the amount due in accordance with their own self assessment (where the person is required to file a return).

The rules relating to the time and manner of accounting for and payment of income tax under this section are modified by **sections 239** and **241** in the case of certain companies. (6)

### ***Excluded payments***

Excluded from the scope of this section are —

- yearly interest of money, and

(2) & (7)

- rents and similar payments chargeable to tax under Case V of Schedule D except such payments made to non-residents – see *section 1041*.

## 239 Income tax on payments by resident companies

### Summary

This section regulates the time and manner in which Irish resident companies are to account for and pay income tax in respect of payments from which income tax is deductible. The income tax which is to be paid over under this section is treated as if it were corporation tax (that is, as part of the company's corporation tax liability). Accordingly, in paying preliminary tax under *Chapter 7 of Part 41A*, the company must take into account its liability under this section.

### Details

#### Definition

A “relevant payment” is a payment from which income tax is deductible and to which the provisions of *section 238(3) to (5)* apply, or a payment which is treated under *section 438* (loans to participators, etc) as an annual payment and in respect of which the company must account for income tax at the standard rate. (1)

The provisions of *section 238(3) to (5)* apply to —

- annual payments,
- patent royalties,
- by virtue of *section 246*, certain payments of interest,
- by virtue of *section 683(3)*, capital sums received on the sale of scheduled mineral assets, and
- by virtue of *section 757(2)*, capital sums received on sale of patent rights.

#### Application

The purpose of the section is to regulate the time and manner in which Irish resident companies account for and pay (or are to be repaid) income tax on relevant payments. (2)

#### Returns and payment

For each accounting period a company must make a return to the inspector of its relevant payments and of the income tax for which it is accountable in respect of those payments. This return must be made within 9 months from the end of the accounting period to which it relates but in any event not later than day 21 [day 23 in the case of a company filing its return electronically – *subsection (4A)*] of the month in which that period of 9 months ends. (3) - (4A)

The tax is due at the time by which corporation tax for the accounting period for which the return is required to be made under *subsection (3)* is due and payable and income tax so due shall be payable by the company in accordance with *section 958* – this brings the due dates for payment of income tax on relevant payments into line with those applying for corporation tax - and is payable without the making of an assessment. However, an assessment may be made where necessary whether or not tax has been paid. (5)

The inspector may make estimated assessments where a relevant payment is not included in a return or where the inspector is dissatisfied with a return. For the purposes of interest on unpaid tax, the tax on such assessment is treated as payable at the time it would have been payable if a correct return had been made. (6)



### ***Relief by way of set-off***

A company may offset the income tax deducted from relevant payments it receives in an accounting period against the income tax it is liable to pay on the relevant payments it makes in that period. The claim for any such set-off is to be included in the return made under **subsection (3)** and, where necessary, tax will be repaid. No legal proceedings for collecting income tax due under this section may be started in respect of tax which is subject to a claim for set-off. However, a claim for set-off cannot halt proceedings already begun. **(7) & (8)**

Income tax set-off under **subsection (7)** is treated as paid. A double set-off is prevented by providing that the same tax is not to be taken into account both under this section and **section 24(2)** (under which income tax deducted from annual payments, etc can be set against corporation tax). **(9)**

### ***Payments made which are not in an accounting period***

In the unusual situation where a company makes a relevant payment under deduction of tax at a time which is not in an accounting period, the previous provisions of this section apply with the following modifications — **(10)**

- the income tax must be paid at the same time,
- an income tax assessment may be made for the year of assessment in which the payment was made for the purposes of recovering the tax deducted.

**Section 240** provides collection procedures for tax assessed under this subsection.

### ***Treatment of income tax as corporation tax***

Income tax payable (after setting off in accordance with **subsection (7)** income tax suffered by the company) in respect of tax deducted from relevant payments is to be treated as corporation tax payable for the accounting period in which the payments are made. This provision applies for the purposes of the charge, assessment, collection and recovery of the tax and interest and penalties on that tax. **(11)(a)**

The company is not prevented from obtaining a repayment of the tax paid because of its treatment as corporation tax. **(11)(b)**

Only one assessment need be made under the various provisions of this section for all relevant payments in respect of which the tax is due on the same date. These provisions, however, do not apply to an assessment made under **subsection (10)** in respect of a relevant payment made at a time which is not in a company's accounting period. **(11)(c)**

### ***Saver for other collection methods***

Despite the collection procedures provided for by this section, the normal collection powers in the Tax Acts are preserved for use where necessary. **(12)**

### ***Regulations***

The Revenue Commissioners are authorised to make regulations modifying the provisions of this section. Every such regulation made is to be laid before Dáil Éireann. No such regulations have been made to date. **(13)**

#### **Example**

A company makes up its accounts annually to December 31.

Accounts for the year ended 31.12.2002 show the following payments —

	Gross	Tax deducted	Net
Royalties	€10,000	€2,000	€8,000
Mining rents	€20,000	€4,000	€16,000
Total tax deducted		€6,000	

The company received an annual payment of €1,000 gross from which tax of €200 had been deducted.

The company must remit to the Collector-General as part of its preliminary tax —

Tax deducted	€6,000
Less tax suffered	<u>€200</u>
Net amount to be remitted	<u>€5,800</u>

## 240 Provisions as to tax under section 239

### Summary

This section applies certain provisions of the Income Tax Acts to the charge, assessment, collection and recovery of income tax under *section 239(10)* (that is, in the unusual case of a payment made under deduction of tax at a time which is not in an accounting period of a company).

### Details

Apart from *subsection (5)*, this section only applies in a situation where income tax is due under *section 239(10)*. (1)

The provisions of the Income Tax Acts providing for the charging, assessing and collection of income tax are applied for the purposes of the income tax to which the section applies. (2)

Any income tax payable under *section 239(10)* (without the making of an assessment) shall, for any day or part of a day from the date when it becomes due until payment, carry interest as follows: (3)(a)

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

*Subsections (3) to (5) of section 1080* apply to interest on income tax under *section 239(10)*. These subsections provide that — (3)(b)

- the interest is to be paid to the Revenue Commissioners without deduction of income tax,
- the interest is not allowable as a deduction in computing profits,
- the interest is recoverable as if it were itself income tax, and

- in court proceedings a certificate from an officer of the Revenue Commissioners regarding the amount of interest due is to be evidence until the contrary is proved.

Where income tax assessed under *section 239(10)* is not paid on the due date it will not be possible to avoid an interest charge, that is, *section 1080(1)(a)* will apply to charge interest in accordance with *section 1080(1)(c)* for each day or part of a day from the date when the tax became due until payment. (4)

Where a loan is made by a close company to a participator, the loan is treated (under *section 438*) as a net annual payment after deduction of income tax at the standard rate for which tax the company must account to Revenue. If, after the company is assessed to that tax under *section 239*, the participator repays the loan, the company is entitled to a repayment of the tax. However, the company is not entitled to be repaid any interest it may have paid on that tax. (5)

A person aggrieved by an assessment made under this section may appeal the assessment by notice in writing to the Appeal Commissioners. An appeal must be made within 30 days after the date of the notice of assessment. The Appeal Commissioners will hear and determine an appeal in the manner provided for in Part 40A of the Act. (6)

A person may not appeal if they have not filed a self assessed return and paid the amount due in accordance with their own self assessment (where the person is required to file a return).

## 241 Income tax on payments by non-resident companies

### Summary

Under *section 238* all taxpayers who make certain payments under deduction of income tax are required to account to the Revenue Commissioners for the tax deducted. In the case of yearly interest payments the obligation to deduct tax and account to Revenue for the tax deducted is contained in *section 246*. Where the payments are made by a company which is resident in the State, the return and payment requirements are contained in *section 239*

This section deals with cases where such payments are made by companies which are not resident in the State but which are liable to Irish corporation tax because, for example, they are trading in the State through a branch or agency. Under this section such a company is required, if it is making payments under deduction of income tax, to make a return of those payments to the inspector. In addition, the income tax deducted from the payments is treated as part of the company's corporation tax liability. Accordingly, in paying preliminary tax under *section 958*, the company must take into account its liability arising under *section 238* and, in the case of interest payments, *section 246*.

### Details

The companies to which the section applies are non-resident companies which are — (1)

- required to account to the Revenue Commissioners for payments made under deduction of tax as required by *section 238* or *section 246*, and
- within the charge to corporation tax.

Such a company is required to make to the inspector a return of payments made under deduction of tax and of the tax deducted. The income tax concerned is treated as corporation tax of the company's accounting period. This provision applies for the (2)

purposes of the charge, assessment, collection and recovery of the tax and any interest or penalties on the tax.

## 242 Annual payments for non-taxable consideration

This section excludes certain annuities and other annual payments from the rules of this Chapter requiring deduction of tax at source. The section applies – with certain exceptions – to any annuity or other annual payment made under a liability incurred for consideration which is not or is not fully taken into account in computing the taxable income of the person making the payment. (1)

The exceptions are interest, annuities granted in the ordinary course of a business of granting annuities and payments to an individual for surrendering or transferring an interest in settled property to the holder of a subsequent interest.

Where the section applies — (2)

- the payment must be made without deduction of income tax,
- no deduction is allowed in respect of the payment in computing the income or total income of the person by whom it is paid, and
- the payment is not to be treated as a charge against the income of the person making the payment for the purposes of corporation tax.

## 242A Tax treatment of certain royalties

### Summary

*Section 238* provides for a deduction of tax at source from certain annual payments, and patent royalty payments. *Section 242A* allows royalty payments to be paid free of withholding tax in certain circumstances.

The section provides that, subject to certain conditions:

1. royalty payments can be paid free of withholding tax where they are made to companies that are tax resident in relevant territories. A relevant territory is a EU Member State other than Ireland or a country with which Ireland has a tax treaty, and
2. the general charge to income tax or corporation tax is removed for companies that are tax resident in relevant territories and in receipt of a royalty payment to which the section applies.

The conditions that apply in each case are:

- the royalty payment must be made by a company in the course of a trade or business carried on by the company,
- the receiving company must be resident in a relevant territory, and the payment must be made for bona fide reasons and not as part of any tax avoidance arrangement, and
- the country of the recipient must have a tax that generally applies to royalty income receivable in that country from sources outside that territory.

### Details

#### Definition

“relevant territory” is given the same meaning that it has in *section 172A*. A relevant territory is an EU Member State other than the State or a territory with which Ireland has a tax treaty. (1)

The royalty payments to which the section applies are royalty payments that meet the (2)

following conditions:

- (a) the royalties are paid by a company in the course of a trade or business carried on by it.
- (b) the royalties are paid to a company:
  - that is not resident in the State,
  - that is resident in a relevant territory that imposes a tax that generally applies to royalties receivable there by companies from sources outside that territory, and
- (c) the royalty payment is paid for bona fide commercial reasons and do not form part of a tax avoidance scheme.

The section does not apply to royalties paid to a company in connection with a trade or business carried on by it in the State through a branch or agency. Such royalties remain within the charge to Irish tax.

### ***Non- application of section 238***

The requirement to apply withholding tax under *section 238* does not apply to any payment to which this section applies. (3)

### ***Non-resident companies***

This subsection removes the royalty payments to which this section applies from the substantive charge to Irish tax that would otherwise apply. (4)

### ***Commencement***

The section applies to a payment made on or after 4 February 2010.

## CHAPTER 2

### *Charges on income for corporation tax purposes*

#### **Overview**

This Chapter provides relief from corporation tax for charges on income (*section 243*), places a ringfence on the deduction of charges incurred by a company in an activity which is taxable at the standard rate of corporation tax (*section 243A*) and provides relief for certain charges on income on a value basis (*section 243B*).

#### **243 Allowance of charges on income**

##### **Summary**

This section provides for relief from corporation tax in respect of annuities and other annual payments, patent royalties, rents and other similar payments, and, to a limited extent, interest, paid in connection with a trade. The principle underlying the section is that these payments (which in the hands of the recipient are in the nature of “pure income” receipts) known as “charges on income” are to be set against the total profits of the company and not against the particular source of income with which the payment is connected. The section incorporates the general prohibition, except for very limited exceptions, on the allowance of interest as a charge.

**Details****Charges on income**

The payments to be deducted as charges on income are —

(1), (1A)  
& (4)

- yearly interest (but see below), annuities or other annual payments,
- short interest payable to a bank, building society, stockbroker or discount house carrying on business in the EU (but see below),
- other similar type payments mentioned in *section 104* (these include rent and similar payments paid in respect of premises (including land) or easements used in connection with mining, quarrying, etc),
- patent royalties referred to in *section 237(2)*.

Short interest payable to a bank, stockbroker or discount house is regarded as paid on the date it is debited to the company's account in the books of the bank (or building society), etc. It is to be noted that *subsection (7)* prohibits interest being treated as a charge on income except in very limited circumstances.

Excluded from the concept of a “charge on income” are any payment in the nature of a dividend or distribution of profits or any payment which is deductible in computing profits for corporation tax purposes (for example, yearly interest paid to a bank (including a building society) in the State and incurred wholly and exclusively for the purposes of a trade).

The reference in *subsection (1)* to “other express exceptions” is designed to take account of such provisions as *section 846(2)(b)* which excludes from the definition of charges on income interest on money borrowed by a non-resident financial concern for the purchase of tax-free securities (within the meaning of *section 845*).

**Deduction for charges paid**

Charges on income are allowed as deductions against total profits for corporation tax purposes. The charges must be paid in the accounting period out of the profits brought into charge to corporation tax for that accounting period and are to be allowed against the total profits as reduced by any other relief (for example, relief for losses) except group relief in accordance with *section 420*. (2)

**Example**

A company makes up its accounts for the year ending 31 December, 2002.

The accounts and computations show —

Trade A	Profit	€15,000
Trade B	Loss	€2,000
Rental income		€1,000
Royalties paid		€3,000

The assessments to corporation tax are —

Trade A	Profit	€15,000
Trade B	Profit	NIL

Rental income	€1,000
Profits of accounting period	€16,000
Trade B – loss relief claimed under <i>section 396(2)</i>	€2,000
Profits as reduced by relief other than charges on income and group relief	€14,000
Less charges on income (that is, royalties paid)	€3,000
Net	€11,000
Tax at 16%	= €1,760

If the company is entitled to group relief the amount in respect of which the relief is due will be deducted from the sum of €11,000.

### ***Deduction for charges paid before trade set up and commenced***

In the case of a trade set up and commenced after 21 January, 1997, charges on income paid by a company before it sets up and commences to trade are, where those charges are paid wholly and exclusively for the purpose of the trade, treated as paid at the time of the commencement of the trade and, consequently, are allowable deductions under this section. Charges on income qualifying for relief under this provision do not qualify for relief under any other provision of the Tax Acts. (3)

### ***Charges paid to non-residents***

Charges on income paid to non-residents are deductible from profits in the same way as if they had been paid to a company resident in the State. In such cases the general requirement that the payment must be made under deduction of income tax is, in particular circumstances, subject to being overruled by a double taxation agreement. Accordingly, to cater for such situations, the paying company may be authorised by the Revenue to pay without deduction of income tax (that is, pay gross) or deduct income tax at a reduced rate. Where this happens, the company is not to be denied a deduction from its profits for such a payment. Companies can also receive interest paid gross on an advance from a bank carrying on a bona fide banking business in the State (by virtue of *section 246(3)(a)*), and interest paid gross on quoted eurobonds (by virtue of *section 64(2)*). In addition, a company is not denied a deduction from its profits in cases where an exemption from withholding tax is provided under the Interest and Royalties Directive in *section 267I*. (5)

### ***Exceptions***

A deduction is prohibited if the payment is charged to capital or is not ultimately borne by the company. A deduction is also prohibited if the payment is not paid under a liability incurred for valuable and sufficient consideration. In the case of a non-resident company, there is the additional condition that the liability must be incurred for the purposes of a trade carried on in the State through a branch or agency. However royalty payments that are revenue in nature are not denied a deduction solely because they are included in the cost of an asset under International Financial Reporting Standards (IFRS) treatment. (6)

### ***Treatment of interest***

In general, interest is not to be treated as a charge on income. However, excluded from this general prohibition is interest on loans applied in acquiring a material interest in certain companies, mainly trading companies and companies whose income consists wholly or mainly of income chargeable under Case V of Schedule D (see *section 247*). (7) & (8)

The provisions of *section 249*, which restrict relief for interest in a case where a person recovers capital from a company in which that person has acquired an interest financed by borrowed moneys and does not apply the recovered capital in repaying the borrowed moneys, are applied for the purposes of restricting interest treated as a charge on income under *subsection (8)*. (9)

### **243A Restriction of relevant charges on income**

#### **Summary**

This section places a ringfence on the deduction of charges incurred by a company in an activity which is taxable at the standard rate of corporation tax.

The general corporation tax rule in relation to “charges on income” is that charges may be offset against total profits of the company for the accounting period. Any charges incurred for the purposes of a trade which are not offset in this way are carried forward and offset against the profits of the company concerned in subsequent accounting periods.

This section ringfences the offset of trading charges incurred in a trade which is subject to tax at the standard corporation tax rate. Where such charges incurred in an accounting period are being offset sideways in that accounting period or backwards to the previous accounting period, they may only be offset against income which is taxable at the standard rate. A similar restriction applies to the offset of such losses under group relief (see *section 420A*).

#### **Details**

“relevant trading charges” are identified as charges paid for the purpose of a trade other than so much of the charges as relate to an excepted trade (i.e. a trade which is taxable at the 25 per cent rate). The section provides that relevant trading charges may not be set off under *section 243* against a company’s profits for an accounting period. Instead, those charges may only be set against relevant trading income and certain other income. “Relevant trading income” is identified as trading income of a company for an accounting period other than trading income which is taxable at the 25 per cent rate. (1), (2)& (3)

The section thus allows charges paid for a trade the income from which is taxed at the standard corporation tax rate to be offset only against income taxable at the standard rate. Standard rate charges may also be set against income of a trade of non-life insurance, reinsurance and against the investment income of a life assurance company that is attributable to its shareholders.

### **243B Relief for certain charges on income on a value basis**

#### **Summary**

This section provides relief for certain charges on income on a value basis. It provides relief for relevant trading charges on income (i.e. charges on income paid



for the purposes of a trade the income from which is taxable at the standard corporation tax rate) paid in an accounting period which have not otherwise been relieved. This is done by reducing corporation tax for the accounting period by an amount determined by applying the relevant corporation tax rate to the amount of the unrelieved charges on income.

## Details

### Definitions

“relevant corporation tax” is the corporation tax which can be reduced by the new relief. It is the corporation tax which would be chargeable for the accounting period apart from: (1)

- payments to Revenue of tax withheld by the company from certain payments (*sections 239 and 241*),
- loss relief under *sections 396B and 420B*, and
- surcharges on undistributed income (*sections 440 and 441*).

“relevant trading charges on income” means charges on income paid wholly and exclusively for the purposes of a trade carried on by the company the income from which is taxable at the standard corporation tax rate.

### The relief

Where the amount of relevant trading charges on income paid by a company in an accounting period exceeds amounts allowed as deductions against income of the company (under *section 243A*), the company can claim relief in respect of the excess on a value basis. (2)

Where a company claims relief under this section in respect of the excess, the relevant corporation tax for the accounting period is to be reduced by an amount determined by applying the standard rate to those “relevant trading charges”. (3)

### Carry forward of unused amounts

Special rules apply to determine the amount of the charges which are to be regarded as having been used for the purposes of the carry forward of losses. The amount of charges which are regarded as having been used is determined by regrossing the relief given at the standard corporation tax rate. (4)

## CHAPTER 3

### *Principal provisions relating to the payment of interest*

## Overview

This Chapter provides for a number of tax reliefs in respect of the payment of interest. *Sections 244 and 245* are concerned with relief for the payment of interest for the purchase of a sole or main residence while *section 244A* provides for tax relief at source in the case of mortgage interest. *Sections 247 to 253* are concerned with the granting of relief for interest paid on loans used to acquire an interest in a business. In addition, the Chapter imposes a withholding tax on the payment of interest by companies and on the payment of interest to non-residents generally (*section 246*). Finally, the Chapter contains a number of measures concerned with the withdrawal of capital from a business (*section 254*) and the payment of interest less tax (*section 255*).

## 244 Relief for interest paid on certain home loans

### Summary

This section concerns “mortgage interest relief” (that is, the relief given for interest paid by an individual on a loan used for the purchase, repair, development or improvement of his/her sole or main residence or of the sole or main residence of his/her former or separated spouse, civil partner or of a dependent relative). The section identifies the type and amount of interest which qualifies for relief and grants that relief directly as an expenditure-based relief.

By virtue of *section 458*, the general provisions relating to the allowances, deductions and reliefs set out in *Chapter 1 of Part 15* apply for the purposes of this section. These include the need for a claimant to make a return of his/her total income on the appropriate form and to formally claim relief under this section. They also include provisions governing the details to be included in a claim, the declaration which is required to be made, the manner in which the relief is to be given, the income on which the relief is to be allowed and the rate of tax at which repayments are to be made.

The following tables illustrate the rates and ceilings applicable for the tax years 2007 to 2020 inclusive (i) for qualifying loans taken out between 1 January 2004 and 31 December 2012 and (ii) for qualifying loans taken out by individuals to purchase their first qualifying residence during the period 1 January 2004 to 31 December 2008 to which the 30% rate of relief applies.

Year	First Time Buyer		Non First Time Buyer	
	Rate	Ceiling	Rate	Ceiling
2007	20%	€16,000 Married/Widowed €8,000 Single	20%	€6,000 Married/Widowed €3,000 Single
2008	20%	€20,000 Married/Widowed €10,000 Single	20%	€6,000 Married/Widowed €3,000 Single
2009	25% year 1 & 2, 22.5% year 3, 4 & 5, 20% year 6 & 7.	€20,000 Married/Widowed €10,000 Single  Note: Ceiling apportioned Jan to Apr and May to Dec 2009 only	15%	€6,000 Married/Widowed €3,000 Single  Note: Ceiling apportioned Jan to Apr and May to Dec 2009 only
2010 – 2017 With effect from 2011 relief	25% year 1 & 2, 22.5% year 3, 4 & 5, 20% year 6 & 7.	€20,000 Married/Widowed €10,000 Single	15%	€6,000 Married/Widowed €3,000 Single

extended to include Civil Partners/ Surviving Civil Partners				
2018	25% year 1 & 2, 22.5% year 3, 4 & 5, 20% year 6 & 7.	€15,000 Married/Widowed/ Civil Partners/Surviving Civil Partner €7,500 Single	15%	€4,500 Married/Widowed/Civil Partners/Surviving Civil Partner €2,250 Single
2019	25% year 1 & 2, 22.5% year 3, 4 & 5, 20% year 6 & 7.	€10,000 Married/Widowed/ Civil Partners/Surviving Civil Partner €5,000 Single	15%	€3,000 Married/Widowed/Civil Partners/Surviving Civil Partner €1,500 Single
2020	25% year 1 & 2, 22.5% year 3, 4 & 5, 20% year 6 & 7.	€5,000 Married/Widowed/ Civil Partners/Surviving Civil Partner €2,500 Single	15%	€1,500 Married/Widowed/Civil Partners/Surviving Civil Partner €750 Single

<b>Loans taken out between 1 JANUARY 2004 – 31 DECEMBER 2008 to buy First Qualifying Residence (see note below)</b>		
<b>Year</b>	<b>Rate</b>	<b>Ceiling</b>
2012 - 2017	30%	Years 1 - 7 €20,000 Married/Widowed/Civil Partners/Surviving Civil Partner €10,000 Single  Year 8 et seq. €6,000 Married/Widowed/ Civil Partners/Surviving Civil Partner €3,000 Single
2018	30%	Years 1 - 7 €15,000 Married/Widowed/Civil Partners/Surviving Civil Partner €7,500 Single  Year 8 et seq. €4,500 Married/Widowed/ Civil Partners/Surviving Civil Partner €2,250 Single

2019	30%	<p>Years 1 - 7 €10,000 Married/Widowed/Civil Partners/Surviving Civil Partner €5,000 Single</p> <p>Year 8 et seq. €3,000 Married/Widowed/ Civil Partners/Surviving Civil Partner €1,500 Single</p>
2020	30%	<p>Years 1 - 7 €5,000 Married/Widowed/Civil Partners/Surviving Civil Partner €2,500 Single</p> <p>Year 8 et seq. €1,500 Married/Widowed/ Civil Partners/Surviving Civil Partner €750 Single</p>

**NOTE:** The 30% rate of relief is available in respect of interest paid on qualifying loans taken out during the period 1 January 2004 to 31 December 2008 used to purchase an individual's (i) first qualifying residence, or (ii) second or subsequent qualifying residence but only where the first qualifying residence was purchased on or after 1 January 2004.

The following table illustrates the percentage of qualifying interest allowable in respect of a qualifying loan for the tax years 2007 to 2020 inclusive.

Year	Qualifying interest paid
Up to and including 2017	100%
2018	75%
2019	50%
2020	25%

Tax relief at source (TRS) for mortgage interest relief applies from 1 January 2002 – see *section 244A*.

### Details

#### Definitions

“Qualifying interest” in relation to an individual and a year of assessment means - **(1)(a)**

- as respects a year of assessment before 2018, the amount of interest paid by the individual in respect of a qualifying loan, and
- as respects the years of assessment 2018, 2019 and 2020, the amount of qualifying interest is reduced to 75 per cent, 50 per cent and 25 per cent respectively of the amount of interest paid by the individual in

respect of a qualifying loan.

A “qualifying loan” is a loan (which includes any arrangement under which interest is payable) used solely to buy, repair, develop or improve a qualifying residence or a loan used in paying off a loan used for such a purpose.

A “qualifying residence” is the sole or main residence of —

- an individual,
- a former or separated (that is, separated under a court order or by deed of separation or separated in such circumstances that the separation is likely to be permanent) spouse or civil partner of the individual,
- a dependent relative of the individual. A dependent relative, in relation to an individual means any of the persons mentioned in *paragraph (a) or (b) of subsection (2), or in paragraph (a) or (b) of subsection (2A) of section 466* in respect of whom the individual is entitled to a tax credit under that section.

The residence must be situated in an EEA state and must be a building or part of a building suitable for use as a dwelling and includes any garden attached to the building.

“EEA State” means a state (including the State) which is a contracting party to the EEA Agreement.

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

***Relievable interest for years of assessment up to and including 2017***

“relievable interest” is the amount of interest paid by an individual in a year of assessment in respect of a qualifying loan on which relief is given. The amount of relievable interest for the years of assessment up to and including the year 2017 is:

- (i) in the case of a jointly assessed married couple, a widowed person or a surviving civil partner – the qualifying interest, or, if less, €6,000.
- (ii) in the case of a single person – the qualifying interest, or, if less, €3,000.

Notwithstanding the preceding provisions, for the first 7 years for which interest relief under this section is due, the amount of relievable interest for the years of assessment up to and including the year 2017 for loans taken out between 1 January 2004 and 31 December 2012 is:

- (i) in the case of a jointly assessed married couple, jointly assessed civil partners, a widowed person or a surviving civil partner – the qualifying interest, or, if less, €20,000.
- (ii) in the case of a single person – the qualifying interest, or, if less, €10,000.

In the case of a person assessed under *section 1017* or *section 1031C*, qualifying interest paid by the person’s spouse or civil partner is treated as having been paid by that person if the spouse or civil partner would have been eligible for relief in respect of that payment had he/she been assessed to tax under *section 1016* or *section 1031B* (assessment as single persons). **(1)(b)**

The 7 year period in which enhanced relief may be obtained (i.e. first time buyer relief) is reduced by 1 year for each year in which the individual was entitled to relief. **(1)(c)**

Mortgage interest relief is abolished with effect from 1 May 2009. **(1A)(a)**

***Notwithstanding this abolition, relief will continue to be available for the tax years 2010 to 2020 inclusive in respect of qualifying interest paid on loans taken out between 1 January 2004 and 31 December 2012.*** **(1A)(b)**

The recycling of old loans by individuals is prohibited (by way of taking out of new loans to repay existing loans). However, the interest on that part of the new loan used to pay off an old qualifying loan may still qualify for tax relief if the interest paid on the old loan (had it not been repaid) would qualify for tax relief. (1A)(c)

The ceilings on interest relief for non-first-time buyers for the tax year 2009 only are apportioned as to the periods 1 January 2009 to 30 April 2009 and 1 May 2009 and 31 December 2009. (1A)(d)

### ***The relief***

Mortgage interest relief is given by means of a reduction in income tax. A taxpayer's income tax is reduced by a sum equal to the "appropriate percentage" of the relievable interest. (2)(a) & (b)

The "appropriate percentage", for loans taken out between 1 January 2004 and 31 December 2012, is: (2)(a)(i)

- For first time buyers relief is available @ 25% for years 1 and 2, @ 22.5% for years 3, 4 and 5 and @ 20% for years 6 and 7.
- For non-first time buyers relief is available @ 15%.

***For individuals who purchased their first qualifying residence on or after 1 January 2004 and on or before 31 December 2008, (or second or subsequent qualifying residence where the first qualifying residence was purchased during that period) relief is available at 30%.*** (2)(a)(ii)

### ***Bar on deducting interest from income***

Interest qualifying for relief under this section is (except for the purpose of section 188 (age exemption) not deductible in calculating total income. (2)(c)

### ***Relief where one spouse or civil partner is a previous claimant***

The benefit of the enhanced relief for the first 7 years of entitlement is not lost completely in the case of a married couple or civil partners where one partner was previously entitled to mortgage interest relief. Where this happens, the interest relief, other than the additional relief that would be allowable in the case of a first-time buyer, is treated as given equally to both spouses. The additional relief is then reduced by one-half and given to the spouse or civil partner who had not previously obtained mortgage interest relief. (3)

#### **Example:**

Assume mortgage interest totalling €11,000 is paid by a married couple or civil partners one of whom was previously entitled to mortgage interest relief.

- (i) €6,000 relief (the maximum normally available to non-first time buyer married couples or civil partners) is divided equally between the spouses/civil partners i.e. €3,000 each.
- (ii) The additional €5,000 that would be available if they were both first-time claimants is reduced by 50% to €2,500 and given to the spouse/civil partner who had not previously been given mortgage interest relief. In total, therefore, the relievable interest for this couple is €8,500 [€3,000+ €3,000+ €2,500].

### ***Artificial loans***

A measure is included to prevent abuse of the relief by the artificial creation of loans in relation to a dwelling. Interest on a loan, which would otherwise be a qualifying loan, is not eligible for relief in certain circumstances. These circumstances include (4)

loans applied in —

- the purchase of a residence from a spouse or civil partner,
- the repurchase of a residence previously disposed of,
- the purchase of a residence from a connected person for more than its actual value.

This rule does not apply in the first two sets of circumstances mentioned above where a husband and wife or civil partners are permanently separated.

***Purchase of new residence before sale of old residence***

A measure of extra relief is provided to cater for the situation of a person changing house who buys or otherwise acquires a new sole or main residence before disposing of the old sole or main residence. It may be that both houses are on mortgage and that there is an overlapping period during which interest is being paid on both loans. If it can be established that it was, from the outset, the person's intention to sell the former residence and that the person has been taking all reasonable steps to do so, the former residence is to be treated as a qualifying residence under the section and the interest on the loan outstanding on that property will rank for tax relief under this section accordingly. The maximum period for which this additional relief will be given is 12 months from the date the new sole or main residence was acquired. This additional relief is subject to the overall restrictions on the amount of interest qualifying as relievable interest. (5)

***Retention of relief in case of death***

The position of a deceased person's spouse, civil partner or dependent relative is safeguarded. Where the interest is paid by the personal representative of a deceased person, or by trustees under the person's will, on a loan which would be a qualifying loan under the section, the interest is eligible for relief. (6)

***Certain loans taken out in 2012 and 2013***

Interest relief is available for the tax years 2013 to 2020, in respect of interest paid on a loan taken out and used by an individual;

- on or after 1 January 2012 and on or before 31 December 2012 to purchase a site on which his or her home is to be constructed; or (7)(a)
- on or after 1 January 2012 and on or before 31 December 2013 to construct the said home on that site. (7)(b)

Interest relief is available for the tax years 2013 to 2020, in respect of interest paid on a loan for which loan approval in writing was in place on or after 1 January 2012 and on or before 31 December 2012; and (8)

- part of the loan was used in 2012 by that individual to repair, develop or improve his or her home, and (8)(a)
- the balance of the loan was used in 2013 by that individual to repair, develop or improve his or her home. (8)(b)

This subsection deems the loans in ***subsection (7)*** and ***(8)(b)*** to be qualifying loans taken out in 2012. (9)

Relief shall not be granted in respect of interest paid on any loan to which ***subsection (7)*** or ***(8)*** applies unless the required Planning Permission was granted on or before 31 December 2012 and such Permission has not ceased to exist. (10)

***Relievable interest for years of assessment 2018, 2019 and 2020*** (11)

The definition of ‘relievable interest’ in *subsection (1)(a)* is amended for the years of assessment 2018, 2019 and 2020 to substitute the ceilings on interest relief as follows:

Year	Married, in a civil partnership, widowed, or a surviving civil partner		Single	
	First time buyer	Non-first time buyer	First time buyer	Non-first time buyer
Before 2018	€20,000	€10,000	€6,000	€3,000
2018	€15,000	€7,500	€4,500	€2,250
2019	€10,000	€5,000	€3,000	€1,500
2020	€5,000	€2,500	€1,500	€750

### 244A Application of *section 244* (relief for interest paid on certain home loans)

#### Summary

This section, which applies from 1 January, 2002, introduced tax relief at source (TRS) for mortgage interest relief – that is, the tax relief in respect of interest paid on a loan used for the purchase, repair, development or improvement of a person’s sole or main residence. From the commencement of TRS, that relief is no longer given through the tax system but, instead, is given “at source” when the borrower makes a mortgage repayment to the mortgage lender. The qualifying interest portion of the repayment is reduced by a percentage equal to the standard rate of income tax – thereby giving relief to the borrower. The mortgage lender is, in turn, reimbursed with an amount equivalent to that reduction by the Revenue Commissioners.

There is no change in the basic qualifying conditions for mortgage interest relief as a result of the TRS arrangements. A “qualifying residence” continues to be one which is the sole or main residence of the individual claimant, or his/her former or separated spouse, or his/her dependent relative but it has to be located in the State. (Relief for qualifying interest paid in respect of a loan on a sole or main residence in Northern Ireland or Great Britain continues to be given, but outside of TRS). The upper limits to the interest qualifying for relief – which (see *section 244*) depend on the claimant’s marital status and whether or not he/she is a first-time buyer – apply under TRS.

Qualifying loans are loans which are used solely for the purchase, repair, development or improvement of a qualifying residence *but* such loans within TRS are those which are secured on the residence, that is, mortgage loans. Interest on qualifying loans which are not mortgage loans continue to attract tax relief but this is given through the tax system and not through TRS.

TRS extends relief to persons with qualifying loans but who previously did not get relief as their taxable income was insufficient to avail of the relief.

An officer of the Revenue Commissioners may request in writing a “qualifying lender” to provide such information in relation to qualifying loans as is reasonably necessary to determine the relief due to an individual for interest paid on certain home loans and the “qualifying lender” is obliged to provide the Revenue Commissioners with the information requested.



## Details

### *Definitions*

The most important terms defined are — (1)(a)

“qualifying dwelling” which makes it clear that the residence in respect of which the mortgage interest is paid must be situated in the State;

“qualifying mortgage loan” specifies that the loan in question must be secured on a qualifying dwelling i.e. a mortgage loan.

### *Purpose of section*

The intention of the section is stated, that is, that tax relief for certain interest (due under *section 244*) is, in certain circumstances, to be given by way of deduction at source and in no other manner. (1)(b)

### *TRS*

Individuals paying qualifying mortgage interest for which relief is due under *section 244* are entitled, in accordance with regulations, to deduct and retain a percentage equal to the standard rate of income tax for the year of assessment in which the payment is due. (2)(a)

A mortgage lender to which the net payment is made is obliged to accept, in accordance with regulations, that payment as discharging the individual’s full liability in respect of mortgage interest, and the mortgage lender may recover from Revenue the equivalent of the amount withheld by the borrower. (2)(b)

### *Qualifying lenders*

The bodies which are qualifying lenders are listed. These comprise banks, building societies, local authorities, mortgage lenders in the EEA corresponding to banks and building societies which lend on the security of property based in the State, and other bodies which apply to Revenue to be registered as qualifying lenders, and which Revenue are satisfied should be registered. (3)

Revenue are required to maintain and publish a list of qualifying lenders. They register applicants they regard as being entitled to be registered as qualifying lenders and may also cancel a body’s registration. A body may appeal against Revenue’s refusal to register it or against cancellation of its registration.

### *Administration of TRS*

The Revenue Commissioners are to make regulations in respect of the administration of the TRS system for mortgage interest relief. Every such regulation must be laid before Dáil Éireann. Regulations have been so made by the Revenue Commissioners – see the Mortgage Interest (Relief at Source) Regulations 2001, S.I. No. 558 of 2001. (5)

Amounts of refunds to mortgage lenders to which they are not entitled are to be repaid by the mortgage lender. (6)

### *Data*

An officer of the Revenue Commissioners may request in writing a “qualifying lender” to provide such information in relation to qualifying loans as is reasonably necessary to determine the relief due to an individual for interest paid on certain home loans. (7)(a)

The “qualifying lender” is obliged to provide the Revenue Commissioners with the information requested not later than 30 days (or longer period agreed with an officer of the Revenue Commissioners) after receiving the request for the information. (7)(b)

The Revenue Commissioners may not use the information provided for any reason other than to determine the correct relief due to an individual. (7)(c)

### **245 Relief for certain bridging loans**

The amount of interest on which a person obtains relief under *section 244* is increased in certain limited circumstances where the person has to resort to bridging finance.

The section applies where a person —

- sells his/her only or main residence and acquires another as his/her only or main residence,
- borrows to fund the acquisition or disposal or both, and
- pays interest on such a loan or on a loan used to repay such a loan or borrows to pay the interest on such a loan.

In the period of 12 months from the date of the loan used to fund the acquisition or disposal or both, a person to whom the section applies is entitled to relief under *section 244* in respect of the interest paid as if that person had paid no other interest in that period.

### **246 Interest payments by companies and to non-residents**

#### **Summary**

This section imposes on companies generally, and on others who pay interest to persons whose usual place of abode is outside the State, the obligation to deduct tax from payments of annual interest and to account to the Revenue for the tax deducted. There are various exclusions from this requirement which include —

- interest paid to or by a bank carrying on business in the State,
- interest on certain securities issued by certified International Financial Services Centre (IFSC) companies, certified Shannon companies or specified collective investment undertakings,
- interest paid by a company to an investment undertaking that is within the gross-roll-up taxation regime,
- interest paid by a company in a fiduciary or representative capacity (except when paid to non-residents),
- interest on Government securities and securities issued by certain State-sponsored bodies,
- interest paid without deduction of tax by virtue of *section 700*,
- interest which is a distribution by virtue of *section 437*,
- interest paid by a company authorised by the Revenue not to deduct tax,
- interest paid by a company or an investment undertaking to a company in another EU Member State, in a country with which Ireland has a tax treaty in force or in a country with which Ireland has signed a tax treaty which has yet to come into force, provided certain conditions are met,
- interest paid by finance and other companies that make loans but are not licensed banks or building societies (subject to certain conditions), and
- interest paid to a special purpose securitisation company (within the meaning of “qualifying company” in *section 110*) and interest paid by such a company to a

person who is resident in another EU Member State, in a country with which Ireland has a tax treaty in force or in a country with which Ireland has signed a tax treaty which has yet to come into force.

## Details

### Definitions

“bank” includes a building society established under Irish law and also a building society established in accordance with the law of another EU Member State. (1)

“company” is widely defined to include any body corporate.

“investment undertaking” comprises —

- a unit trust mentioned in *section 731(5)(a)*,
- a special investment scheme within the meaning given to it in *section 737*,
- an investment undertaking within the meaning given to it in *section 739B*,
- a common contractual fund within the meaning given to it in *section 739I*, or
- an investment limited partnership with the meaning given to it in *section 739J*.

“relevant person” means a company or an investment undertaking.

“relevant security” is a security issued by a company while it was carrying on certified IFSC or Shannon trading operations which has a redemption date within 15 years of the date of issue. This definition is only relevant in relation to the interest referred to in *subsection (3)(c)*.

“relevant territory” means a Member State of the EU other than the State, a country with which Ireland has a double tax treaty in force or a country with which Ireland has signed a double tax treaty which has yet to come into force.

“tax” means tax imposed in a relevant territory which corresponds to Irish income or corporation tax.

### Withholding tax

Companies generally are obliged to deduct tax on payment of interest to a person resident in the State except where the interest is paid by the company in a fiduciary or representative capacity. Companies such as banks frequently act as trustees and executors and may be responsible in that capacity for the payment of interest; such interest must be paid without deduction of tax where the recipient is resident in the State. Interest paid to non-residents, whether by companies (and whether in a fiduciary or representative capacity or otherwise) or by individuals, must, however, be paid under deduction of tax and the tax has to be paid over to the Revenue. This provision overcomes the difficulty of collecting tax from non-residents on income arising to them in the State. It should be noted that the obligation to withhold tax under this section may be negated (that is, the payment may be made gross) under the terms of a particular double taxation treaty or by virtue of some of the exceptions provided for in *subsection (3)*. (2)

### Exceptions

Excluded from the withholding tax requirement are — (3)

- interest paid to or by a bank in the ordinary course of banking business,
- interest paid in the State:
  - (i) by a company to another company to which *subsection 5(a)* applies (i.e. a finance/treasury company), or

- (ii) by a company to which *subsection (5)(a)(i)* and *(ii)* applies (i.e. a finance/treasury company) to another company that is resident in the State where that other company is deemed to be a member of the same group of companies as the finance/treasury company.

For this purpose, the provisions of *section 411* are to be applied to determine whether the companies are members of the same group with the exception that the 75% shareholding requirement in section 411 is replaced with a 51% shareholding requirement.

Subparagraph (ii) applies to interest paid on or after 1 January 2014.

- interest paid to a non-resident by a certified IFSC company, a certified Shannon company or a specified collective investment undertaking. This is a legacy exemption and applies only to “relevant securities” that were issued by an IFSC company prior to the expiry of their licence.
- interest paid in the State to an investment undertaking (within the meaning of *section 739B*),
- interest paid by companies authorised by the Revenue to pay interest without deduction of tax,
- interest on securities in respect of which the Minister for Finance has given a direction under *section 36* that the interest on the security be paid without deduction of tax,
- interest paid to the National Asset Management Agency (NAMA) or a *section 616(1)(g)* company, the State acting through NAMA or a *section 616(1)(g)* company, or the National Treasury Management Agency (NTMA) by NAMA or a *section 616(1)(g)* company,
- interest paid by NAMA, a *section 616(1)(g)* company, or the State acting through NAMA or a *section 616(1)(g)* company to a person resident in a relevant territory (excepting companies in certain cases),
- interest paid by an industrial and provident society without deduction of tax by virtue of *section 700*,
- interest paid in the State to an exempt approved pension scheme (within the meaning of *section 774*),
- interest paid by a company and which is treated as a distribution under *section 437* (interest paid to directors of close companies),
- interest, which is not exempted from withholding tax by any of the other *paragraphs (a) to (g)* of *subsection (3)*, paid, in the course of a trade or business, by a company or an investment undertaking (defined as a “relevant person” in *subsection (1)*) to a company (a) that is resident for tax purposes in a “relevant territory” (defined in *subsection (1)*) and the tax regime in that relevant territory is one that imposes a tax that generally applies to interest receivable in that territory by companies from sources outside that territory, or (b) where the interest is exempt from tax under the terms of the double tax treaty between Ireland and the relevant territory. The withholding tax exemption does not apply where the interest is received by the non-resident company in connection with a trade or business carried on in the State through a branch or agency,
- interest paid to a special purpose securitisation company (within the meaning of “qualifying company” in *section 110*) and interest paid by such a company to a person who is resident in another EU Member State, a country with which Ireland has a tax treaty in force or in a country with which Ireland has signed a tax treaty which has yet to come into force, except in a case where the interest is paid to a company in relation to a business which that company carries on in

the State through a branch or agency.

***Relevant securities***

Where interest is paid on relevant securities, the deletion of *sections 445* and *446* are (4) to be ignored and the expiry provisions for certification under those sections are treated as not applying. This enables the continued payment of interest on relevant securities without deduction of tax by IFSC and Shannon companies.

***Conditions to be met by company receiving interest from finance companies and other companies that are not licensed banks or building societies***

The company receiving the interest: (5)(a)

- must advance money in the ordinary course of its trade and one of the activities of the trade must be the lending of money,
- must account for the interest payable as a trading receipt,
- must notify both the appropriate inspector and the company paying the interest that it is a company which meets the two preceding conditions, and
- must notify the company paying the interest that it has so notified the inspector and provide the company paying the interest with its tax reference number. For this purpose a person's tax reference number will consist of a reference number stated on a return of income form or notice of assessment issued to that person by an inspector, or the person's value-added tax registration number. The reference number must relate to the company paying the interest. A reference number (e.g. a PPSN) which relates to say a director or other officer of the company is not acceptable.

***Company ceasing to meet conditions***

Once a company ceases to meet these conditions the company is obliged to (5)(b) immediately notify the inspector and the company paying the interest in writing that it no longer qualifies for the exclusion from withholding tax. The consequence of this is that the company paying the interest should withhold tax in accordance with this section as respects any interest paid after the company ceases to qualify for the exclusion.

**246A Interest in respect of wholesale debt instruments**

**Summary**

This section provides the rules governing the tax treatment of interest paid on wholesale debt instruments, that is, commercial paper and certificates of deposit.

Broadly, the section provides:

- Firstly, in the case of non-residents, that interest may be paid gross without the need for a formal declaration of non-residence, provided the person by or through whom the interest is paid is satisfied that the person beneficially entitled to the interest is not resident in the State and the product is held in a recognised clearing system and the instrument is issued in an amount which is not less than set minima. In a case where the instrument is not held in a recognised clearing system a formal declaration of non-residence is required.
- Secondly, in the case of residents, interest may be paid gross provided the person by or through whom the interest is paid obtains the tax reference number of the person beneficially entitled to the interest and makes this available to the Revenue Commissioners along with the amount of interest paid. In the case of instruments held in recognised clearing systems the instrument must be in an

amount which is not less than set minima.

The rules relating to wholesale debt instruments will only come into force following a Ministerial order.

## Details

### *Definitions*

The definition of “approved denomination” is designed to provide for the minimum denomination which a certificate of deposit or commercial paper must be issued in if the treatment set out in the section is to apply. (1)

A “recognised clearing system” for the purposes of the Tax Acts and the Capital Gains Tax Acts is any clearing system which has already been recognised by the Revenue Commissioners for the purposes of *sections 64* and *739B*. These systems are listed in the definition and there is a mechanism for Revenue to extend recognition to other systems by order. (2)

### *Tax treatment*

Any possibility of DIRT or withholding tax applying where either the issuing bank or company (the “issuer”) or the paying agent is non-resident is removed where the instrument is held in a recognised clearing system and the instrument is of an approved denomination. Accordingly, interest paid by a non-resident issuer using a resident paying agent will be exempt from any withholding requirement and, likewise, interest paid by a resident issuer using a non-resident paying agent will also be exempt from any withholding requirement. (3)(a)

In the case of resident issuers or resident paying agents (paying on behalf of a resident issuer), a range of options by which interest may be paid gross is provided for where either sufficient details are returned to Revenue to enable the recipient to be identified or a suitable declaration by the recipient is in place. (3)(b)

Interest paid by a resident issuer or a resident paying agent where the deposit is held in a recognised clearing system and is of an approved denomination (that is, a case within *subsection (3)(b)(ii)(I)*) will be free of any DIRT or withholding tax, but the issuer or the paying agent, as appropriate, will in such a case be required to supply the tax reference number of the person receiving the interest when making the annual return of interest paid gross. Only the paying agent dealing directly with the clearing system would be obliged to return this information. For example, where an issuer pays interest through a clearing system, the paying agent receiving the interest through the clearing system and responsible for paying the interest to individual investors will be responsible for acquiring the tax reference number and for making the return.

Interest paid by a resident issuer or a resident paying agent directly to the person beneficially entitled to the interest and who is a resident of the State will be free of DIRT or withholding tax where the person’s tax reference number has been provided (that is, a case within *subsection (3)(b)(ii)(II)*). Again, the issuer or the paying agent will be required to include the tax reference number in the return of interest paid without deduction of tax.

Finally, interest paid to a non-resident beneficial owner will be free of DIRT or withholding tax where the person has made the required declaration (that is, a case within *subsection (3)(b)(ii)(III)*). In such a case there will be no requirement to return tax reference numbers to Revenue along with the annual return of interest paid gross.

### ***Provision of tax reference numbers***

For cases within **paragraph (b)(ii)(I)** and **(II)** of **subsection (3)** and which are not within **paragraph (a)** of **subsection (3)**, the person paying the interest is required to provide the tax reference numbers to Revenue along with the details of interest paid without deduction of tax as is already required under **section 891**. Where interest is paid which is within those two paragraphs, the person paying the interest is — **(4)**

- firstly, regarded as a person to whom **section 891** would apply if it would not otherwise apply. Basically **section 891** applies to financial institutions and not all paying agents would come within its remit. This provision ensure that all other paying agents could be required to make the return required under **section 891**,
- secondly, regarded as a person who by virtue of **section 894** is required to make an automatic annual return under **section 891** (the actual requirement in **section 891** is for the return to be made following a request by an inspector) if that person would not otherwise have to make such an automatic return, and
- finally, requires the person paying the interest to return the tax reference number of the persons within these two cases in the return to be made of interest paid without deduction of tax to such persons.

Revenue may seek details of tax reference numbers if they have not already been included in a return under **section 891**.

### ***Form of declaration***

The form of the declaration to be made in relation to a case which is within **paragraph (b)(ii)(III)** of **subsection (3)** is set out. **(5)**

### ***Presumption that person qualifies***

The person making the payment may continue to regard the person to whom it pays interest as a person within **paragraph (b)(ii)(II)** (that is, beneficially entitled to the interest) or **(b)(ii)(III)** (that is, non-resident, beneficially entitled to the interest and having provided the required declaration) after it has satisfied itself that the payment is such a payment until it is in possession of information to the contrary. **(6)**

### ***Keeping of records***

Provision is made for the keeping of declarations and the examination of such by a Revenue officer. **(7)**

### ***Commencement order***

Subsection (2) of section 49 of the Finance Act 2003 provides that the rules relating to the tax treatment of wholesale debt instruments will only apply as respects an instrument issued on or after such day as the Minister for Finance designates by order.

## **247 Relief to companies on loans applied in acquiring interest in other companies**

### **Summary**

This section provides, subject to certain restrictions, relief for companies in respect of interest on a loan used to:

- acquire directly, or indirectly through a single holding company, an interest in

a trading company or a company whose income arises wholly or mainly in the form of rents or other income from property (that is, a “Case V income” company),

- on-lend to such a company,
- acquire, or to on-lend to in certain circumstances, a holding company that indirectly holds an interest in a trading company through one or more intermediate holding companies, or
- pay off a loan the interest on which would have qualified for relief if it were not paid off.

The main conditions to be satisfied before the relief is given is that:

- (i) when the interest is paid the investing company must have a material interest in the company, or where the loan is on-lent and used by a company connected with the company, in the company and connected company, and
- (ii) taking as a whole the period from the application of the loan until the interest is paid:
  - a. the investing company must have at least one of its directors on the board of the other company or, where the loan is on-lent and used by a company connected to the other company, in the company and the connected company.
  - b. the investing company must not have recovered or be deemed to have recovered any capital from the company or from a connected company, apart from any amount taken into account under *section 249*.

With effect from 2 February 2006, certain restrictions apply on the offset of interest under the section. From that date relief for interest is not available in respect of interest paid by an investing company on a loan made to it by a company which is connected with it where the loan is used to acquire ordinary share capital of a company that is also connected with the investing company, or to on-lend to another company which uses the funds directly or indirectly to acquire capital of a company that is connected with the investing company. A number of exceptions to this restriction are provided for in *paragraphs (d) to (h) of subsection (4A)* (see below).

With effect from 21 January 2011, certain further restrictions apply on the offset of interest under the section. Where the company which uses the loan is wholly or mainly a trading company, then the loan must be used wholly and exclusively for the purposes of that trade. Where the company which uses the loan is a “Case V income” company, then the loan must be used wholly and exclusively in the purchase, improvement or repair of the premises to which the profits or gains relate. Where the company which uses the loan is a holding company that holds shares directly in a trading company, then the loan must be used wholly and exclusively for the purpose of holding stocks, shares or securities.

With effect from 19 October 2017, relief applies for interest on a loan used to acquire, or in certain circumstances lend to, a holding company that indirectly holds shares in a trading company through one or more intermediate holding companies provided the monies are used for certain prescribed purposes.

Subject to some exceptions, relief is not available in respect of interest paid on loans



from a connected company for the purposes of financing the purchase of certain assets from a connected company.

There is also a restriction on the amount of interest relief that may be claimed by an investing company that provides funds to a trading company for the purposes of expenditure incurred by the trading company on the provision of a **specified intangible asset** within the meaning of *section 291A*. The restriction applies so as to ensure that the aggregate amount of interest relief claimed by the investing company cannot exceed the amount of interest that would be deductible in the hands of the trading company under *section 291A* if that company had itself incurred the interest. *Subsections (4B), (4C) and (4D)* contain the detailed provisions to achieve this purpose.

Finally, the section contains definitions for this section and *sections 248* and *249*.

*Section 249* contains anti-avoidance provisions applicable to this section.

## Details

### Definitions

“control” is to be construed in accordance with section 432.

“intermediate holding company” means a company whose business consists wholly or mainly of the holding of stocks, shares or securities and is in relation to an investee company, a company through which that investee company indirectly holds stocks, shares or securities in a trading company or companies.

“material interest” means the beneficial ownership of the ability to control, directly or indirectly, more than 5 per cent of the ordinary share capital of the company.

“trading stock” is to be construed in accordance with section 89.

### Application

The section applies to interest on money borrowed — (2)

- to acquire ordinary shares of — (2)(a)
  - a trading company,
  - a “Case V income” company,
  - a company the business of which consists wholly or mainly of holding stocks, shares or securities directly in a trading company,
  - a company the business of which consists wholly or mainly of holding stocks, shares or securities of a trading company indirectly through an intermediate company or companies, or
  
- a company the business of which consists wholly or mainly of the holding of stocks, shares or securities directly in a “Case V income” company.
- to lend to such a company money which is used wholly or exclusively: (2)(b)
  - where the company is a trading company, for the purposes of the trade or trades of that company,
  - where the company is a Case V company, in the purchase, improvement

or repair of premises to which the profits or gains relate,

- where the company is a company the business of which consists wholly or mainly of the holding of stocks, shares or securities directly in a trading company, for the purposes of holding such stocks, shares or securities.
  - where the company is a company the business of which consists wholly or mainly of holding stocks, shares or securities of a trading company indirectly through one or more intermediate holding companies, for the purposes of acquiring and holding stocks, shares or securities in a trading company indirectly, or
  - where the company is a company the business of which consists wholly or mainly of holding stocks, shares or securities of a trading company directly in a “Case V income” company, for the purposes of holding such stocks, shares or securities.
- to lend to a trading company or a Case V company money which is used wholly or exclusively by a connected company - **(2)(ba)**
    - where the connected company is a trading company, for the purposes of the trade or trades of that company,
    - where the connected company is a Case V company, in the purchase, improvement or repair of premises to which the profits or gains relate,
    - where the connected company is a company whose business consists wholly or mainly of the holding of stocks, shares or securities directly in a trading company, for the purposes of holding such stock, shares or securities.
    - where the connected company is a company the business of which consists wholly or mainly holding of stocks, shares or securities directly in a “Case V income” company, for the purposes of holding such stock, shares or securities,

A holding company being a company that holds stocks, shares or securities in a trading company indirectly through one or more intermediate holding companies, is specifically excluded from the scope of paragraph (ba) of subsection (2) as it is dealt with in paragraph (bb).

- to lend to a holding company, being a company that holds stocks, shares or securities in a trading company indirectly through one or more intermediate holding companies, money which is on-lent by that company to a connected company and that connected company uses the money wholly and exclusively: **(2)(bb)**
  - where the connected company is a company whose business consists wholly or mainly of the holding of stocks, shares or securities directly in a trading company, for the purposes of acquiring and holding any part of the ordinary share capital of a trading company, or
  - where the connected company is a company whose business consists wholly or mainly of the holding of stocks, shares or securities of a trading company indirectly through one or more intermediate holding companies, for the

purpose of acquiring and holding any part of the ordinary share capital of a holding company that directly holds stocks, shares or securities in a trading company.

### ***Acquisition of Share Capital***

Where a loan to an investing company is applied in subscribing for share capital of another company, the capital must be used wholly and exclusively either by that company or a company connected with it, as the case may be, for the purposes of its trade, in the purchase, improvement or repair of premises, or for the purposes of holding stock, shares or securities. Where the company which uses the capital is a company whose business consists wholly or mainly of the holding of stocks, shares or securities (2A)

- *directly or indirectly* in a trading company, or
- directly in a Case V company,

it must be used for the purposes of holding such stocks, shares or securities..

### ***Anti-avoidance***

Subsections (2)(a)(iv), (b)(iv) and (bb) only apply to a company whose business consists wholly or mainly of the holding of stocks, shares or securities of a trading company indirectly through one or more intermediate holding companies where it and each intermediate holding company exists for bona fide commercial reasons and not as part of a scheme or arrangement the purpose of which or one of the purposes of which is the avoidance of tax. In the case of a third party acquisition of shares, satisfaction of this criteria can be considered by the acquirer group post acquisition. (2B)

### ***The relief***

(1) & (3)

Relief is available for a company in respect of interest on a loan obtained for any of these purposes provided that the company fulfils certain conditions in relation to the company in which the loan was invested or a company connected with that company. These conditions are —

- when the interest is paid the investing company must have a material interest (“material interest” is the beneficial ownership of or the ability to control directly or indirectly more than 5 per cent of the ordinary share capital of the company) in the company, or where the loan is on-lent and used by a company connected with the company (a connected company is a company which is a trading company, a “Case V income” company or a holding company of the type referred to in **subsection (2)(a)**, **subsection (2)(ba)** or **subsection (2)(bb)**, and which is regarded as connected with the company by virtue of **section 10**), in the company and the connected company
- during the period taken as a whole from applying the loan to the time when the interest was paid at least one director of the investing company was also a director of the company or, where the loan is on-lent and used by a company connected with the other company, in the company and the connected company,
- during that period the investing company did not recover any capital from the company or from a connected company, apart from any amount taken into account under **section 249**.

### ***Use of the loan***

The loan must have been made in connection with the application of the money and must have been made either on the occasion of its application or within what is in the (4)

circumstances a reasonable time, and the loan must not have been applied for some other purpose before being applied as described in **subsection (2)**. The placing on temporary deposit (for example, with a bank or a building society) of loans of predetermined amounts should not be regarded as an application of the loans for “some other purpose”.

### **Restriction of relief**

The section does not apply to a loan made to an investing company by a company that is connected with the investing company in certain circumstances. The relief will not be available if the loan is used by the investing company to acquire from a company that is connected with the investing company ordinary share capital of a company (the “target company”). The company from which the share capital is acquired can be the target company where that company issues shares to another company. The test as to whether there is a connection between the investing company and the company from which the shares are being acquired is applied at the time of acquisition of the shares and immediately after that acquisition. **(4A)(a)**

In addition, relief will not be available if the loan is used by the investing company to lend to another company, money which is used directly or indirectly to acquire any part of the capital of a company that is connected with the investing company.

The restriction of relief in **paragraph (a)** cannot be avoided by way of back-to-back loan arrangements. This prevents relief being available in a situation where an investing company borrows from a third party but where that third party receives an equivalent funding from a company connected with the investing company. If there is such a back-to-back loan arrangement, the loan is regarded as made to the investing company by a connected person. **(4A)(b)**

### **Exceptions to restrictions**

The restriction of relief in **paragraph (a)** does not apply if two conditions are met. **(4A)(c)**

The first condition is that the loan is used either to acquire share capital on its issue or to lend on to another company to acquire such capital on its issue. **(4A)(c)(i)**

The second condition is that the new share capital is issued for the purposes of increasing the capital available to the target company for use in its trade or business. However, the issue of the share capital must not be a part of any arrangement in connection with the original loan designed to achieve a circular flow of money that could involve the provision of money directly or indirectly to persons and in the following circumstances: **(4A)(c)(ii)**

- to the person who made the original loan to achieve effective repayment of the loan or the greater part of it. **(4A)(c)(ii)(I)**
- to “a person connected with” the person who made the original loan to achieve effective repayment of the loan or the greater part of it, even though the moneys are provided to a person other than the lender. **(4A)(c)(ii)(II)**

### **Relevant income**

A further relaxation of the restriction under **paragraph (a)** is provided for where there is a matching income (which is referred to as “relevant income”) arising from the making of the loan. **(4A)(d)**

A description of “relevant income” is provided for. The relevant income may consist of interest or dividends that are chargeable to corporation tax. In the case of interest, such matching could arise where the loan is used directly by the investing company, or indirectly through another company or a series of companies. The type of interest **(4A)(d)(i)**

that can be regarded as relevant income is interest that is not deductible in computing for corporation tax purposes income or profits of the investing company, or any company connected with it, and that is taken into account in computing income chargeable to corporation tax of the company that receives it.

For dividends to be regarded as relevant income, the dividends must be chargeable to corporation tax in the State. (4A)(d)(ii)

The further requirement is that the interest or dividend income must be income that would not have arisen but for the direct or indirect use of the original loan.

The further relaxation of the restriction of relief under *paragraph (a)* in the case of relevant income applies as follows. The denial of relief under *paragraph (a)* is not to apply to the investing company in respect of so much of the interest on the “*section 247* loan” as does not exceed relevant income of the investing company for the accounting period concerned. (4A)(e)

Where interest on the *section 247* loan exceeds the relevant income of the investing company, the excess can be set off against relevant income of companies connected with the investing company. The conditions to be met before that can apply are as follows:

- The first condition is that the *section 247* interest exceeds the relevant income of the investing company; (4A)(e)(i)
- The second condition is that the interest is not otherwise deductible; (4A)(e)(ii)
- The third condition is that the investing company and a connected company must jointly make an election; (4A)(e)(iii)
- The final condition provides that the total amount of interest relieved against relevant income of all companies connected with the investing company cannot be greater than the interest that is not used by the investing company. (4A)(e)(iv)

The amount that can be set off against relevant income of a connected company is limited to the lower of:

under *clause (I)*:

the proportion of relevant income of the period that is common to the accounting period of the investing company and the connected company, and

under *clause (II)*:

the relevant income of the company less any amount of losses set against it under group relief or that could have been set off (under *section 396(2)*).

### ***Back to back loans***

Provision is made against the use of a back-to-back loan made in order to avoid the restriction on offset against relevant income that applies where the interest concerned is deductible for tax purposes in computing income of the investing company or a company connected with it. The provision counters a situation where interest could otherwise be routed through a third party so that the interest that might qualify as relevant income is not deductible in computing income of the investing company or a connected company. Where such a back-to-back loan arrangement arises, interest received from the third party and which would otherwise qualify as relevant income will be treated as interest that is deductible in computing income of the investing company or a company connected with it. (4A)(f)

### ***Exchange gains & losses***

Any gains or losses arising from exchange rate movements that relate to the relevant income, or to the underlying loans or investments, are to be taken into account in (4A)(g)

calculating the relevant income. Gains and losses on hedging contracts to protect against exposure to exchange rate or interest rate fluctuations are also to be taken into account in determining relevant income.

A modification is made to one aspect of the application of *paragraph (c)*. That paragraph allows interest relief to apply in respect of a loan if the loan is used to defray money applied in acquiring newly issued ordinary share capital. This, however, is subject to the condition that the issue of the share capital must not be part of an arrangement in connection with the original loan that is designed to achieved a circular flow of money that would involve the effective repayment of the original loan to the person who made it (or to a connected person). (4A)(h)

The modification provides that it should not be presumed that such an arrangement exists solely because the share capital is used in paying off to the person who made the *section 247* loan (or to a connected person) another loan. This, however, only applies where the other loan was used wholly and exclusively for the purposes of a trade or business and was not itself part of a circularity arrangement, and interest on the other loan would have been deductible if it was not paid off.

### *Special provisions in relation to specified intangible assets*

*Subsection (4B)* provides for a restriction on the amount of interest deductible by an investing company where that company provides funds to another company [‘other company’] either by way of subscription for share capital or the loan of money, and that other company uses the funds to provide specified intangible assets in respect of which an allowance is to be made under *section 291A*. The restriction will be applied to the interest paid by the investing company on the loan - less any dividends, distributions or interest received from the other company in respect of the moneys advanced – and the subsection specifies that such interest cannot exceed the amount of interest that would be deductible in the hands of that other company, under *section 284* as applied by *section 291A*, were that other company to incur the interest expense and if any additional restriction resulting from this were to be made solely by restriction of interest. (4B)

*Subsection (4C)* provides that any excess interest that has not been relieved due to the restriction under *subsection (4B)* above shall be carried forward to be treated as interest paid in the next accounting period of the company for which relief, subject to *subsection (4B)*, can be given and so on for each succeeding accounting period. (4C)

*Subsection (4D)* provides for an apportionment of amounts where the corresponding accounting period of the investing company and the other company do not coincide. (4D)

### *Intra-group loans to finance the purchase of assets from another group company*

Relief under this section is not available in respect of interest on an intra-group loan used to finance the purchase of assets from another group company. (4E)

For the purposes of this subsection assets do not include share capital, intellectual property or trading stock. (4E)(a)

Subject to *paragraphs (c) to (f)* of this subsection, relief will not be available in respect of interest paid on loans from a connected company for the purposes of purchasing assets from a connected company. (4E)(b)

An exception to the rule in *paragraph (b)* is provided for in the case of a loan to acquire a trade from a company which is not within the charge to corporation tax. In such a case the amount of the interest which can be deducted is restricted to the profits of the trade acquired. (4E)(c)(i)

Where a company acquires part of a trade that part is treated as a separate trade. (4E)(c)(ii)  
Where the company begins to carry on the activities of the acquired trade as part of its & (iii)  
trade the profits or gains of the integrated trade are apportioned on a reasonable basis  
for the purposes of restricting relief under this subsection.

This subsection provides for similar treatment in cases where assets are acquired by a (4E)(d)  
leasing company which generate a new stream of income. The amount of the relief to  
be given in respect of the interest paid in the accounting period by the investing  
company on the loan is restricted to the amount of the new income generated by the  
asset acquired.

Where the accounting period of the investing company does not coincide with the (4E)(e)  
accounting period of the company to which it made the loan, then for the purpose of  
computing any restriction of relief for an accounting period as required by  
*paragraphs (c) and (d)* the profits or gains are to be apportioned.

This is an anti-avoidance provision preventing companies circumventing the (4E)(f)  
subsection through the use of back-to-back loans with unconnected persons.

#### ***Restriction of relief where borrowed monies are lent on***

Relief due to the investing company is restricted where the companies which use the (4F)  
borrowed monies are in receipt of interest from the lending on of those monies.

#### ***Relevant trading charges***

Interest on loans applied in lending money to a trading company is treated as a (4G)  
relevant trading charge on income and can only be set against income chargeable at  
12.5% or relieved on a value basis at 12.5%.

#### ***Granting of relief***

Interest eligible for relief under this section is to be treated as a non-retainable charge (5) & (6)  
on the borrower's income for the year of assessment in which interest is paid. This  
enables relief to be given by repayment if necessary. In other words, the interest is to  
be treated as a deduction in computing the amount of the borrower's income  
chargeable to tax. Interest eligible for relief under this section is not eligible for relief  
under any other provision.

### **248 Relief to individuals on loans applied in acquiring interest in companies**

#### **Summary**

This section contains provisions in relation to an individual borrower corresponding  
broadly to those in relation to a corporate borrower in *section 247*. The provisions are  
designed to cater for the case of an individual who borrows money for the purpose of  
purchasing an interest in a company. The main condition to be satisfied before the  
relief can be given is that, taking as a whole the period from the application of the  
loan until the interest was paid, the individual must have worked for the greater part  
of his/her time in the management or conduct of the business of the company or of a  
connected company.

The allowance of relief under this section does not preclude a claim for unrestricted  
relief on other "business" interest under *section 81*.

*Section 249* contains anti-avoidance provisions applicable to the section.

The relief is not available for new loans made on or after 7 December 2010 and, for  
qualifying loans made before 7 December 2010, relief is phased out over the tax

years 2011 to 2013. No relief is available for the tax year 2014 and subsequent tax years.

## Details

### *Application*

The section applies to interest on money borrowed — (1)

- to acquire ordinary shares of — (a)
  - a trading company, or
  - a company the business of which consists wholly or mainly of holding stocks, shares or securities in such a company,
- to lend money to such a company, or (b)
- to pay off another loan which was applied for either of those purposes. (c)

The relief in respect of replacement loans under *subsection (1)(c)* will not be available unless— (1A)

- the new loan is not greater than the amount of the balance yet to be paid off the previous loan, and
- the term of the new loan is no longer than the balance of the term of the former loan.

### *The relief*

Unrestricted relief is available for an individual in respect of interest on a loan obtained for any of these purposes provided that the individual fulfils certain conditions in relation to the company in which the loan was invested or with a company connected with that company. Those conditions are — (2)

- when the interest is paid the investing individual must have a material interest (“material interest” is the beneficial ownership of or the ability to control directly or indirectly more than 5 per cent of the ordinary share capital of the company) in the company or in a connected company (a connected company is a company which is a trading company, a “Case V income” company or a holding company of the type referred to in *subsection (2)(a)* and which is regarded as connected with the company by virtue of *section 10*),
- during the period taken as a whole from the application of the loan to the time the interest was paid the individual worked for the greater part of his/her time in the actual management or conduct of the business of the company or of a connected company, and
- during that period the investing individual did not recover any capital from the company or from a connected company, apart from any amount taken into account under *section 249*.

### *Tax avoidance*

Relief is denied for interest paid on or after 24 January, 1992 unless the loan is applied for bona fide commercial purposes and is not part of a tax avoidance scheme. (3)

### *Use of loan*

The loan must have been made in connection with the application of the money and must have been made either on the occasion of its application or within what is in the circumstances a reasonable time, and the loan must not have been applied for some other purpose before being applied as described in *subsection (1)*. The placing on temporary deposit (for example, with a bank or a building society) of loans of (4)



predetermined amounts should not be regarded as an application of the loans for “some other purpose”.

### ***Granting of relief***

Interest eligible for relief under this section is to be treated as a non-retainable charge (5) on the borrower’s income for the year in which the interest is paid. This enables relief to be given by repayment if necessary. In other words, the interest is to be treated as a deduction in computing the amount of the borrower’s income chargeable to tax. Interest eligible for relief under this section is not eligible for relief under any other provision.

### ***Phasing out the relief***

The relief is not available for interest paid on new loans made on or after 7 December 2010. (6) & (7)

Furthermore, the relief is not available, as and from 1 January 2014 for interest paid on loans made prior to 7 December 2010 and for such loans, for the tax year 2011, 75% of the qualifying interest paid qualifies for relief; for the tax year 2012, 50% of the qualifying interest paid qualifies for relief; and for the tax year 2013, 25% of the qualifying interest paid qualifies for relief.

## **248A Restriction of relief in respect of loans applied in acquiring interest in companies and partnerships**

### **Summary**

This is an anti-avoidance measure to prevent persons getting round the former bar on relief for interest against rental income from a residential property by routing the borrowed money through a company or partnership.

### **Details**

It provides that where the money from a loan on which the interest would qualify for relief under either *section 247, 248 or 253* is subsequently used, on or after 7 May, 1998, to purchase, improve or repair property or to redeem a loan which was used for those purposes, the relief to be given in respect of interest on that loan for any year in which the property is rented residential property was reduced to the extent that the loan was used in connection with that property. (2)

This section does not apply to interest referred to in *subsection (2)* which accrues on or after 1 January, 2002. (3)

The bar on relief is re-instated as respects interest (accruing on or after 6 February 2003) on a loan used to purchase the let residential property from the spouse or civil partner of the individual to whom relief is given under *section 248 or 253*. (4)

The disallowance of interest relief where the rented property is purchased from a spouse or civil partner does not apply in the case of legally separated persons, individuals who are divorced, civil partners who have separated under a deed of separation or other legally enforceable agreement, or where the civil partnership has been dissolved. (5)

## **249 Rules relating to recovery of capital and replacement loans**

### **Summary**

This section is intended to prevent abuse of the provisions contained in *sections 247 and*

**248.** Abuse could take place by the recovery of capital from the company in which borrowings were invested or from a company connected with it. Also a company could recover capital from the company in which it intends to invest before it borrows the funds in respect of which tax relief is given for the investment.

If the borrower recovers an amount of capital from the company or a connected company without utilising it to reduce the money borrowed for the purpose of acquiring the interest in the company, the section provides that the borrower will thereafter lose relief on the interest referable to the amount of the borrowed money corresponding to the capital recovered.

If the borrower (being a company) makes an investment in a company which is itself a holding company and this company makes a recovery of capital from one of its directly held subsidiaries without either —

- passing the funds recovered back to the investing company in order to pay off the loan attracting tax relief, or
- using the funds recovered for certain approved purposes,

then, there will be a deemed recovery of capital by the borrower and the rules relating to a recovery of capital will apply.

A recovery of capital will, subject to certain exceptions, also be deemed to occur where the borrower makes an investment in a holding company that holds shares in a trading company or companies indirectly through one or more intermediate holding company or companies, and an intermediate holding company recovers capital from another company. The deemed recovery provision does not apply in similar circumstances to those noted above as well as where—

- the capital recovered is used by the intermediate holding company to repay a loan made to it by the company concerned, or
- for bona fide commercial reasons, such as to facilitate a streamlining of the group structure, an intermediate holding company transfers its assets and liabilities to another intermediate holding company.

The section also extends the concept of “recovery of capital” to a recovery effected from the company to be invested in within a 2 year period before the borrowed funds are actually invested except where the funds recovered are used for certain purposes. The purposes concerned are either the repayment of another loan which itself qualifies for relief or the capital recovered is applied to acquire shares in, or in lending to, a trading company, a property rental company or a holding company of such a company.

As respects a deemed recovery of capital and a recovery of capital before the investment of the borrowed funds, the section provides that certain payments made by the company to be invested in to the investing company or, in the case of a deemed recovery of capital, by the subsidiary company to the company invested in by the borrowing company, will not constitute a recovery of capital or a deemed recovery of capital. Such payments, therefore, will not trigger a restriction of relief. The payments concerned are the repayment of loans used for trading or property rental purposes and the repayment of loans made before 6 February 2002.

The section also provides that where relief is claimed for interest on a loan which replaces another loan, any restriction on relief in respect of interest on the original loan is to apply to interest on the loan which replaces it.

## Details

### **Definitions**

The definition of “relevant period” sets out the period before the application of the borrowed funds within which a recovery of capital by the investing company from the company invested in will result in a restriction of relief. The period concerned is the two year period immediately before the date of the application of the loan. (1)(a)(i)

The second definition defines certain categories of loans the repayment of which will not trigger a recovery of capital in advance of the application of the proceeds of the loan or a deemed recovery of capital and consequently a restriction of relief. The loans concerned (referred to as “specified loans”) are —

- any loan taken out before 6 February 2003,
- loans used for ordinary trading purposes, and
- loans used for the purposes of a rental business.

### **Recovery of capital before application of loan**

Where the borrower (being a company) makes a recovery of capital in a two year period before any borrowed funds are actually applied (the relevant period) from the company in which it invests in, then a restriction of the relief which would otherwise be available in respect of any interest paid on the borrowed funds results. The circumstances in which a recovery of capital is treated as happening in the relevant period are the same as apply where the borrower makes a recovery of capital after the application of the borrowed funds. (1)(a)(ii)

Provision is made to ensure that the restriction on the relief does not arise where the recovery of capital is —

- represented by the repayment of a “specified loan” (in other words any loan taken out before 6 February 2003 or an ordinary trading loan or loan for the purposes of a rental business) by the company to be invested in to the borrower,
- used to repay some other loan which qualifies for tax relief under *section 247* for interest paid (this recognises that there should not be a restriction of future relief where capital recovered is used to repay an outstanding loan which qualifies for tax relief), or
- used by the borrower to acquire shares in, or lending to, a trading company, a property rental company, or a holding company of such a company (this recognises that in certain circumstances a company may not be able for contractual reasons to pay off its borrowing but may be able to use the funds recovered for re-investment purposes).

Provision is also made to ensure that a recovery of capital does not operate to restrict all relief to be made within the two year look-back period. In other words, a recovery of capital will cause the restriction of relief in respect of one loan only.

### **Recovery of capital by borrower**

Where the borrower (being either an individual or a company) recovers an amount of capital from the company concerned or from a connected company, or in the case of a borrower that is a company, is deemed to recover an amount of capital from the company concerned, without using it in reducing the loan to which *section 247* or *248* applies, the borrower is treated as having repaid the loan to the extent of that amount and thereafter the borrower loses relief in respect of the interest or a part of it as appropriate. (1)(a)(iii) & (iv)

The borrower is treated as recovering an amount of capital from a company if — (2)(a)

- the borrower sells ordinary shares in the company or in a connected company for money or money's worth or receives money or money's worth as a repayment of ordinary share capital of the company or of a connected company,
- the company or a connected company repays the amount of a loan or advance from the borrower, or
- the borrower assigns a debt due to the borrower from the company or from a connected company for money or money's worth.

If the borrower gives away the shareholding for less than arm's length value, the borrower will be deemed to have recovered from the company the market value of the shares. (2)(b)

***Deemed recovery of capital by a borrower (being a company)***

This provision only applies where the company concerned (that is, the company invested in) is a holding company (this is the meaning of the reference to ***section 247(2)(a)(iii), (iv) or (v)***). Where the company concerned is a holding company, the borrower is deemed to have made a recovery of capital where the company concerned has itself recovered capital from one of its subsidiaries (for this purpose a company is considered a subsidiary of the company concerned where the company concerned owns directly more than 50 per cent of the ordinary share capital of the other company) without using the capital recovered to — (2)(aa)(i)

- repay a loan made to it by the borrower (this in turn triggers a recovery of capital by the borrower thereby requiring it to use the capital recovered in repaying the loan for which it is getting tax relief for interest or else suffering a restriction of the relief in an amount equal to the amount recovered),
- redeeming any of its ordinary share capital acquired by the borrower (again this triggers a recovery of capital by the borrower with the consequences set out above),
- acquire shares in, or lending to, a trading company, a property rental company, or a direct holding company of such a company or, in certain circumstances, of a holding company that holds shares in a trading company indirectly through one or more intermediate holding companies (this recognises that in certain circumstances a company may not be able to repay a loan or redeem its shares and allows a company to avoid a recovery of capital where it re-invests the funds recovered), or
- repay some other loan which qualifies for tax relief in respect of interest paid under ***section 247*** (this recognises that there should not be a restriction of relief where capital recovered is used to repay other borrowed funds which qualified for tax relief).

The circumstances in which the company in which the borrower has invested is treated as having made a recovery of capital from one of its subsidiaries are the same as apply to a recovery of capital by the borrower itself, except that the repayment of — (2)(aa)

- a loan which was taken out before 6 February 2003,
- a loan for trading purposes by the subsidiary, or
- a loan used for the purposes of a rental business carried on by the subsidiary,

is not treated as a recovery of capital by the company concerned and therefore cannot be treated as a deemed recovery of capital by the borrower.

Provision is made for the apportionment of any capital recovered by the company concerned where more than one company qualifies as an investing company in relation to the company concerned. In other words, where two or more companies have borrowed to (2)(aa)(iii)

invest in the company concerned and all the investing companies qualify for tax relief for the interest paid in respect of the borrowings. In such circumstances any recovery of capital by the company invested in (that is, the company concerned) would trigger a deemed recovery of capital by each of the investing companies and without this provision would restrict all loans equally.

### ***Share for share reorganisations***

In respect of loans made on or after 21 January 2011, companies may elect that the recovery of capital provisions of this section will not apply in the case of a reorganisation involving an exchange of shares that **section 584** applies to or which but for **section 626B**, would apply by virtue of **section 586**. Where such an election is made, the new shares will be treated as if they were the old shares for the purposes of applying this section on a subsequent disposal of those new shares. (2)(ab)

### ***Deemed recovery of capital where an intermediate holding company recovers capital***

This provision applies where the company concerned (that is, the company invested in) is a holding company that indirectly holds shares in a trading company through one or more intermediate holding companies (this is the meaning of the reference to **section 247(2)(a)(iv)**). Where the company concerned is such a holding company, the borrower is deemed to have made a recovery of capital from the company concerned where, in certain circumstances, an intermediate holding company recovers capital from another company. In order for this deemed recovery of capital provision to apply, certain ownership requirements must be met in relation to both the intermediate holding company and the other company. In particular, for the provision to apply: (2)(ac)

- the company concerned must own at least 50% of the ordinary share capital of the intermediate holding company, whether directly or indirectly, or both companies must be under the control of the same person or persons; and
- the intermediate holding company must directly own more than 50% of the ordinary share capital of the other company or both companies must be under the control of the same person or persons.

The circumstances in which an intermediate holding company is treated as having made a recovery of capital from another company are the same as apply to a recovery of capital by the company concerned as set out in paragraph (aa)(ii). (2)(ac)(ii)

An investing company will not, in certain circumstances, be deemed to have made a recovery of capital under subparagraph (i). These circumstances are where— (2)(ac)(iii)

- the capital recovered by the intermediate holding company is used to repay a loan made to it by the company concerned,
- the capital recovered by the intermediate company is used for the purposes set out in paragraphs (a) or (b) of subsection 247(2),
- the capital recovered by the intermediate company is used to repay a loan to which section 247 applies, or
- the recovery of capital arises in the event of an intermediate holding company (other than an intermediate holding company referred to subparagraphs (i) or (ii) of section 247(2)(bb)) being dissolved without going into liquidation and its assets and liabilities are transferred to another intermediate holding company. The dissolution and transfer of assets and liabilities must be for *bona fide* commercial reasons and not for the purposes of tax avoidance and the company concerned must

continue to hold indirectly the same beneficial percentage of shares in the trading company that it held prior to the dissolution.

***Share for share reorganisations***

(2)(ac)(iv)

The provisions of subparagraph (ab) are modified so as to apply in the context of an intermediate holding company. Companies may elect that the recovery of capital provisions of this section will not apply in the case of a reorganisation involving an exchange of shares that **section 584** applies to or which but for **section 626B**, would apply by virtue of **section 586**. Where such an election is made, the new shares will be treated as if they were the old shares for the purposes of applying this section on a subsequent disposal of those new shares.

***Multiple Recovery of Capital***

(2)(ac)(v)

Provision is made to prevent more than one deemed recovery of capital under this paragraph or under paragraph (aa) arising from related transactions or sequence of events. A company may by notice in writing exclude an amount of capital deemed to have been recovered under this paragraph (referred to as capital previously recovered) from a subsequent recovery of capital under this paragraph or under paragraph (aa) where the capital previously recovered arose within a reasonable period of time and by reference to a related transaction or event. The investing company must maintain and make available such records as are required to reasonably show that the relevant requirements are satisfied.

***Apportionment of Capital Recovered***

(2)(ac)(vi)

The rules relating to the apportionment of a recovery capital by the company concerned where more than one company qualifies as an investing company in relation to the company concerned are applied and modified in the context of a deemed recovery of capital under paragraph (ac). Where two or more companies have borrowed to invest in the company concerned and all the investing companies qualify for tax relief for the interest paid in respect of the borrowings. In such circumstances any recovery of capital by the company invested in (that is, the company concerned) would trigger a deemed recovery of capital by each of the investing companies and without this provision would restrict all loans equally.

***Arm’s Length requirement***

(2)(b)

If the borrower gives away the shareholding for less than arm’s length value, the borrower will be deemed to have recovered from the company the market value of the shares.

***Substitute loans***

Where relief is claimed for interest on a substituted loan, the same conditions apply as if all the loans were one loan. (3)

**250 Extension of relief under section 248 to certain individuals in relation to loans applied in acquiring interest in certain companies**

**Summary**

This section extends the scope of the relief, in respect of interest on borrowed money, available under **section 248**. That section provides for unlimited relief for an individual in respect of interest on money borrowed to acquire shares in, or lend money to, a trading company (including a “Case V income” company) or a holding company of such a trading company for use in the trade or business carried on by the company or by a connected company, provided that the individual —

- holds more than 5 per cent of the ordinary share capital of the company or of a

- connected company, and
- works for the great part of his/her time in the management or conduct of the business of the company or of a connected company.

By virtue of this section, these restrictions do not apply in relation to both full-time and part-time directors and employees of private companies. In the case of borrowings by full-time employees and full-time directors of a public company to acquire shares in the company, these restrictions do not apply but relief is limited to interest amounting to €3,050 for a year of assessment. The provisions of this section may be summarised as follows —

Private companies (*subsection (2)*)

Trading companies (including “Case V income” companies)	Unlimited relief for employees and directors whether full-time or part-time
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Holding companies (as described in <i>section 248(1)(a)(ii)</i> )	Unlimited relief for full-time employees and full-time directors of the holding company or of a trading or “Case V income” company which would be regarded as connected with it for the purposes of <i>section 248</i> .
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Public companies (*subsection (3)*)

Trading companies (including “Case V income” companies)	Relief on interest of up to €3,050 for a year of assessment for full-time employees and full-time directors of the company.
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Holding companies resident in the State	Relief on interest of up to €3,050 for a year of assessment for full-time employees and full-time directors of the holding company, or of any 90 per cent subsidiary of the holding company ( <i>subsection (5)(f)</i> ).
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**Details**

**Definitions**

A full-time employee or director is an employee or director who is required to devote substantially the whole or his/her time to the company. **(1)**

A part-time employee or director is an employee or director who is not required to devote substantially the whole of his/her time to the company.

A “holding company” has the same meaning as in *section 411*, namely, a company whose business consists wholly or mainly of the holding of shares or securities of companies which are the company’s 90 per cent subsidiaries and are trading companies (that is, companies whose business consists wholly or mainly of the carrying on of a trade or trades).

### **Private companies**

The conditions necessary for obtaining the relief provided for in **section 248** (that is, (2) the 5 per cent shareholding plus the “greater part of his/her time” employment qualifications) are waived in the case of a private company subject to the conditions of this section being fulfilled. It is to be noted that because the relief is granted under **section 248** (and is in addition to, and not in substitution for, any relief which may be claimed under any other provision, that is, under **section 81**) the provisions of that section, other than the excluded provisions, are preserved. Therefore, the provisions of **section 248(1)(c)**, **(2)(c)**, **(3)** and **(4)** and consequently of **section 249** apply to loans applied for the purposes specified in **section 248(1)**, in respect of which the conditions of this section are fulfilled.

The provisions of **subsection (2)** are effectively confined to private companies by virtue of the provisions of **subsection (3)** which applies to companies other than private companies.

The unlimited relief for interest provided by this subsection is confined to loans obtained to acquire shares in or to lend money to —

- a trading company or a “Case V income” company (see **section 248(1)(a)(i)**) by an individual who is an employee or director of the company, whether full-time or part-time, throughout the period from the purchase of the shares in, or the lending of the money to, the company until the interest is paid,
- a private company (that is, a private company within the meaning of section 33 of the Companies Act, 1963) whose business consists wholly or mainly of the holding of stocks, shares or securities in a trading company or in a “Case V income” company, by an individual who is a full-time employee or a full-time director of the company, or of a company which would be regarded as connected with such a company for the purposes of **section 248** (namely, a connected company within the meaning of **section 10** which is a company within **section 247(2)(a)**, that is, a trading company, a “Case V income” company or a holding company of such a company) throughout the period from the purchase of the shares in, or the lending of the money to, the company until the interest is paid.

A further condition provides that the company whose shares are bought or to which the money is lent or any person connected with that company must not, during the period so described, have made any loans or advanced any money to the claimant, or to any person connected with the claimant, other than in the ordinary course of a business which included the lending of money carried on by the company or by a person connected with the company. For the purposes of this condition, the term “connected” is to be interpreted in accordance with **subsection (5)** which includes as “connected persons” additional persons to those treated as connected for the purposes of **section 248**.

### **Public companies**

Individuals investing in companies other than private companies qualify for limited (3) relief for interest – up to the amount of €3,050 – on loans obtained to acquire shares in or lend money to —

- a trading company or a “Case V income” company, or
- a holding company (see **subsection (1)**) which is resident in the State (see **subsection (5)(e)**)

The investment must be by a full-time employee or full-time director of the trading or



holding company, or of a 90 per cent subsidiary of the holding company (see *subsection (5)(f)*).

### ***Withdrawal of relief***

The relief given is withdrawn where there are “back-to-back” loans (that is, where the borrower obtains a loan from say, a bank, which the borrower then lends to a trading company (for example, a loan company) which then lends the money back to the original borrower for use for speculative purposes). In such circumstances it is clear that relief should not be available for interest on the original loan which, in effect, is now being used for speculative purposes. In such a case a claw-back of relief operates but only if the second loan (the “loan-back”) — (4)

- is made to the claimant or to a person connected with the claimant, and
- that loan is subsequently regarded (under *subsection (5)*) as not having been made or advanced in the ordinary course of business.

### ***Connected persons***

In addition to the provisions for the construction of references to one person being connected with another which are contained in *section 10*, a person is to be regarded as connected with another person if the person has given the other person a loan, otherwise than in the ordinary course of business – where the first-mentioned person’s business includes the lending of money. (5)(a) & (b)

The rules for recognising what constitutes the “ordinary course” of the business of lending money are laid down in a negative way, that is, by prohibiting such recognition if certain factors or circumstances apply in relation to the money lent. A loan is not regarded as having been made in the ordinary course of business if — (5)(c)

- the loan is made on terms incompatible with an arm’s length transaction,
- the terms on which a loan made under arm’s length conditions are subsequently altered to non-arm’s length conditions,
- interest on the loan is waived,
- interest on the loan is not paid within 12 months from the due date, or
- the loan is to be repaid within 12 months from the date for repayment.

### ***The securing of a loan***

A person is to be regarded as having made a loan to another person where — (5)(d)

- that other person incurs a debt to the person, or
- a debt due from that other person to a third party is assigned to the person.

Excluded from the first rule is a debt incurred for the supply of goods or services in the ordinary course of a trade or business unless the period for which credit is given exceeds 6 months or is longer than the normal credit period allowed by the trader or businessman.

### ***Holding companies***

An Irish resident holding company, other than a private company, is deemed to be a trading company or a “Case V income” company within the meaning of *section 248(1)(a)(i)*. This enables relief on interest up to the amount of €3,050 to be granted for a year of assessment under *subsection (2)* to full-time employees and full-time directors of public companies which are holding companies. (5)(e)

### ***Employees of subsidiary companies***

A full-time employee or a full-time director of a 90 per cent subsidiary of a (public) holding company is deemed to be a full-time employee or a full-time director of the holding company. Thus, such an employee or director can claim relief for interest up to the amount of €3,050 for a year of assessment on money borrowed to buy shares in, or lend money to, the parent company of the employing company even though he/she is not a full-time employee or full-time director of the parent company. (5)(f)

### **250A Restriction of relief to individuals in respect of loans applied in acquiring interest in companies**

#### **Summary**

This section restricts the availability of interest relief to individuals under **section 248** (or that section as extended by **section 250**) in respect of interest paid on loans applied for the purposes of acquiring share capital in, or lending to, a company.

Firstly, the new section applies where money borrowed by an individual and invested in, or loaned to, a company is used after 1 January 2003 by the company involved, in whole or in part, directly or indirectly:

- to acquire a specified building (essentially an industrial or commercial building with a remaining tax life) from another company,
- to replace money used to so acquire, or
- to pay off a loan used to so acquire.

Secondly, the section covers situations where the individual uses the borrowed money to pay off a previous loan where money under that earlier loan was used, after 1 January 2003, by the company for any of these purposes.

Thirdly, the section applies to other situations where a specified building (or buildings) may already be in the ownership of a company and subsequently an individual acquires share capital in the company with borrowed money. For the section to apply in this situation, the company involved must be a company, 75% of the income of which, following the acquisition of the specified building(s), consists of rental income arising from one or more specified buildings. Additionally, the company must acquire the specified building(s) on or after 1 January 2003 from another company, and the individual must acquire the share capital in the company on or after 20 February 2004 with the borrowed money.

Where the section applies, relief for a year of assessment, under **section 248** (or that section as extended by **section 250**) in relation to interest paid by an individual on the “specified amount” of an eligible loan may not exceed the individual’s return from the company in that year in respect of the specified amount of the loan involved. (The specified amount may be the full loan or part of the loan). An individual’s return from a company for a year of assessment is the amount of the distributions or, as applicable, the interest received by the individual from the company in the year in relation to the specified amount.

Generally, the restriction of relief in the section applies to payments of interest made by individuals on or after 19 March 2003 except in situations where a loan is used to purchase, on or after 20 February 2004, share capital in the type of rental company referred to above, in which case it applies to interest paid by individuals on or after that date.

## Details

### Definitions

A number of terms (“distribution”, “relevant interest” and “residue of expenditure”) (I) are defined by reference to the meaning of those terms in other provisions of the Taxes Consolidation Act 1997. Other terms are defined as follows:

“eligible loan” is defined in relation to an individual and a company and means a loan to the individual, to which **section 248** applies, to defray money for any of the purposes specified in that section.

“specified amount” is defined in relation to an eligible loan. In essence, the term means the whole, or part, of the loan where the money, or the part of the money, applied by the individual:

- (a) is used after 1 January 2003 by the company, directly or indirectly:
- to acquire the relevant interest in a specified building – (this acquisition can be by the company in which the individual applied the money or by any other person),
  - to replace money used in such an acquisition, or
  - to pay off a loan used in such an acquisition;
- (b) pays off another eligible loan or part of such a loan to the individual (or any previous loan/s which it replaced) which was used by the company for any of the above purposes on or after 1 January 2003;
- (c) was applied in acquiring, on or after 20 February 2004, any part of the share capital of a company whose income is 75%, or more, rental income arising from one or more specified buildings. This test should be carried out in each year of assessment (after the purchase of the specified building) as claims for interest relief are being made.

“specified building” is defined in three paragraphs as follows:

**Paragraph (a)** requires that it be a building or structure, or part of a building or structure which is an industrial building or structure under **section 268(1)** and in relation to which capital allowances were or are to be made to a company under **Chapter 1 of Part 9** in respect of the construction or refurbishment expenditure incurred, or the residue of that expenditure. Commercial buildings or structures in relation to which such capital allowances were or are to be made to a company by virtue of **Part 10** (property based tax incentive schemes) or **section 843** (third level educational buildings) or **section 843A** (certain childcare buildings) are also included in the definition,

**Paragraph (b)** requires that the company referred to in **paragraph (a)** (to which the capital allowances were or are to be made) held the relevant interest in the capital expenditure on the construction or refurbishment of the building at any time on or after 1 January 2003, and

**Paragraph (c)** requires that any other company (i.e. other than the company referred to in **paragraph (a)**) becomes entitled to capital allowances under **Chapter 1 of Part 9** in respect of the construction or refurbishment expenditure incurred, or the residue of that expenditure, subsequent to the time referred to in **paragraph (b)** i.e. subsequent to the time when the previous company held the relevant interest. This entitlement must follow on from the acquisition of the relevant interest or any part of the relevant interest in the capital expenditure incurred on the building. The “other

company” which becomes entitled to the capital allowances may be the company in which the individual applied money to purchase share capital in, or to lend to, or it may be any other company (e.g. a connected company). Arrangements which involve any intermediate acquisitions of the relevant interest are also brought within the definition.

“specified provisions” means *section 248* and that section as extended by *section 250*.

### ***Restriction of interest relief***

Notwithstanding the provisions of *sections 248* and *250*, it is provided that relief (2) under *section 248* for any year of assessment in respect of any payment of interest by an individual on the specified amount of an eligible loan shall not exceed that individual’s return from the company concerned in that year in relation to that specified amount.

In essence the amount of relief in respect of interest payments on the specified amount of a loan applied by the individual in investing in the company, is limited to the lower of the amount of the income stream arising from the application of the money defrayed by the specified amount and the amount of interest that would have been relievable in the absence of this section.

### ***Return in relation to specified amount of eligible loan***

This provision, which is subject to *subsection (4)*, explains what an individual’s (3) return is in relation to a specified amount of an eligible loan in a year of assessment.

Where the specified amount defrays an amount of money applied by the individual (3)(a) for the purpose specified in *section 248(1)(a)* [acquiring ordinary share capital] or in *section 248(1)(b)* [lending money to the company for its trade/business or that of a connected company], the individual’s return is:

- the amount, if any, of the distributions or, as the case may be, the interest received by the individual from the company in that year as a result of the application of that amount of money.

Where the specified amount defrays an amount of money applied by the individual, (3)(b) directly or indirectly, for the purpose or paying off the specified amount of another eligible loan where the earlier specified amount defrayed an amount of money which was applied for the purpose specified in *section 248(1)(a)* or (b), the individual’s return is:

- the amount, if any, of the distributions or, as the case may be, the interest received by the individual from the company in that year as a result of the application of that earlier amount of money.

### ***Apportionment provisions***

Apportionment is provided for, where necessary, of the total payments of interest by (4) an individual on an eligible loan and of the total amount of interest received by an individual as a result of the application of all money defrayed by such a loan, in determining:

- the amount of any payments of interest on the specified amount of the eligible loan, or
- of the amount of any interest received as a result of the application of money which was defrayed by such a specified amount.

This apportionment is to be made in the same proportion which the specified amount of the eligible loan bears to the eligible loan itself.

## **Commencement**

By virtue of the provisions of section 22(2) Finance Act 2004, this section applies:

- firstly, in relation to interest paid on or after 19 March 2003. Therefore, the section impacts not alone on new loans taken out on or after 19 March 2003 but to interest payments made on or after that date in respect of loans taken out prior to that date (where the money or part of the money was used after 1 January 2003 to acquire a specified building), and
- secondly, in relation to interest paid on or after 20 February 2004, where the section applies by virtue of *paragraph (c)* of the definition of “specified amount”.

For the purposes of the section interest is deemed to accrue on a daily basis.

## **251 Restriction of relief to individuals on loans applied in acquiring shares in companies where a claim for “BES relief” or “film relief” is made in respect of amount subscribed for shares**

Relief is not to be allowed under *section 248* or that section as extended by *section 250* in respect of any interest paid on any loan applied in acquiring ordinary shares of a company which are issued —

- on or after 20 April, 1990, where a claim for BES relief (including seed capital relief) is made under *Part 16* in respect of the amount subscribed for the shares, or
- on or after 6 May, 1993, where a claim for film relief is made under *section 481* in respect of the amount subscribed for the shares.

## **252 Restriction of relief to individuals on loans applied in acquiring interest in companies which become quoted companies**

### **Summary**

This section abolishes, subject to certain transitional arrangements, the tax relief available under *section 248* as extended by *section 250* in respect of loans applied to acquire an interest in quoted companies.

No relief is to be given in respect of a loan applied on or after 29 January, 1992 if at the time the loan is applied the company is a quoted company. The relief for other loans used to acquire an interest in a company is, irrespective of the date the loan was applied or the status of the company at the time the loan was applied, to be phased out over a 3 year period if, at “the specified date”, the company is a quoted company. The specified date is determined both by reference to the date the loan was applied and the date the company becomes quoted. The relief is reduced to 70 per cent in the first year of phasing out, 40 per cent in the second year and to zero in the third and subsequent years.

Relief continues to be available in respect of loans to acquire an interest in unquoted companies.

### **Details**

#### **Definitions**

“loan” is a loan applied for any of the purposes specified in the principal section (that is, *section 248* as extended by *section 250*). The purposes mentioned in *section 248* are — (1)

- the acquisition of any part of the ordinary share capital of a trading company (including a “Case V income” company) or of the holding company of such a company,
- lending to any such company for the purpose of its business or of the business of a connected company, and
- paying off any such loan.

“quoted company” is a company whose shares —

- are listed in the official list of the Irish Stock Exchange or any other stock exchange, or
- are quoted on an unlisted securities market (this includes both the Developing Companies Market (DCM) and the exploration securities market of the Irish Stock Exchange).

“the specified date”, in relation to a loan, is —

- 6 April, 1992 (where the loan was applied on or before 5 April, 1989),
- 6 April, 1993 (where the loan was applied between 6 April, 1989 and 5 April, 1990),
- 6 April, 1994 (where the loan was applied on or after 6 April, 1990), or
- if later, 1 January in the second next tax year after the tax year in which the company whose shares were acquired as a result of the loan or to which the money was loaned becomes a quoted company (for example, if a company becomes a quoted company on 1 June, 2002, the specified date in relation to any loan which was used to acquire the share capital of that company or which was loaned to that company is 1 January, 2004).

### ***Restriction of relief***

If at the specified date in relation to a loan a company, part of whose ordinary share capital was acquired or to whom the money was lent, is a quoted company, the relief under the principal section is to be phased out. (2)

In the first year of phasing out (which is the tax year starting with the specified date) the relief is to be reduced to 70 per cent of what it would otherwise have been. In the second year (which is the tax year following that which started with the specified date) it is to be reduced to 40 per cent. No relief will be available for the third and subsequent tax years. Once phasing out has begun it will not be stopped or reversed even if the company should revert to being an unquoted company.

This phasing out of relief procedure does not apply where a loan is applied on or after 29 January, 1992 (that is, applied for a purpose specified in **section 248**) if at the time the loan is applied the company, part of whose share capital was or is acquired or to whom the money was or is loaned, is a quoted company. In such a case no relief whatever is available. (3)

## **253 Relief to individuals on loans applied in acquiring interest in partnerships**

### **Summary**

This section provides for unrestricted relief to be given to an individual for interest on money borrowed to enable him/her to acquire a share in a partnership or to contribute or advance money to a partnership. To ensure that the relief is confined to genuine cases, the condition is imposed that the individual must, throughout the period from the application of the proceeds of the loan until the interest is paid, have personally acted as a partner in the conduct of the trade or profession carried on by the partnership. There are provisions to restrict the relief on the money borrowed where

the individual has recovered any capital from the partnership.

The granting of relief under this section does not preclude a claim for unrestricted relief on other “business” interest under *section 81*.

The relief is not available for new loans made on or after 15 October 2013 unless the loan replaces an existing qualifying loan and the replacement loan does not exceed the balance and term of the existing loan but the restrictions introduced by the Finance (No 2) Act 2013 also apply to any new loan. For qualifying loans made before 15 October 2013, relief is phased out over the tax years 2014 to 2016. No relief is available for the tax year 2017 and subsequent tax years. This restriction on relief does not apply where the partnership is a farm partnership within the meaning of *section 598A*.

## Details

### *Application*

The section applies to a loan used — (1)

- to buy a share in a partnership,
- to contribute money to a partnership by means of capital or a premium,
- to contribute money to a partnership to be used wholly and exclusively for the purposes of the partnership business, or
- to pay off another qualifying loan.

### *Conditions for relief*

The conditions which must be satisfied to enable the borrower to obtain relief without restriction are — (2)

- that throughout the period from the application of the borrowed money until the interest is paid he/she must have personally acted in the conduct of the partnership business as a partner in the partnership, and
- he/she must not have recovered any capital from the partnership in that period apart from any amount taken into account in *subsection (3)*.

### *Recovery of capital*

If the borrower recovers an amount of capital from the partnership without using it in reducing the loan, the borrower is thereafter to lose relief on a corresponding part of the interest. (3)

The borrower is to be treated as recovering an amount of capital if — (4)(a)

- the borrower receives money or money’s worth for the sale of any part of his/her interest in the partnership,
- the partnership returns any of the capital to the borrower or the partnership repays any part of the loan, or
- the borrower assigns any debt due to him/her from the partnership for money or money’s worth.

If the borrower gives away any part of his/her interest in the partnership at less than arm’s length value, he/she is treated as having recovered from the partnership the market value of what is given away. (4)(b)

### *Substituted loans*

Where relief is claimed under *subsection (1)(c)* for interest on a substituted loan, *subsections (2), (3) and (4)* apply as if all the loans were one loan. (5)

### ***Use of loan***

The loan must have been made in connection with the application of the money and must have been made either on the occasion of its application or within what is in the circumstances a reasonable time, and the loan must not have been applied for some other purpose before being applied as described in **subsection (1)**. The placing on temporary deposit, for example, with a bank or a building society, of loans of predetermined amounts should not be regarded as an application of the loans for “some other purpose”. (6)

### ***The relief***

Interest eligible for relief under this section is to be treated as a non-retainable charge on the borrower’s income for the year in which the interest is paid. This enables relief to be given by repayment if necessary. In other words, the interest is to be treated as a deduction in computing the amount of the borrower’s income chargeable to tax. Interest eligible for relief under this section is not eligible for relief under any other provision. (7)

### ***Phasing out the relief for some partnerships***

The relief is not available for interest paid on new loans made on or after 15 October 2013 (8) & (9)

Furthermore the relief is not available, as and from 1 January 2017 for interest paid on loans made prior to 15 October 2013 and for such loans for the tax year 2014, 75% of the qualifying interest paid qualifies for relief; for the tax year 2015, 50% of the qualifying interest qualifies for relief; and for the tax year 2016, 25% of the qualifying interest qualifies for relief.

The restrictions on relief outlined in subsection (8) and (9) do not apply where the partnership is a farm partnership within the meaning of **section 598A**. (10)

Subsection (10) which abolished the relief for new loans does not apply to loans which replace existing qualifying loans, provided the new loan does not exceed the balance or the term of the original loan. (11)

### **254 Interest on borrowings to replace capital withdrawn in certain circumstances from a business**

This section is an anti-avoidance provision. It is intended to prevent a person from withdrawing capital from the business for private purposes and within 5 years replacing it with loan capital, the interest on which would otherwise qualify for relief as a business expense.

### **255 Arrangements for payment of interest less tax or of fixed net amount**

This section deals with the construction of agreements made at a time when tax was deductible from interest at source. In such cases it was customary to provide for payment of interest “less tax” or at a net rate after deduction of tax. Since tax is no longer deductible from such payments it is necessary to provide that such agreements, where they might still be in existence, are to be construed as meaning payment of interest at the gross rate of interest.

Where there is any agreement, however worded, for payment of an amount less tax, the words “less tax” or the equivalent are to be disregarded in the case of interest from which tax may not now be deducted. If, therefore, there is an existing agreement to pay interest of, say, €1,000 a year less tax, this would have meant that for years for (1)



which the standard rate of tax was 35 per cent the borrower would pay a net sum of €650 to the lender (in whose hands the interest would be regarded as taxed income). Since 1974–75 the borrower is under an obligation to pay €1,000 a year to the lender, who is charged to tax directly.

An agreement, however worded, for the payment of interest chargeable with tax under Schedule D by reference to a net rate after deduction of tax is construed as requiring payment at the corresponding gross rate. For example, an agreement to pay such amount of interest as after deduction of tax amounts to, €800 per annum is, when the standard rate is 20 per cent, required to be construed as an agreement to pay a gross amount of €1,000. (2)

## CHAPTER 4

### *Interest payments by certain deposit takers*

#### **Overview**

This Chapter provides for a retention tax on interest accruing on deposit accounts (commonly known as “Deposit Interest Retention Tax” or more usually “DIRT”) at the rate of

35% in the case of interest paid or credited on or after 1 January 2019,

33% in the case of interest paid or credited on or after 1 January 2020,

on deposits held with a “relevant deposit taker”.

The tax must be deducted at source out of interest paid or credited on certain deposits (“relevant deposits”) of Irish residents with “relevant deposit takers” (namely, the licensed banks, credit unions, the Post Office Savings Bank and the Building Societies). In these notes the term “financial institutions” is, in general, used to denote references to “relevant deposit takers”.

DIRT does not apply to interest on —

- deposits beneficially owned by non-residents (on completion of the appropriate form of declaration),
- deposits beneficially owned by tax-exempt charities,
- deposits held by a financial institution which are beneficially owned by another financial institution,
- deposits beneficially owned a Credit Union,
- deposits beneficially owned by the Central Bank,
- deposits beneficially owned by the Investor Compensation Company Ltd.,
- deposits which are debts on certain bank securities listed on a stock exchange,
- certain deposits denominated in foreign currencies,
- deposits beneficially owned by Icarom plc,
- deposits beneficially owned by the National Treasury Management Agency (NTMA),
- deposits beneficially owned by the State acting through the NTMA,
- deposits beneficially owned by the National Pensions Reserve Fund Commission (NPRFC) or an NPRFC investment vehicle,
- deposits beneficially owned by the State acting through the NPRFC or an NPRFC investment vehicle,
- deposits beneficially owned by the National Asset Management Agency (NAMA),

- deposits beneficially owned by the State acting through the NAMA,
- deposits beneficially owned by companies and pension schemes,
- deposits beneficially owned by Personal Retirement Savings Account (PRSA) providers,
- deposits held in a branch of a financial institution which is located outside of the State.

DIRT deducted from interest is a final liability tax, that is, once DIRT is paid no further liability arises on that interest. There is no provision for refunds of DIRT except to charities, to individuals who are aged 65 or over and to individuals who are permanently incapacitated by reason of mental or physical infirmity from maintaining themselves.

**Chapter 5** of this Part applies the DIRT provisions to dividends paid by credit unions.

## 256 Interpretation (*Chapter 4*)

### Summary

**Section 256** is concerned with the interpretation of certain words and expressions used in **Chapter 4** of **Part 8**.

### Details

#### Definitions

“amount on account of appropriate tax” is an aid to the construction and application of the special “payment on account” provisions contained in **section 258(4)** under which a financial institution must make interim payments of DIRT accruing for a year of assessment. (1)

“appropriate tax” is the amount of tax (that is, DIRT) which must be deducted by a financial institution from a payment of “relevant interest”. In these notes “DIRT” is used to refer to the tax deducted under this Chapter rather than “appropriate tax”. The rates of DIRT in operation since 6 April 2001 are as follows:

<i>Date / Deposit</i>	<b>Special Savings Account / Special Term Accounts</b>	<b>Other relevant deposits where interest is paid annually or at more frequent intervals</b>	<b>Other deposits</b>
6 April 2001 – 31 December 2008	20%	Standard rate of income tax (20%)	Standard rate of income tax plus 3 per cent (23%)
1 January 2009 – 7 April 2009	23%	Standard rate of income tax plus 3 per cent (23%)	Standard rate of income tax plus 6 per cent (26%)
8 April 2009 – 31 December 2010	25%	25%	28%
1 January 2011 –	27%	27%	30%

31 December 2011			
1 January 2012 – 31 December 2012	30%	30%	33%
1 January 2013 – 31 December 2013	33%	33%	36%
1 January 2014	41%	41%	41%
1 January 2017 – 31 December 2017	39%	39%	39%
1 January 2018 – 31 December 2018	37%	37%	37%
1 January 2019 – 31 December 2019	35%	35%	35%
1 January 2020	33%	33%	33%

“building society”, in addition to building societies established under Irish law, includes a building society established in accordance with the law of another Member State of the European Communities.

“credit union” means a society registered under the Credit Union Act 1997, including a society deemed to be so registered under section 5(3) of that Act, that is, a society which, immediately before the commencement of that section, was registered as a credit union under the Industrial and Provident Societies Acts 1893 to 1978.

“deposit” is the type of account the interest on which is subject to DIRT. The reference to “with or without interest” is intended to deal with situations where, for example, a non-interest-bearing deposit is converted to an interest-bearing deposit after the money in the deposit has been paid to the financial institution. The definition is intended to embrace normal deposit accounts, certificates of deposit and time deposits. It also covers the situation where the full amount of capital on deposit is not guaranteed repayable, or where the amount to be repaid is linked to or determined by changes in a stock exchange index.

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

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

“foreign currency” means a currency other than the currency of the State.

“interest” is given an extended meaning and includes any amount which is or is to be repaid in excess of the amount of the deposit.

“long term account” means an account in which the deposit is to be held in the account for a period of not less than 5 years.

“medium term account” means an account in which the deposit is to be held in the account for a period of not less than 3 years.

“pension scheme” is —

- an exempt approved scheme within the meaning of *section 784* (this is basically an occupational pension scheme which is approved by the Revenue Commissioners for tax purposes and which is established under irrevocable

trusts), and

- retirement annuity contracts or trust schemes to which *section 784* or *785* apply (these are pension contracts of a type often availed of by individuals, particularly the self-employed).

“Personal Retirements Savings Account” has the same meaning as in *section 787A*.

“PRSA provider” has the same meaning as in Part X of the Pensions Act 1990.

“relevant amount” means any amount of income referred to in *section 205A(2)* and any amount of gains referred to in *section 205A(3)* arising from the Magdalen Restorative Justice Ex-Gratia Scheme.

“relevant deposit” identifies the deposit accounts to which DIRT applies. The following are excluded from the definition of “relevant deposit” —

- Deposits made with a financial institution by —
  - another financial institution,
  - the Central Bank of Ireland (the Central Bank itself is not a “relevant deposit taker”),
  - the Investor Compensation Company Limited,
  - the National Treasury Management Agency (NTMA),
  - the State acting through the NTMA (this exclusion is necessary as the State is normally the beneficial owner of interest on deposits made by the NTMA),
  - a Fund investment vehicle (within the meaning of section 37 of the National Treasury Management Agency (Amendment) Act 2014) of which the Minister for Finance is the sole beneficial owner,
  - the National Asset Management Agency (NAMA),
  - the State acting through NAMA
  - the Strategic Banking Corporation of Ireland (SBCI) or a subsidiary wholly owned by it or a subsidiary wholly owned by any such subsidiary,
  - the Minister for Social Protection in respect of accounts held under section 9 of the Social Welfare Consolidation Act 2005,
  - a Real Estate Investment Trust (REIT) or a member of a group REIT [by virtue of Section 705G(3) TCA 1997]
  - the National Pensions Reserve Fund Commission (NPRFC) or a Commission investment vehicle, [Section 5(1) and Schedule 1 of the National Treasury Management Agency (Amendment) Act 2014 provides for the dissolution, by Ministerial Order, of the NPRFC. The Ministerial Order has not been signed as of yet.]
  - the State acting through the NPRFC or an NPRFC investment vehicle,
  - Icarom plc.

In effect, interest on inter-bank deposits is not subject to DIRT.

[It is a condition of these exclusions that a financial institution, the Central Bank, the NTMA, the NAMA, , the SBCI, the NPRFC, the State or Icarom plc, should beneficially own the interest on such deposits. This is necessary to ensure that interest on certain transactions between banks and non-banks does not escape DIRT. For example, an inter-bank certificate of deposit could be sold

on by the bank making the deposit to a non-banking company which would then receive the interest. The interest, however, not being beneficially owned by a financial institution at the time it is paid, would be subject to DIRT.]

- Interest-bearing securities (for example, loan stock) issued by a financial institution which are listed on a stock exchange. Without this exclusion the definition of “deposit” would otherwise be wide enough to cover loan stock on which interest is payable.
- Deposits in foreign branches of a financial institution which is resident in the State for corporation tax purposes.
- Deposits in foreign branches of a foreign financial institution which has a branch in Ireland. [Relevant deposits in the Irish branch of such a financial institution are subject to DIRT].
- Certain limited foreign currency (that is, a currency other than the currency of the State) deposits. Interest on foreign currency deposits made by individuals on or after 1 June, 1991 is subject to DIRT. Foreign currency deposits by individuals made before that date (which under exchange controls could only be made by non-residents) continue to be outside the scope of DIRT. Additions in the same currency in the period 1 June, 1991 to 1 January, 1993 to foreign accounts of individuals opened before 1 June, 1991 are excluded from DIRT. As and from 1 January, 1993, all foreign currency deposits (that is, all new deposits and all new additions to existing deposits) made after that date are subject to DIRT.
- Deposits made on or after 25 March, 2002 which are beneficially owned by a company or a pension scheme and where the Revenue reference numbers appropriate to these bodies have been provided to the financial institutions. (Prior to that date a declaration was required.)
- Deposits which are made by a Personal Retirement Savings Account (PRSA) provider where
  - the deposits are held for the purposes of a Personal Retirement Savings Account
  - and*
  - the reference number assigned by Revenue to the PRSA provider has been provided to the financial institution.
- Irish currency deposits of foreign residents. The conditions for exclusion, so that interest may be paid gross, are that —
  - no part of the interest due must be beneficially owned by a person resident in the State (thus, the interest on a joint account beneficially owned by an Irish and a foreign resident would be subject to DIRT), and
  - the bank, etc must have received a declaration as to non-residence under *section 263*.
- Deposits of charities made on or after 25 March 2002 which are entitled, in respect of the interest, to exemption from income tax by virtue of *section 207(1)(b)* or from corporation tax (if the charity is a company) under *section 207(1)(b)* as applied by *section 76(6)*. The charity must provide its charity reference number to the financial institution. (Prior to that date a declaration was required.)
- Deposits referred to in *subsections (1A), (1B) and (1C)* (see below).

“relevant deposit taker” specifies the financial institutions within the DIRT scheme. It includes all licensed banks and certain other deposit takers excluded from the requirement to hold a licence from the Central Bank, such as building societies, credit unions and the Post Office Savings Banks. It also includes branches in the State of

banks and building societies which are established in and subject to a regulatory authority in another member State of the EEA. Also included is a “specified intermediary” in relation only to a “specified deposit” (see below). Industrial and provident societies or other persons who might take money on deposit are outside the scope of the definition.

The inclusion of the Post Offices Savings Bank does not bring within the DIRT scheme savings certificates, the National Instalment – Savings Scheme or savings bonds the interest on which is to be paid without deduction of tax. Those schemes are separate from deposits with the Post Office Savings Bank.

“relevant interest” means interest paid in respect of a “relevant deposit”, (but see *section 261A* with regard to special term accounts).

“return” is the returns required to be made by a financial institution to the Collector-General under *section 258(2)*.

“special savings account” is an account opened on or after 1 January, 1993 and before 6 April, 2001 by an individual which complies with the conditions in *section 264(1)* and in respect of which a declaration of the kind referred to in *section 264(2)* is made to the financial institution.

“special term account” means a medium term account (3 years or more) or a long term account (5 years or more) opened, on or after the 1 January 2002 and before the 16<sup>th</sup> October 2013, with a relevant deposit taker in respect of which the conditions of *section 264A(1)* were satisfied, and a declaration of the kind mentioned in *section 264A(2)* had been made to the relevant deposit taker.

“special term share account” has the same meaning as in *section 267A*.

“specified deposit” is a deposit of a class designated by the Minister for Finance for the purposes of this definition.

“specified intermediary” is a person appointed by the National Treasury Management Agency for the purposes only of taking specified deposits.

### ***Deposits under subsection (1A) and (1B) – Exempt from DIRT***

These deposits were excluded from being a “relevant deposit” by the Finance Act 2007.

A deposit shall be a deposit under *subsection (1A)* for any year of assessment if — **(1A)**

- at any time in that year of assessment the individual beneficially entitled to the interest, the individual’s spouse or the individual’s civil partner is 65 years or over, and the total income of the individual for that year of assessment does not exceed the specified amount (within the meaning of *section 188(2)*) (i.e. the relevant exemption limit), **(a)**
- and
- a declaration of the kind mentioned in *section 263A* (see below) has been made to the relevant deposit taker. **(b)**

A deposit shall also be a deposit under *subsection (1B)* for any year of assessment if— **(1B)**

- the individual beneficially entitled to any interest paid in respect of that deposit in that year of assessment, the individual’s spouse or the individual’s civil partner is a relevant person (within the meaning of *section 267(1)(b)* (i.e. permanently incapacitated)) and the individual would, in accordance with *section 267(3)*, be entitled to repayment of the whole of any appropriate tax if it **(a)**

has been deducted from that interest. It also provides for a person who is entitled to the interest as a trustee of a special trust for permanently incapacitated individuals under *section 189A(2)* and who would, under *section 267(2)*, be entitled to repayment of the whole of the DIRT if it had been deducted,

- a declaration of the kind mentioned in *section 263B* has been made to the Revenue Commissioners, (b)
- a notification of the kind mentioned in *section 263C* has been issued by the Revenue Commissioners to the relevant deposit taker that the deposit is a deposit to which this subsection refers and that the notification is not cancelled in accordance with *section 263C(2)*, and (c)
- the individual beneficially entitled to the interest is not otherwise an individual referred to in *subsection (1A)* (i.e. self, spouse or civil partner is over 65 and the total income is below the exemption limit). (d)

If the notification under *section 263C(2)* is cancelled then the Revenue Commissioners will notify the deposit taker who shall not treat it as a deposit under this subsection from that time.

### ***Deposits under subsection (1C) – Exempt from DIRT***

Deposits under *subsection (1C)* were excluded from being a “relevant deposit” by the Finance Act 2018.

A deposit shall be a deposit under *subsection (1C)* for any year of assessment if —

- the deposit is solely in respect of a “relevant amount”,
- a declaration of the kind mentioned in *section 263D* has been made to the Revenue Commissioners,
- a notification of the kind mentioned in *section 263E* has been issued by the Revenue Commissioners to the relevant deposit taker that the deposit is a deposit to which this subsection refers and that the notification is not cancelled in accordance with *section 263E(2)*.

### ***Construction***

The meaning of “payment” and “paid” is expanded to encompass situations in which interest on a relevant deposit is not paid over to the depositor but is credited to the deposit account (or to any other account). Crediting interest in this manner therefore constitutes payment; consequently, DIRT must be deducted by the financial institution from the amount credited and payment must be made to the Collector-General under *section 258(3)* and (4) or *section 259(4)*. (2)(a)

The amount of a payment from which tax is to be deducted is the grossed-up amount of the payment before deduction of DIRT. This provision is necessary for the interpretation of, in particular, *section 257(1)*. (2)(b)

A deposit is regarded as held at a foreign or, as the case may be, Irish branch of a financial institution if it is recorded in the books of the bank, etc as a liability of that branch. This is particularly relevant for the purposes of *paragraph (c)* and (d) of the definition of “relevant deposit”. (2)(c)

A relevant deposit taker must obtain the tax reference number of a person making a specified deposit. The person making the deposit is required to provide the number. (3)

## 257 Deduction of tax from relevant interest

### Summary

This section is the charging provision for DIRT. It provides that a financial institution must deduct DIRT on paying or crediting relevant interest. The financial institution is indemnified against any claim for the “gross” amount of such interest. A financial institution is required to treat every deposit as a relevant deposit, and thus subject to DIRT, unless satisfied that it is not a relevant deposit. Finally, the section removes relevant interest from the ambit of *section 246* so that there is no conflict with the provisions of that section requiring deduction of tax at source from certain payments of interest.

### Details

A financial institution is required to deduct DIRT (referred to in the Chapter as “appropriate tax” – see definition in *section 256(1)*) from payments of “relevant interest” (that is, interest paid or credited in respect of “relevant deposits”). The deduction is to be made out of “the amount of the payment”, which means the gross amount (see *section 256(2)(b)*) of the interest paid or credited before deduction of the appropriate rate of DIRT. The use of the words “the person.....shall allow such deduction” ensures that the financial institution is protected in its contractual relationship with customers to whom the financial institution pays interest “net” of tax instead of gross. (1)

A financial institution must treat every deposit held by it as a relevant deposit subject to DIRT unless it is satisfied that it is not a relevant deposit. The financial institution must ensure that the rules contained in the definition of “relevant deposit” in *section 256* relating to excluded deposits (mainly non-resident accounts) are complied with. The financial institution may continue to regard the deposit as not being a relevant deposit after it has satisfied itself that the deposit is outside the scheme until it is in possession of information to the contrary (for example, when informed – see *section 263(1)(e)* – that an Irish resident person has become beneficially entitled to any interest on the deposit). (2)

Interest payable under deduction of tax under this Chapter is removed from the ambit of *section 246*. (3)

## 258 Returns and collection of appropriate tax

### Summary

This section provides for returns, payments and payments on account of DIRT by financial institutions and provides that, in general, the existing provisions for the assessment and collection of income tax, and for the charge of interest on overdue tax, apply with suitable modifications to DIRT. The section provides specifically that DIRT is payable without the necessity for raising an assessment, but provision is made to empower an inspector to raise an assessment if payment is delayed or if he/she considers it necessary to do so because he/she is dissatisfied with the particulars contained in a return.

The payment on account provisions of this section are subject to the alternative method of calculating that payment contained in *section 259*.



## Details

### *Application*

The provisions of this section apply to the collection and recovery of DIRT on relevant interest. Any other provision of the Tax Acts dealing with collection and recovery is, therefore, subject to the provisions of this section in so far as they apply to DIRT. (1)

### *Returns*

A financial institution is required to make annual returns to the Collector-General for each year of assessment of relevant interest paid (or credited) by it in the year and of the DIRT deductible under *section 257(1)*. The return is to be made within 15 days from the end of the year of assessment. Even if a financial institution fails to deduct DIRT from a payment of relevant interest, it would nonetheless be obliged to account in the end-of-year return for the amount of DIRT relating to that payment. (2)

### *Payments*

Payment by the financial institution to the Collector-General of DIRT deductible from the relevant interest must be made by the final date by which the return is to be made (that is, 15 days from the end of the year of assessment). The tax is payable without the making of an assessment but, for the purposes of securing collection of the tax or any interest on the tax, an assessment may be made by the inspector if the DIRT, or any part of the DIRT, due for the year is not paid on time. A payment on account during the course of the year of assessment is provided for in *section (4)* or, alternatively, in *section 259*. (3)

The words in brackets, that is, “(whether or not it has been paid when the assessment is made)” apply to permit an assessment to be made where —

- an insufficient amount of DIRT had been paid on or before the due date (that is, within 15 days after the end of the year of assessment), or
- the tax due has not been paid on or before the due date.

Thus, if a bank which owes €1,000,000 for DIRT pays €800,000 in due time, an assessment may be made for the €1,000,000. Collection procedures will then commence in respect of the unpaid balance. Similarly, if no DIRT is paid before the due date, an assessment to recover it may be made even though, before the assessment is made, the full €1,000,000 has been paid. The assessment would be necessary so that interest on the €1,000,000 from the due date to the date of payment could be recovered by the Collector-General.

There is no necessity for a notice of assessment to be sent to the taxpayer if the correct amount of tax has been paid in due time. However, a pro forma assessment may be made to enable monies paid in due time to be brought to account by the Collector-General.

### *Interim payments*

Interim payments on account by financial institutions on foot of DIRT due to be paid by them for a year of assessment are required. [An alternative method which must be used in certain circumstances for calculating the amount of the interim payment on account is provided for by *section 259*]. The payments on account must be made within 21 days of each of the following dates (4)

- 31 March

(4)(a)

- 30 June
- 30 September

The payment on account that must be made within 21 days of 31 March must not be less than the appropriate tax accruing in the period 1 January to 31 March. **(4)(b)(i)**

The payment on account that must be made within 21 days of 30 June must not be less than the appropriate tax accruing in the period 1 April to 30 June. **(4)(b)(ii)**

The payment on account that must be made within 21 days of 30 September must not be less than the appropriate tax accruing in the period 1 July to 30 December. **(4)(b)(iii)**

Any amount on account of appropriate tax paid by the relevant deposit taker for any year of assessment shall be treated as far as may be as a payment on account of any appropriate tax due and payable by it for that year of assessment under **subsection (3)**

Normally, bank interest is treated as accruing from day to day but in some cases interest may accrue on periodic balances, etc or may not accrue until the end of the month in which money is deposited. In every case, for the purposes of the payment on account, interest is treated as accruing from day to day so that a notional amount, on which the payment on account may be based, can readily be determined. **(4)(d)**

In the very rare case where the payment on account might exceed the DIRT due for the full year of assessment the excess is carried forward and set firstly against the next payment on account due (that is, for the next year of assessment). Any remaining balance is set against the next payment due for the full year under **subsection (3)** and so on until the excess is exhausted. **(4)(e)**

#### ***Interest deemed to accrue from day to day***

For the purposes of the return and payment of DIRT under **subsection (3)**, interest is deemed to accrue from day to day (if determinable) and, to the extent that it is deemed to accrue in a year of assessment and is not actually paid in that year, is deemed to be paid on 31 December in that year. **(4A)**

Such interest deemed to have been paid on 31 December in a year of assessment (the DIRT on which must be accounted for under **subsection (3)**) may be credited against the DIRT liability of the year of assessment in which the DIRT is actually paid. **(4B)**

The same payment and collection conditions that apply to the payment for the full year apply to the payments on account due under **subsection (4)**. The amount on account of DIRT is to be paid without the making of an assessment. **(5)**

The annual return of DIRT is to contain particulars of the interest in respect of which interim payments are due for the relevant year of assessment and of the “amount on account of appropriate tax” payable in respect of that interest. A return is required whether or not relevant interest has been paid. This is to deal with the possible situation where payments were due on the accrued basis under **subsection (4)** but no payment (or return) was due under **subsection (3)** because no relevant interest had actually been credited in the year.

#### ***Assessments***

An inspector is authorised to make an estimated assessment where a financial institution has not made a return, or has made a return which includes an incorrect amount of DIRT, or has made a return with which the inspector is dissatisfied. The due date for any tax contained in the assessment is, for the purposes of interest on unpaid tax, to be the date on which the tax should have been paid without the making **(6)**

of an assessment if a correct return had been made in due time.

The making of any necessary assessments, adjustments or set-offs to secure the correct tax liabilities of a financial institution (and, if necessary, of a depositor) is provided for where a return contains any item incorrectly included as a payment of relevant interest. For example, the financial institution might erroneously indicate in a return that DIRT was deducted from interest paid to a non-resident depositor (in effect, the deposit in question would not be a relevant deposit). (7)

While, normally, DIRT is due and payable without the making of an assessment, the due date for payment of DIRT in respect of which an assessment has issued is one month after the issue of the notice of assessment. However, that due date cannot displace an earlier due date which would have been applicable under *subsections (3) and (4)*. If the assessment is appealed, the appropriate earlier due dates continue to apply. Any tax overpaid on determination of an appeal against such an assessment is to be repaid. (8)

### *Collection, etc*

The provisions of the Income Tax Acts relating to the assessments, appeals and collection of and interest on income tax apply to DIRT. (9)(a)

With effect from 1 July 2009, interest is payable at a rate of 0.0274 per cent per day or part of a day on the late payment of DIRT (or of an amount on account of such tax) which is payable under *subsection (3) or (4)* without the making of an assessment. (9)(b) & (c)

For any day or part of a day before 1 July 2009 during which the DIRT remains unpaid, interest is payable at the rate of 0.0322 per cent per day or part of a day on the late payment of DIRT.

Assessed DIRT is subject to the normal interest provisions applying to assessed taxes except as is provided below.

The payment and procedural provisions of *section 1080* which apply to interest on assessed taxes are applied to interest payable under this subsection on DIRT (or the amount on account of such tax) which is payable without the making of an assessment. *Subsection (4) of section 1080* provides for certification of an interest debt in legal proceedings.

Where an assessment to DIRT is made so that the normal interest charge would arise under *section 1080* that section is to apply with the omission of *subsection (2)(b)* which deals with the date as from which interest is payable in a case where there is an appeal against an income tax assessment. This provision is not required in the case of an assessment to DIRT because the due date for payment of interest in such a case is set out in *subsection (8)* which applies whether or not there is an appeal against such assessments. (9)(d)

A relevant deposit taker aggrieved by an assessment made on that person under this section may appeal the assessment by notice in writing to the Appeal Commissioners. An appeal must be made within 30 days after the date of the notice of assessment. The Appeal Commissioners will hear and determine an appeal in the manner provided for in Part 40A of the Act. (9A)

A relevant deposit taker may not appeal if they have not filed a self assessed return and paid the amount of appropriate tax due in accordance with their own self assessment (where the person is required to file a return).

### ***Prescribed form for returns***

The return required under this section is to be made on the prescribed form and is to include a declaration that it is correct and complete. (10)

## **259 Alternative amount on account of appropriate tax**

### **Summary**

This section counters the effect on the yield from DIRT of the special crediting of deposit interest made by certain financial institutions just before the introduction of DIRT on 6 April 1986.

**Section 259** applies to a deposit-taker if the amount of DIRT payable in respect of interest paid or credited by it in a year of assessment is less than the amount of tax appropriate to the interest which accrued on the deposits held by it in a specified period of 12 months.

The 12 month period ends on the deposit-takers latest general crediting date in the year of assessment or, if it has no general crediting date, on the last day of that year.

Where **section 259** applies to an institution in respect of a year of assessment, its October payment on account of DIRT for the following, and each succeeding, year of assessment is determined by calculating the DIRT on 12 months' interest accruing to 30 September in the year of assessment and then reducing the resultant amount by the payments on account made in the previous January, April and July.

### **Details**

For the purposes of the section, interest is treated as accruing “from day-to-day”. The effect of this is that even if entitlement to receipt of interest arises only on fixed dates at, say, 6 monthly or yearly intervals, the interest due on the deposit can still be apportioned to periods ending on dates other than those fixed crediting or payment dates. (1)(a)

In the section references to “general crediting date” are to be taken as references to a date on which a financial institution credits interest to the majority of the deposit accounts held by it. The reference to “majority” is necessary to cater for the situation where all deposits might not be credited with interest on the same date. For instance, some forms of deposit might involve monthly interest cheques, or might be credited with interest only when they are uplifted or at a specified interval following the opening of the deposit. The qualification contained in brackets establishes that a relevant deposit is to be treated as credited with interest whether or not that interest is then added to the capital for the purposes of the next crediting of interest. (1)(b)

Where the DIRT due and payable by a financial institution for any year of assessment in respect of interest paid or credited in that year is less than the notional tax due in respect of interest accrued on deposits held by it in a specified period of 12 months ending in that year of assessment, the modified method of calculating the October payment on account provided for in this section applies on a continuing basis in each subsequent year of assessment. In short, the section in general applies where a financial institution would be liable for DIRT on less than 12 months interest in any year of assessment. (2)

The period of 12 months can vary depending on the circumstance. The period of 12 months is to end on the “general crediting date” of the institution if there is only one such date in the year of assessment. The period of 12 months is to end on the last such date if there is more than one general crediting date in the year. Where financial institutions have no general crediting date in a year of assessment (for instance, a bank which has predominantly short-term deposits with random dates for credits), the 12 month period is to end on the last day of the year of assessment, that is, 31 December.

Where this section applies to a financial institution for any tax year, the amount of the interim payment on account is no longer determined in accordance with **section 258(4)**. Instead, for that tax year and for all subsequent tax years, the interim payments on account are calculated by reference to **subsection (4)**. Where the payment is to be so calculated, references in the Tax Acts (other than in this section) to **section 258(4)** are equated to references to **subsection (4)**. This is necessary so as to apply to payments on account due under **subsection (4)** certain references in this Chapter to payments on account of DIRT due in accordance with **section 258(4)**. These references are in —

- **section 256(1)** which is concerned, in effect, with defining the payment on account,
- **section 258(5)** which provides that the payment on account is payable without the necessity for raising an assessment,
- **section 258(8)(a)** which establishes that the due date for assessed DIRT (in the event that an assessment must be raised) is one month after the date of the assessment. [However, the due date so established cannot displace an earlier due date for a payment on account under **section 258(4)**. Even if the assessment is appealed, the earlier due date continues to apply.]

Where this section applies to a financial institution for a year of assessment, the payments on account for that year are to be calculated in accordance with the formula in the Table to this **subsection** **(4)(a)(i)**

The interim payments on account must be made within 21 days of each of the following dates

- 31 March **(4)(a)**
- 30 June
- 30 September

The Table sets out the formula for calculating the payment on account under this **subsection**. The formula is — **(i)**

$$\frac{A - (B - C)}{3}$$

where

- A is the amount of DIRT which would be payable by a deposit taker if all the interest accruing in the 12 months ending on the relevant quarterly date in the year of assessment were actually paid or credited in the year of assessment.
- B is the amount of DIRT payable by the deposit taker in respect of interest actually paid or credited in the preceding year of assessment.
- C is the lesser of the amount at B and the amount treated in accordance with this subsection or **section 258(4)** as paid by the relevant deposit taker on account of the appropriate tax due and payable by it for the year of assessment preceding the relevant year.

**Subparagraph (ii)** provides that notwithstanding **section 258(3)**, the aggregate of the **(ii)** interim amounts on account of appropriate tax due in accordance with **subparagraphs (i) and (iii)** should not be less than the amount produced by the formula:

$$A - (B - C)$$

where

- A is the amount of appropriate tax which would be due and payable for the year of assessment in accordance with **section 258(3)** if the total amount of the relevant interest which had accrued in the period of 12 months ending on 30 September in the relevant year on all relevant deposits held by the relevant deposit taker in that period (and no more) had been paid by in the relevant year,
- B is the amount of appropriate tax which was due and payable by the deposit taker for the year of assessment preceding the relevant year in accordance with **section 258(3)** and
- C is an amount equal to the lesser of the amount at B and the amount treated, in accordance with this subsection or **section 258(4)**, as paid by the relevant deposit taker on account of the appropriate tax due and payable by it for the year of assessment preceding the relevant year.

This subparagraph provides that, where for any year of assessment, the amount **(iii)** computed in accordance with **subparagraph (ii)** exceeds the aggregate of the amounts computed in accordance with **subparagraph (i)** and, without prejudice to the obligation to pay any amount computed in accordance with **subparagraph (i)**, that excess must be paid to the Collector General within 21 days of 30 September in that year of assessment and shall be treated as far as may be as a payment on account of any appropriate tax due and payable by it for that year of assessment under **section 258(3)**.

In the unlikely event of the aggregate payments on account (which are calculated on **(4)(b)** the basis of accrued interest) exceeding the liability for the tax year which is determined by reference to interest paid or credited in the year, the excess is to be carried forward as a credit against the payment due for the following tax year. Any remaining balance is to be set against the next quarterly payment and so on until the excess is absorbed.

## **260 Provisions supplemental to sections 258 and 259**

### **Summary**

This section ensures that where financial institutions do not actually pay (or credit) interest on a deposit in a year of assessment (for example, long term savings products where interest is paid at the end of a fixed period) they will account on an annual basis for DIRT on the accrued interest on the deposit.

The section does not alter in any way the liability to tax of the depositor who will continue to be chargeable to DIRT in respect of the interest for the year in which it is actually paid (or credited).

### **Details**

#### **Definitions**

“specified deposit” is any relevant deposit made after 28 March, 1996 in respect of **(1)**

which specified interest is payable other than such deposits —

- held in a Special Savings Account, or
- in respect of which —
  - interest is determined by reference to changes in a Stock Exchange or other financial index,
  - the financial institution had been making arrangements before 28 March, 1996 to accept the deposit, and
  - the deposit is made on or before 7 June, 1996.

“specified interest” is interest in respect of a specified deposit other than any part of that interest which —

- is payable annually or at more frequent intervals, or
- cannot be determined until the date it is actually paid; this applies even where the terms under which the deposit was made are complied with fully (for instance, the allowance for the possibility of early withdrawal would not make the interest payable indeterminate).

***Specified interest accruing in a year treated as paid in the year***

The amount of specified interest accruing in any year of assessment is treated as paid (2) in that year, except in the year in which the specified interest is actually paid. This deeming provision is necessary for the purposes of **section 258** which regulates the time and manner in which DIRT in relation to a payment of relevant interest is to be accounted for and paid. As a result of this procedure the financial institution is to account for DIRT in accordance with **section 258** for the year of assessment for which the specified interest is deemed to have been paid.

DIRT is to be deducted from the full payment of specified interest when that payment (3) is actually made. However, DIRT paid in respect of accruals of that interest in previous years of assessment (which interest would have been deemed to have been paid under this section) may be credited against the financial institution’s liability for DIRT for the year of actual payment (or of subsequent years if necessary). This is for clarification only since the obligation to deduct, account for and pay DIRT on the interest when it is actually paid already arises under **sections 257** and **258**.

***Derogation***

A derogation from the section is provided where for a year of assessment and all (4) preceding years of assessment:

in accordance with **section 258(4)** or **259(4)**, as may be appropriate, a deposit taker (a) makes a payment on account of appropriate tax in respect of specified interest as if, in relation to each specified deposit held by it, the references:

- in **section 258(4)** to each of the periods referred to in **subparagraphs (i), (ii) (i)** and **(iii)** of **paragraph (b)** of **section 258(4)** in the year of assessment were a reference to the period beginning on the date on which the specified deposit was made and ending on each date referred to in **subparagraphs (i), (ii) and (iii)** of **paragraph (b)** of **section 258(4)(a)**, as the case may be, in the year of assessment,
- in **section 259(4)(i)**, where it occurs in the meaning assigned to “A”, to the (ii) period of 12 months ending on each of the dates referred to in **subparagraphs (i), (ii) and (iii)** of **section 258(4)(a)** in the relevant year, were a reference to the period beginning on the date on which the specified deposit was made and ending on each date referred to in **subparagraphs (i), (ii) and (iii)** of **section**

**258(4)(a)**, as the case may be, in the year of assessment, to “the period of 12 months ending on the 5th day of October in the relevant year”,

- in **section 259(4)(ii)**, where it occurs in the meaning assigned to “A”, to the period of 12 months ending on 30 September in the relevant year, were a reference to the period beginning on the date on which the specified deposit was made and ending on 30 September in the year of assessment.

A further condition which must be complied with if the derogation is to apply is that the amount to be paid on account of appropriate tax for that year including any amounts payable in accordance with **sections 258(4)** and **259(4)** as so modified, before any set-off of any amount on account of appropriate tax paid in an earlier year of assessment, does not exceed the DIRT payable by the financial institution for the year of assessment. (b)

## 261 Taxation of relevant interest, etc

### Summary

This section sets out the general framework for the tax treatment of relevant interest in the hands of depositors. It ensures that dividends on building society share accounts are treated as normal deposit interest. It provides the basis for raising assessments in certain cases on interest receivable under deduction of DIRT. It also provides that no repayments of DIRT are to be made except to —

- companies within the charge to corporation tax in respect of the interest,
- charities, and
- individuals who are aged 65 years or over or who are permanently incapacitated.

### Details

Because most building society deposits are in the form of share accounts, it is necessary to provide that the dividends (that is, interest) on such accounts should not be treated as distributions (which, as such, would be liable to dividend withholding tax in the hands of Irish resident individuals and be exempt from tax in the hands of an Irish-resident company as franked investment income). Such dividends are accordingly regarded as normal deposit interest (which in reality they are) and brought within the ambit of DIRT. (a)

A person who is not liable to tax cannot normally get a repayment of DIRT deducted from relevant interest paid. Exceptions apply, however, in the case of charities, individuals aged 65 years and over and individuals who are permanently incapacitated (see **section 267**). The bar on repayment of DIRT also does not apply to a company which is liable to corporation tax on the interest. Under **section 24(2)** such a company can offset the income tax deducted at source (that is, the DIRT) against its corporation tax liability (if any) and obtain a repayment if it has trading losses to offset against its investment income liable to corporation tax. In addition, it is to be noted that, in any event, deposits made by companies can be excluded from the DIRT scheme (see **section 256(1)(f)**). (b)

Any amount of relevant interest (that is, the “gross” interest, as provided for in **section 256(2)(b)**) is taxable under Case IV of Schedule D and, except in the case of Special Savings Accounts, is to be taken into account in computing the recipient’s total income. However, except for the purposes of a claim for repayment of DIRT under **section 267(3)**, in charging the recipient of the interest to tax, the various exemption limits in **section 188** are increased by the amount of the interest received. (c) & (d)



The individual is entitled to a credit under *section 59* in respect of the DIRT deducted from the interest. The rate of income tax to be applied to relevant interest income when the individual's total income is taxed, is to be the same as the rate at which DIRT is deducted from that interest income. This procedure effectively ensures that DIRT deducted from interest on relevant deposits is a final liability tax.

In the event of a claim for repayment of DIRT under *section 267(3)* the normal exemption limits under *section 188* apply. The purpose of this is to prevent a low income person with small deposit interest being exposed to a marginal relief rate of tax (40 per cent) on the interest.

Where the appropriate exemption limit in *section 188* is increased by the amount of relevant interest, the references in that section to —

- “income tax payable” are to be construed as references to “income tax payable after a credit is given, by virtue of *section 59*, for DIRT deducted from the relevant interest”, and
- “a sum equal to twice the specified amount” are to be construed as references to “a sum equal to the aggregate of twice the specified amount and the amount of the relevant interest”.

This procedure ensures that the credit for DIRT is, in cases where the exemption limits are increased by the amount of relevant interest received, given before marginal relief is calculated. The purpose of this is to ensure that the credit for DIRT is set against relevant interest and not other income and to limit the cut-off point for marginal relief to twice the appropriate exemption limit plus the amount of the relevant interest.

In the case of DIRT deducted from Special Savings Accounts, *section 264(4)* effectively substitutes *paragraph (c)* of this section with a new provision which ensures that DIRT on Special Savings Accounts is treated as being paid in full settlement of all tax liability in respect of that interest. However, such DIRT is still eligible for repayment under *section 267(3)* (see note on *section 264*).

## **261A Taxation of interest on special term accounts**

### **Summary**

The term “special term accounts” refers to certain deposit accounts that could be opened in the period 1 January 2002 to 15 October 2013. The tax treatment applicable to such accounts is as outlined below. Section 23 of the Finance Act (No 2) 2013 provided that no new special term account could be opened on or after 16 October.

In relation to accounts opened before this date, the tax treatment outlined covers the following accounts:

- special medium term accounts that have not reached the third anniversary of the opening of the account by 15 October 2013,
- special long term accounts that have not reached the fifth anniversary of the opening of the account by 15 October 2013 **and**
- special long term accounts that were originally opened as special medium term accounts and that have not reached the fifth anniversary of the opening of the account by 15 October 2013.

Special term accounts are accounts held for a duration of at least 3 years in the case of medium term accounts or at least 5 years in the case of long term accounts. A

DIRT exemption applies for the first €480 per annum of interest where the funds are invested for a minimum of 3 years and for the first €635 interest where the funds are invested for 5 years.

Where an election is made to change a medium term account to a long term account, then for subsequent years only the amount of interest over €635 is liable to DIRT.

Any interest received in excess of these amounts will be liable to DIRT at 39 per cent from 1 January 2017.

Annual returns, with details of new special term account holders, must be made by financial institutions to the Revenue Commissioners.

The provisions of the section came into force by way of an Order made by the Minister for Finance with effect from 1 January 2002 and were ceased, with effect from the 16<sup>th</sup> October 2013, by **Section 23, Finance (No. 2) Act 2013**.

### Details

Interest on a special term account will be relevant interest for the purposes of the DIRT regime but only to the extent that it exceeds €480 in the case of a “medium term account” and €635 in the case of a “long term account”. (1) – (3)

An individual may elect in writing to convert a medium term account to a long term account. Where such an election is made, interest paid in a tax year, which starts on or after the date of the election, will be relevant interest only to the extent that it exceeds €635. (4) & (5)

These exempted amounts are not to be taken into account in computing total income for the purposes of the Income Tax Acts.

Relevant interest paid on a special term account is not to be reckoned in computing total income, except for the purposes of a repayment claim under **section 267(3)**. This, however, does not apply to interest on an account which ceases to be a special term account. (6)

An account ceases to be a special term account if any of the conditions in **section 264A(1)** cease to be satisfied. Where that happens, all subsequent interest paid on an account will be relevant interest and subject to DIRT. All past interest will be treated as relevant interest to the extent that it has not already been so treated and DIRT must be deducted from such interest. If that interest has already been withdrawn, the amount of DIRT must be deducted from the relevant deposits in the account. (7)

**Subsection (6)** does not apply to any interest in respect of any relevant deposit held in the account which is paid, or treated as paid by virtue of **subsection (7)**, on or after the date on which the account ceases to be a special term account. (8)

**Section 23, Finance (No. 2) Act 2013** provides that a special term account will cease to be a special term account: (9)

- On the third anniversary of the account being opened if the account is a medium term account. (9)(a)
- On the fifth anniversary of the account being opened if the account is a long term account. (9)(b)
- On the fifth anniversary of the account being opened if the account is a long term account that was originally opened as a medium term account.

The effect of **Section 23, Finance Act 2013** is that DIRT will be deducted from the full amount of any interest paid or credited, on or after the 16<sup>th</sup> October 2013, to:

- a medium term account that has passed its third anniversary of opening or
- a long term account that has passed its fifth anniversary of opening.

### **261B Taxation of specified interest**

This section provides that, notwithstanding any other provision of the Income Tax Acts, “specified interest” received gross by a person entitled to exemption under *subsection (1A), (1B) or (1C)* will only be taxable at the rate set out in *section 256*.

“specified interest” is defined as interest arising to a person in respect of a deposit in relation to which a declaration has been made by the person under *subsection (1A), (1B) or (1C)* of *section 256* i.e. individuals aged 65 years or over and those who are permanently incapacitated where their income falls below certain limits. (1)

This ensures that the individual, having made such a declaration, will not be charged to income tax on the gross interest at a tax rate higher than the rate set out in *section 256*. A provision is also included so that withholding tax on interest under *section 246(2)* will not apply to the interest now being paid gross of DIRT. (2)(3)

### **262 Statement furnished by relevant deposit taker**

This section provides that a financial institution must give the depositor a voucher, certificate or similar statement showing:

- the gross amount of any relevant interest paid to the depositor,
- the DIRT deducted therefrom,
- the net payment *and*
- the date of the payment.

As elsewhere in this Chapter, “payment” of interest includes “crediting” of interest to an account as provided for in *section 256(2)(a)*.

### **263 Declarations relating to deposits of non-residents**

#### **Summary**

This section provides for a form of declaration in respect of deposits beneficially owned by persons who are not resident in the State so that a financial institution may pay interest on such deposits without deduction of DIRT. The section supplements *paragraph (g)(ii)* of the definition of “relevant deposit” in *section 256(1)*.

#### **Details**

##### ***Declarations***

Without the required declaration, a financial institution cannot treat a deposit beneficially owned by a non-resident as not being a “relevant deposit” and must deduct tax at source on interest paid or credited on the deposit.

The required declaration must be in writing to the financial institution and must be — (1)

- signed by the person to whom interest on a deposit is payable (the person who makes the declaration (“the declarer”) may be the non-resident beneficial owner himself or a person, resident or otherwise, holding the deposit in trust for the non-resident), and
- in a form prescribed or authorised by the Revenue Commissioners.

The declarer must declare that the person or persons beneficially entitled to the interest on the deposit (that is, the declarer or the person or persons for whom the declarer holds the deposit in trust) is or are not resident in the State. It is important to note that all of the persons beneficially entitled to the interest must be non-resident. If one of the joint owners of a deposit were an Irish resident, the deposit would be a “relevant deposit” and interest paid on the deposit would be subject to deduction of DIRT.

The names, addresses of principal places of residence and countries of residence of all the persons beneficially entitled to the interest must be stated in the declaration.

An undertaking must be given by the declarer to advise the financial institution if any of the persons so referred to (that is, any person beneficially entitled to the interest) becomes resident in the State. This is to alert the financial institution to the fact that the condition in *paragraph (g)(i)* of the definition of “relevant deposit” in *section 258* that no Irish resident should be beneficially entitled to any interest on the deposit is no longer fulfilled in relation to the deposit. Accordingly, the bank, etc would then have to treat the deposit as a “relevant deposit” and deduct tax from all payments of interest made after the time when a person resident in the State became beneficially entitled to any interest on the deposit.

Such other information as the Revenue Commissioners may reasonably require must be supplied in the declaration. In addition to the preceding information the declaration also requires the reference number of the account in which the deposit is held and a statement of the capacity (that is, agent, trustee, etc) in which the declaration is signed.

Declarations made in accordance with paragraph (22) of Finance Resolution No. 12, passed by Dáil Éireann on 30 January, 1986, are treated as if they were declarations made in accordance with this section.

### ***Retention of, and examination of, declarations***

Financial institutions must keep and retain declarations under this section for the longer of — (2)

- 6 years, and
- until 3 years after the account is closed or becomes a relevant deposit (by, for example, a beneficiary changing his/her residence status to Irish resident).

An inspector is authorised to require a financial institution to make available within a specified time all declarations under this section on giving notice in writing to the financial institution.

An inspector is also authorised to examine all declarations so made available by a financial institution and to take extracts from them or copies of them.

## **263A Declarations to a relevant deposit taker relating to deposits of certain persons**

### **Summary**

This section provides for a form of declaration in respect of deposits beneficially owned by individuals who, or whose spouse or civil partner, is 65 years or over and the total income of the individual(s) for that year of assessment does not exceed the relevant exemption limit. This is sent directly to the financial institution who may then pay interest on such deposits without deduction of DIRT. The section supplements *paragraph (i)* of the definition of “relevant deposit” in *section 256(1)*

and also **section 256(1A)**.

## Details

### **Declarations**

A financial institution cannot treat a deposit beneficially owned by an individual under **subsection (1A)** of **section 256** as not being a “relevant deposit” unless the required declaration is received, otherwise DIRT must be deducted at source on interest paid or credited on the deposit.

The required declaration must be made in writing to a relevant deposit taker and must—

- be made by an individual to whom any interest on the deposit in respect of which the declaration is made is payable by the relevant deposit taker, (a)
- be made in such form as may be prescribed, authorised or approved by the Revenue Commissioners. This allows for the submission of declarations electronically, (b)
- declare that at the time the declaration is made — (c)
  - the individual beneficially entitled to the interest in relation to the deposit or his or her spouse or civil partner is 65 years of age or over, and
  - the total income of the individual for the year of assessment for which the declaration is made will not exceed the relevant income tax exemption limit (within the meaning of **section 188(2)**) for that individual,
- contain as respects the individual, or as the case may be each of the individuals, mentioned above — (d)
  - the name and address of the individual,
  - the date of birth of the individual who has attained the age of 65, and
  - the individual’s PPS Number (within the meaning of **section 891B**),
- contain an undertaking by the declarer that if the individual or, as the case may be, any of the individuals mentioned above no longer satisfies the conditions set out in **section 256(1A)(a)**, the declarer will notify the relevant deposit taker accordingly, and (e)
- contain such other information as the Revenue Commissioners may reasonably require for the purposes of this Chapter. (f)

### **Retention of, and examination of, declarations**

The rules relating to the retention and examination of declarations are the same as those relating to deposits of non-residents as set out in **section 263(2)**, i.e. financial institutions must keep and retain declarations under this section for the longer of — (g)

- 6 years, and
- until 3 years after the account is closed or becomes a relevant deposit (by, for example, a beneficiary changing his/her residence status to Irish resident).

An inspector is authorised to require a financial institution to make available within a specified time all declarations under this section on giving notice in writing to the financial institution.

An inspector is also authorised to examine all declarations so made available by a financial institution and to take extracts from them or copies of them.

## **263B Declarations to the Revenue Commissioners relating to deposits of certain**

## persons

### Summary

This section provides for a form of declaration in respect of deposits beneficially owned by individuals who, or whose spouse, are permanently incapacitated or where the persons entitled to the interest are trustees of a special trust for permanently incapacitated individuals where the income is exempt from tax. Such persons are required to make a declaration to that effect to the Revenue Commissioners and also declare that they would be entitled to a refund of the entire DIRT from Revenue if it had been deducted. The financial institution will, on receipt of a notification under *section 263C* from Revenue, pay interest on such deposits without deduction of DIRT. The section supplements *paragraph (j)* of the definition of “relevant deposit” in *section 256(1)* and also *section 256(1B)*.

### Details

#### Declarations

Before the Revenue Commissioners can consider whether to notify the financial institution, in accordance with *section 263C*, that a deposit under *subsection (1B)* of *section 256* is not to be treated as a “relevant deposit” i.e. interest paid DIRT free, they must receive the required declaration.

The required declaration must be made in writing to the Revenue Commissioners and must —

- be made by the person to whom any interest on the deposit in respect of which the declaration is made is payable by the relevant deposit taker, (a)
- be made in such form as may be prescribed, authorised or approved by the Revenue Commissioners. This allows for the submission of declarations electronically, (b)
- declare that at the time the declaration is made — (c)
  - the individual beneficially entitled to the interest in relation to the deposit or his or her spouse or civil partner is permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself, and
  - the individual beneficially entitled to any interest paid in respect of that deposit in any year of assessment or his or her spouse is a relevant person (within the meaning of *section 267*) and the individual would, in accordance with *section 267(3)*, be entitled to a repayment of the whole of any appropriate tax if it has been deducted from that interest,or
  - the person entitled to the interest in relation to the deposit is exempt from income tax by virtue of *section 189A(2)* (i.e. trustees of special trusts for permanently incapacitated individuals) and would, in accordance with *section 267(2)*, be entitled to a repayment of the whole of any appropriate tax if it has been deducted from that interest,
- contain as respects the person, or as the case may be each of the persons mentioned above: (d)
  - the name and address of the person,
  - the person’s PPS Number (within the meaning of *section 891B*) or, if not an individual, the persons tax reference number (within the meaning of

*paragraphs (a) and (b) of the definition of “tax reference number” in section 885),*

- the name and address of the deposit taker (including the name and address of the branch of the deposit taker, if any) who holds the deposit in respect of which the declaration is made, and
- the account number or membership number, as the case may be, of the deposit in respect of which the declaration is made,
- contain an undertaking by the declarer that if the person or persons mentioned above no longer satisfies the conditions set out in *section 256(1B)(a)*, the declarer will notify the Revenue Commissioners accordingly, and (e)
- contain such other information as the Revenue Commissioners may reasonably require for the purposes of this Chapter. (f)

### **263C Notifications by the Revenue Commissioners relating to deposits of certain persons**

#### **Summary**

This section provides for the form of notification by the Revenue Commissioners to the financial institution regarding deposits which are not to be treated as a “relevant deposit”. On receipt of this notification, the financial institution may then pay interest on such deposits without deduction of DIRT. The section supplements *paragraph (j) of the definition of “relevant deposit” in section 256(1) and also section 256(1B).*

#### **Details**

##### **Notifications**

The requirements in relation to a notification referred to under *section 256(1B)* by the Revenue Commissioners to the deposit taker are that such a notification — (1)

- is made in writing by the Revenue Commissioners to a relevant deposit taker confirming that the account identified in the notification is to be treated as not being a relevant deposit unless and until the notification is cancelled, (a)
  - contains the following information for the person beneficially entitled to the interest, or a trustee entitled to the interest on behalf of a special trust for an incapacitated individual under *section 189A(2)* in relation to the deposit — (b)
    - the name and address of the person,
    - the person’s PPS Number (within the meaning of *section 891B*) or the trustee’s tax reference number (within the meaning of *section 885*), and
    - the account number of the deposit,
- and
- contains such other information as the Revenue Commissioners may reasonably decide for the purposes of this Chapter. (c)

The Revenue Commissioners may cancel the notification at any time and give notice (2) in writing to both the relevant deposit taker and the person(s) mentioned above. The deposit shall not be a deposit to which this section applies from that time.

### **263D Declarations to the Revenue Commissioners in relation to relevant amounts**

## Summary

This section provides for a form of declaration in respect of deposits of relevant amounts. The beneficial owner of relevant amounts is required to make a declaration to that effect to the Revenue Commissioners. The financial institution will, on receipt of a notification under section 263E from Revenue, pay interest on such deposits without deduction of DIRT.

## Details

### *Declarations*

Before the Revenue Commissioners can consider whether to notify the financial institution, in accordance with section 263D, that a deposit under subsection (1C) of section 256 is not to be treated as a “relevant deposit” i.e. interest paid DIRT free, they must receive the required declaration.

The required declaration must be made in writing to the Revenue Commissioners and must —

- be made and signed by the person (in this section referred to as the “declarer”) to whom any interest on the deposit in respect of which the declaration is made is payable by the relevant deposit taker, (a)
- be made in such form as may be prescribed, authorised or approved by the Revenue Commissioners, (b)
- declare that at the time the declaration is made the deposit is solely in respect of a relevant amount, (c)
- contain in respect of the declarer (d)
  - the name and address of the person, (d)(i)
  - the person’s PPS Number (within the meaning of section 891B) (d)(ii)
  - the name and address of the deposit taker (including the name and address of the branch of the deposit taker, if any) who holds the deposit in respect of which the declaration is made, and (d)(iii)
  - the account number or membership number, as the case may be, of the deposit in respect of which the declaration is made, (d)(iv)
- and
- contain such other information as the Revenue Commissioners may reasonably require for the purposes of this Chapter (e)

## **263E Notifications by the Revenue Commissioners relating to deposits of relevant amounts**

### Summary

This section provides for the form of notification by the Revenue Commissioners to the financial institution regarding deposits of relevant amounts which are not to be treated as a “relevant deposit”. On receipt of this notification, the financial institution may then pay interest on such deposits without deduction of DIRT.

### Notifications

The requirements in relation to a notification referred to under section 256(1C) by the (1)



- Revenue Commissioners to the deposit taker are that such a notification is made in writing by the Revenue Commissioners to a relevant deposit taker confirming that the account identified in the notification is to be treated as not being a relevant deposit unless and until the notification is cancelled, (1)(a)
- contains the following information for the person beneficially entitled to the interest in relation to the deposit — (1)(b)
- the name and address of the person,
  - the person’s PPS Number (within the meaning of section 891B),
  - the account number of the deposit,
- and
- contains such other information as the Revenue Commissioners may reasonably decide for the purposes of this Chapter. (c)
- The Revenue Commissioners may cancel the notification at any time and give notice in writing to both the relevant deposit taker and the person mentioned above. The deposit shall not be a deposit to which this section applies from that time. (2)

## 264 Conditions and declarations relating to special savings accounts

### Summary

This section deals with the Special Savings Accounts for individuals. It sets out the various conditions which had to be satisfied before an account could be regarded as a Special Savings Account.

It also describes the contents of the declaration which individuals had to make if a deposit was to be treated as a Special Savings Account.

Finally, it ensures that DIRT is the only liability to tax which arises in respect of interest on such accounts

No new Special Savings Accounts can be opened after 6 April 2001 (see definition of “special savings account” in *section 256(1)*).

### Details

#### *Conditions*

The conditions which had to be satisfied before an account would have been regarded as a Special Savings Account were as follows — (1)

- the account had to be designated a Special Savings Account by the financial institution,
- the account could not be denominated in a foreign currency,
- the account could not be connected with any other account held by either the account holder or any other person,
- no withdrawals could be made from the account within the first 3 months of it being opened,
- withdrawals must be at 30 days notice,
- all deposits held in the account must be subject to the same terms and conditions,
- fixed interest arrangements on the account must not exceed 24 months,
- the rate of interest payable must not, directly or indirectly, be linked to or

determined by a change in the price or value of any shares, stock, debentures or securities listed on a stock exchange or dealt in on an unlisted securities market,

- the balance on the account must not at any time exceed €63,500,
- the account had to be opened and held in the name of a person of full age (that is, someone aged 18 or over or who is married),
- the account had to be opened and held in the name of the person beneficially entitled to the interest on the account,
- except in the case of an account opened and held by a married couple, the account must not be a joint account,
- except in the case of a married couple, an individual can only have one special savings account at any one time,
- in the case of a joint account opened by a married couple, they can have one other joint account at the same time.

An account is connected with another account if —

- one account was opened with reference to the other or if one was opened with a view to the opening of another on particular terms, and
- the terms on which either of the accounts were opened are more favourable than would have been available had the other account not been opened.

### ***Declarations***

On opening a Special Savings Account — (2)

- the individual to whom any interest on the account is payable had to make and sign the appropriate declaration and give it to the financial institution,
- the declaration had to be in a form prescribed or authorised by the Revenue Commissioners,
- the declarer had to declare that the conditions that relate to the individual opening the account are satisfied (see ***subsection (1)***),
- the full name and address of the individual beneficially entitled to the interest on the account had to be stated in the declaration,
- the declaration had to contain an undertaking by the declarer that he/she will notify the financial institution if any of the conditions relating to the individual opening the account cease to be satisfied (for example, he/ she opened a prohibited further Special Savings Account), and
- the declaration had to contain such other information as the Revenue Commissioners reasonably require.

### ***Retention of, and examination of, declarations***

A financial institution must — (3)

- retain the declarations for a period of 6 years or for 3 years after the account is closed or becomes a normal DIRT account, and
- allow access to the declarations to an inspector on being given notice in writing.

The inspector is empowered to examine all declarations made available to him/her and to take such extracts or copies as he/she thinks fit.

### ***Final liability on payment of DIRT***

**Section 261** is amended on an “as if” basis so as to provide that the amount of DIRT (4) deducted in respect of interest on Special Savings Accounts is to be regarded as being in full settlement of all tax liability in respect of that interest. This is achieved by substituting, in that section, a new ***paragraph (c)*** which provides that, except for the purposes of a claim to repayment under ***section 267(3)***, the interest on a Special Savings Account is not to be regarded as part of total income for tax purposes – the

exclusion in respect of *section 267(3)* is because to make a claim for repayment under that section the interest must be part of total income.

### ***Ceasing of status as Special Savings Account***

A Special Savings Account is to cease to be such an account if any of the conditions (5) in *subsection (1)* cease to be satisfied, and *subsection (4)* is not to apply to any interest payable in respect of the account on or after the date of such cessation. Where this occurs, the account becomes a normal deposit the interest on which is subject to deduction of DIRT in accordance with *section 256(1)*. .

## **264A Conditions and declarations relating to special term accounts**

### **Summary**

The term “special term accounts” refers to certain deposit accounts that could be opened in the period 1 January 2002 to 15 October 2013.

This section deals with the conditions that applied to “special term accounts” and describes the contents of the declaration which had to be made in order for a deposit to be treated as a special term account.

### **Details**

#### ***Conditions applying to “special term accounts”***

The following conditions applied to “special term accounts”: (1)

- the account had to be designated as a medium term account or as a long term account;
- it could not be designated in foreign currency;
- it could not be connected with any other account;
- all relevant deposits are subject to the same terms;
- the interest rate could not be fixed for a period greater than 12 months;
- the interest paid or payable could not be linked to or determined by changes in the price/value of shares on a stock exchange, etc.;
- an account could not be opened/held by an individual under the age of 16;
- the account could only be opened and held in the name of the person beneficially entitled to the relevant interest;
- a joint account could be held by not more than 2 individuals;
- an individual could not simultaneously hold more than one account, except in the case of married persons or civil partners who may hold 2 joint accounts;
- the maximum amount of monthly deposit could not exceed €635, but when the account was opened an individual could transfer his/her savings with the same deposit taker to the account, and a single deposit of €7,620 could also be made during the term of the account;
- interest credited to an account is not to be regarded as a deposit for the purposes of the €635 monthly limit but such interest may not be withdrawn unless it is withdrawn within 12 months from the date credited;
- deposits may not be withdrawn from an account, otherwise than on the death of an account holder, within 3 years from the date of deposit, in the case of a medium term account, and 5 years from the date of deposit, in the case of a long term account, but a single withdrawal may be made from an account by an individual who is 60 years or over provided the account was opened by him/her before reaching that age.

### ***Details of declaration required***

The declaration must be a declaration in writing to the relevant deposit taker which: (2)

- was made by the individual who holds the account,
- was signed by the declarer,
- was in a form prescribed by the Revenue Commissioners,
- declared that the relevant conditions of ***subsection (1)*** are satisfied,
- contained the full name and address of the declarer,
- contained an undertaking that if the relevant conditions of ***subsection (1)*** cease to be satisfied the declarer will notify the relevant deposit taker,
- contained any other information required by the Revenue Commissioners.

The provisions of ***section 263(2)*** in relation to the retention and examination of (3) declarations applied to declarations under this section.

Section 23 of the Finance Act (No 2) 2013 provided that no new special term share account could be opened on or after 16 October. Therefore, with effect from that date the tax treatment outlined above applies only to the following accounts:

- special medium term share accounts that have not reached the third anniversary of the opening of the account by 15 October 2013,
- special long term share accounts that have not reached the fifth anniversary of the opening of the account by 15 October 2013 ***and***
- special long term share accounts that were originally opened as special medium term share accounts and that have not reached the fifth anniversary of the opening of the account by 15 October 2013.

### **264B Returns of special term accounts by relevant deposit takers**

#### **Summary**

This section provides that returns of special term accounts must be made by relevant deposit takers.

#### **Details**

The return must be made by the relevant deposit taker by 31 March in each year of assessment to the “appropriate inspector”. This is the inspector who gives notice in writing to the relevant deposit taker that he or she is the inspector to whom the return is to be delivered or, where there is no such inspector, the inspector of returns (as defined in ***section 2***).

The return must specify: (2)

- the name and address of the holders of each special term account opened in the previous year of assessment,
- whether the account is a medium term or long term account, and
- the date the account was opened.

The section applies the provisions of ***sections 1052*** and ***1054*** to the failure to deliver a return under the section as they apply to a failure to deliver a return referred to in ***section 1052***. (3)

As no new Special Term Accounts can be opened after the 16th October 2013, by

virtue of Section 23, Finance (No.2 ) Act 2013, the final return under section 264B will be due by the 31st March 2014.

### **265 Deposits of companies and pension schemes**

This section requires financial institutions to include the reference number assigned to the pension scheme by the Revenue Commissioners or, in the case of a company, its tax reference number, on its returns under *section 891*.

### **265A Deposits of certain persons**

This section provides that, where a return is required to be made by a relevant deposit taker under *section 891* in respect of interest on a deposit which is a deposit referred to in *subsection (1A)* or *(1B)* of *section 256*, then the return shall also include —

- the PPS Number (within the meaning of *section 891B*) of the person, or (a)
- where the person is not an individual (i.e. trustees of a special trust for permanently incapacitated individuals under *section 189A(2)*) the person's tax reference number within the meaning of *paragraphs (b)* and *(c)* of *section 885*.

*Subsections (1A)* and *(1B)* of *section 256* relate to DIRT exempt deposits for (b) individuals aged 65 years or over and those who are permanently incapacitated.

### **266 Deposits of charities**

This section requires the financial institutions to include the reference number (CHY number) assigned to the charity by the Revenue Commissioners on its returns under *section 891*.

### **266A Repayments of appropriate tax to first-time buyers**

#### **Summary**

This section provides for refunds of Deposit Interest Retention Tax to first-time purchasers and in respect of “Self-built” properties built by first-time purchasers. .

The repayment of DIRT will only be made to eligible first-time purchasers on the conclusion of the conveyance of the property into the name of the first-time purchaser during the period of the scheme

In relation to “self-built” properties built by first-time purchasers, repayment of DIRT will be made only where the dwelling has been completed to a standard where it is suitable for immediate occupation as a dwelling.

Relief is confined to DIRT paid on savings, up to a maximum of 20% of the purchase price of the house or apartment, in the 48 months prior to the purchase date.

This section has effect from 14 October 2014 and will be in place until 31 December 2017

#### **Details**

#### **Definition**

“*completion value*” in relation to a dwelling, means the price which the unencumbered fee simple of the dwelling might reasonably be expected to fetch on a sale in the open market were that dwelling to be sold on the relevant completion date in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the dwelling and with the benefit of any easement necessary to afford the same access to the dwelling as would have existed prior to that sale; (1)

“*first-time purchaser*” means a person, being an individual who, at the time of a relevant purchase or on the relevant completion date, as the case may be, has not, either individually or jointly with any other person or persons, previously purchased or

previously built directly or indirectly on his or her own behalf any other dwelling;

“*relevant completion*” means the completion of the construction of a new dwelling, on or after 14 October 2014 and on or before to 31 December 2017, to a standard where it is suitable for immediate occupation as a dwelling and the dwelling —

(a) has been built directly or indirectly —

- (i) on his or her own behalf by a first-time purchaser only, for occupation as his or her place of residence, or
- (ii) on their own behalf by more than one person, where each such person is a first-time purchaser only, for occupation as their place of residence,

and

(b) is constructed on property conveyed or transferred, on or before 31 December 2017, into the name or names of the first-time purchaser or first-time purchasers only, as the case may be;

“*relevant completion date*” means the date on which the dwelling becomes suitable for immediate occupation as a dwelling;

“*relevant purchase*” means the conveyance or transfer of a dwelling on or after 14 October 2014 and on or before 31 December 2017—

(a) into the name of a first-time purchaser only, for occupation as his or her place of residence, or

(b) into the names of more than one person, where each such person is a first-time purchaser only, for use as their place of residence;

“*relevant savings*” means —

(a) in the case of a relevant purchase, so much of the aggregate amount at any time of any relevant deposits held in the name of a first-time purchaser, individually or jointly with another first-time purchaser only, as does not exceed 20 per cent of the amount of the consideration paid in respect of the relevant purchase by the first-time purchaser, or

(b) in the case of a relevant completion, so much of the aggregate amount at any time of any relevant deposits held in the name of a first-time purchaser, individually or jointly with another first-time purchaser only, as does not exceed 20 per cent of the completion value of the dwelling;

“*relevant savings interest*” means relevant interest paid —

(a) in the case of a relevant purchase, at any time during the period of 48 months ending on the date of the relevant purchase by a first-time purchaser, to the first-time purchaser in respect of relevant savings, or

(b) in the case of a relevant completion, at any time during the period of the 48 months ending on the relevant completion date, to the first-time purchaser in respect of relevant savings;

Subsection 2(a) provides that despite the general prohibition in **section 261(b)** on (2)(a) repayments of DIRT (except for companies within the charge to corporation tax in respect of relevant interest), repayments of DIRT deducted from relevant interest may be made to a “first-time purchaser”.

Subsection 2(b) seeks to ensure that D.I.R.T. refunds are not claimed more than once (2)(b) under the provisions of the Tax Acts.

## 267 Repayment of appropriate tax in certain cases

### Summary

This section provides that, despite the general prohibition in *section 261(b)* on repayments of DIRT (except for companies within the charge to corporation tax in respect of relevant interest), repayments of DIRT deducted from relevant interest may be made to the trustees of a trust for a permanently incapacitated individual or individuals or to a charity. It also provides for repayment of DIRT to an individual who or whose spouse or civil partner is aged 65 years or over, or is permanently incapacitated, to the extent that such an individual (because of personal reliefs, age exemption, etc) would not otherwise be liable to tax in respect of the relevant interest.

### Details

#### Definition

A “relevant person” is an individual who can establish to the satisfaction of the inspector that — (1)

- the individual or his/her spouse or civil partner is aged 65 years or over at any time during a year of assessment, or
- the individual or his/her spouse or civil partner was, throughout the year of assessment permanently incapacitated (or became so at some time in the year).

To qualify as permanently incapacitated an individual must prove that he/she or his/her spouse or civil partner is “permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself”.

The terms used are not defined in the Tax Acts and, in general, claims for repayment are evaluated on the grounds of permanent incapacity on the same basis as is currently adopted in dealing with claims under *sections 465* (incapacitated children) and *466* (dependent relative).

Provided that it is obvious from the facts of the case that an individual or his/her spouse or civil partner comes within this category, the claim is to be accepted. Any person dissatisfied with a decision in regard to these matters may appeal to the Appeal Commissioners.

#### Repayments

Any DIRT deducted from interest paid to the trustees of trusts which qualify for exemption from income tax under Schedule D by virtue of *section 189A(2)*, or paid to a charity entitled to exemption from income tax under Schedule D by virtue of *section 207* or from corporation tax by virtue of *section 207* as applied for corporation tax purposes by *section 76(6)*, is to be repaid. (2)

Where a relevant person (see *subsection (1)*) would be entitled to repayment of DIRT (including DIRT deducted from relevant interest which would have been included as part of his or her total income but for the provisions of *section 189(2)*, *section 189A(4)* or *section 192(2)*) due to the amount of his/her income or to the operation of tax credits, personal reliefs, age exemption, loss relief, etc, the prohibition on the repayment of DIRT is not to apply. However, the repayment due under the provision is only made on the making of a claim and is not made until after the end of the year of assessment to which the deduction of DIRT relates. (3)

## CHAPTER 5

### *Dividend payments by credit unions*

#### Overview

Dividends paid or credited on all share accounts held by members of Credit Unions within the DIRT regime with effect from 1 January 2014.

Prior to 1 January 2014 dividends received by a member in respect of shares held in a regular share account were not liable to DIRT and were taxable at the members marginal income tax rate. The member was also obliged to declare the dividend income on his or her tax return.

Special medium and long-term share accounts held in Credit Unions and opened in the period 1<sup>st</sup> January 2002 to 15<sup>th</sup> October 2013 qualified for a measure of tax relief in certain circumstances. These special term share accounts allowed a member of a Credit Union who is an individual, to opt to hold shares in the account for a minimum term of either 3 or 5 years. A tax exemption applied:

- for the first €480 p.a. of dividends received where the funds are invested for a minimum of three years, and
- for the first €635 p.a. of dividends received where the funds are invested for a minimum of five years.

Any dividends received in excess of the €480 / €635 limits are liable, to the appropriate rate of DIRT (39% from 1 January 2017).

Annual returns, with details of all new special term share account holders, had to be made by the Credit Unions to the Revenue Commissioners. Similar tax exemptions are available under *Chapter 4* of this Part in relation to interest on deposits held in special 3 and 5 year term accounts with other relevant deposit-taking financial institutions.

An individual could not hold a special term share account and a special term (deposit) account at the same time.

*Chapter 5* contains the following sections:

- *Section 267A* which is an interpretation section.
- *Section 267AA* as inserted by section 23 of the Finance (No 2) Act 2013 providing for the taxation of dividends in regular share accounts with effect from 1 January 2014.
- *Section 267B* which provides for elections to open
  - special share accounts
  - special term share accounts [opened in the period 1<sup>st</sup> January 2002 to 15<sup>th</sup> October 2013]and also provides that such accounts come within the DIRT regime.
- *Section 267C* which provides exemptions for certain amounts of dividends paid on special term share accounts.
- *Section 267D* which contains conditions and details of declarations in relation to special term share accounts.
- *Section 267E* which provides that returns must be made by Credit Unions in relation to special term share accounts.
- *Section 267F* which contains supplementary provisions.

The provisions of this Chapter commenced by way of Ministerial order with effect



from 1 January 2002.

## **267A Interpretation (Chapter 5)**

### **Summary**

This section is the interpretation section for *Chapter 5* of *Part 8*. Some of the definitions are used to apply the same meaning to terms as they have in the interpretation section for the main DIRT Chapter i.e. *Chapter 4* of this Part.

### **Details**

#### **Definitions**

“appropriate tax” has the same meaning as in *section 256(1)*. (1)

“dividend” means a dividend on shares declared by a credit union at its annual general meeting.

“long term share account” means an account opened before 16 October 2013 by an individual credit union member in which each share is to be held in the account for a minimum period of 5 years.

“medium term share account” means an account opened before 16 October 2013 by an individual credit union member in which each share is to be held in the account for a minimum period of 3 years.

“regular share account” means an account, other than a special share account or special term share account.

“relevant deposit” has the same meaning as in *section 256(1)*.

“relevant deposit taker” has the same meaning as in *section 256(1)*.

“relevant interest” has the same meaning as in *section 256(1)*.

“savings” includes shares and deposits.

“share” has the same meaning as in section 2(1) of the Credit Union Act 1997.

“special share account” means an account in which shares are held on terms under which the member has agreed with the credit union that the shares and dividends thereon are to be subject to the DIRT provisions of *Chapter 4* of this Part i.e. *Part 8*.

“special term account” has the same meaning as in *section 256(1)*.

“special term share account” means a medium term share account or a long term share account in respect of which the conditions of *section 267D(1)* are satisfied, and a declaration of the kind mentioned in *section 267D(2)* is made.

The section also provides that dividends credited to a member’s account are treated, (2)  
for the purposes of the application by the Chapter of the DIRT provisions, as if they were dividends paid.

#### **267AA Taxation of dividends in regular share accounts**

This section provides that dividends paid or credited to regular share accounts will be subject to DIRT.

This paragraph provides that a credit union shall treat deposits in a regular share account as a relevant deposit. (a)

The DIRT provisions, as set out in Chapter 4 of this Part, are to apply to dividends paid or credited to regular share accounts as they apply to relevant interest paid by a (b)

relevant deposit taker.

## **267B Election to open a special share account or a special term share account**

### **Summary**

This section provides that a member or a prospective member of a credit union may elect in writing to open

- a special share account  
**and/or**
- a special term share account (opened in the period 1 January 2002 to 15 October 2013) .

The section provides that where such an election is made, the shares in the account are to be treated as relevant deposits for DIRT purposes and any dividends paid (or credited, by virtue of *section 267A(2)*) are, subject to the exemptions available in relation to dividends arising on special term share accounts, to be subject to DIRT at the appropriate rate (39% from 1 January 2017).

### **Details**

#### ***Election to open special share accounts and special term share accounts***

A member or a prospective member of a credit union may either or both: (1)

- elect in writing to the credit union to open a special share account, or
- where the member is an individual, elect in writing to the credit union to open a special term share account (which could be opened in the period 1 January 2002 to 15 October 2013) .

Where an election is made to open a special share account the credit union must designate the account as such, apply the DIRT provisions of *Chapter 4* of this Part to the account and deduct the appropriate rate of DIRT (39% from 1 January 2017) from any dividends paid (or credited). (2)

Where an election was made to open a special term share account, the credit union designated the account as such, and applied the DIRT provisions of *Chapter 4* of this Part to the account in addition to the exemptions provided for in *section 267C*. (3)

## **267C Taxation of dividends on special term share accounts**

### **Summary**

The term “special term share accounts” refers to certain Credit Union share accounts that could be opened in the period 1 January 2002 to 15 October 2013.

This section provides for the annual exemptions in relation to dividends arising on special term share accounts held in a Credit Union i.e. €480 per tax year in relation to a 3 year account and €635 per tax year in relation to a 5 year account.

The section allows a member to elect in writing to convert a 3 year account to a 5 year account. Where this happens the increased exemption applies for any tax year which commences on or after the date of the election.

The section also provides that an account ceases to be a special term share account if any of the conditions in relation to the account are broken. Where this happens the account is then treated as a special share account (i.e. DIRT is payable on all dividends and the €480 or €635 exemption does not apply).

If the breach of conditions occurs on or after 1 January 2017, DIRT at the rate of 39% will be deducted from all dividends previously paid gross (i.e. without the deduction of DIRT). The dividends are liable to DIRT at the 39% rate irrespective of the DIRT rate that was in force when the dividends were originally paid or credited.

## Details

### ***Exemptions for dividends paid on special term share accounts***

Dividends on a medium term share account are treated as relevant interest for DIRT purposes only to the extent that they exceed €480 in a tax year. (1) & (2)

Dividends on a long term share account are treated as relevant interest only to the extent that they exceed €635 in a tax year.

Additionally, the first €480 or €635, as the case may be, is exempt from income tax and is not taken into account in computing total income.

An individual may elect in writing to convert a medium term share account to a long term share account. Where such an election is made, dividends paid in a tax year which starts on or after the date of the election will be relevant interest only to the extent that they exceed €635 and the first €635 is, as outlined above, totally exempt from income tax. (3) & (4)

An account ceases to be a special term share account if any of the conditions in **section 267D(1)** cease to be satisfied. Where that happens the account is treated as a special share account (i.e. the exemptions above do not apply and the account is liable to DIRT on all dividends) from the date the conditions failed to be satisfied. (5)

Also, all past dividends paid gross (i.e. without the deduction of DIRT) will be treated as relevant interest and DIRT must be deducted from these dividends or, if the dividends have already been withdrawn, the DIRT due must be deducted from the shares in the account.

Section 23 of the Finance Act (No 2) 2013 provided that no new special term share account could be opened on or after 16 October. Therefore, with effect from that date, the tax treatment outlined above applies only to the following accounts:

- special medium term share accounts that have not reached the third anniversary of the opening of the account by 15 October 2013,
- special long term share accounts that have not reached the fifth anniversary of the opening of the account by 15 October 2013 ***and***
- special long term share accounts that were originally opened as special medium term share accounts and that have not reached the fifth anniversary of the opening of the account by 15 October 2013.

## **267D Conditions and declarations relating to special term share accounts**

### Summary

This section outlines the conditions that applied in order that an account could be considered to be a special term share account. It also contains details of the declaration which had to be made in relation to such an account.

## Details

### ***Conditions in relation to special term share accounts***

- The conditions in relation to a special term share account were as follows: (1)
- the account had to be opened and designated by the credit union as a medium term share account or as a long term share account. (a)
  - it could not be designated in foreign currency. (b)
  - it could not be connected with any other account. (c)
  - all shares in the account must be subject to the same terms. (d)
  - the rate of dividend must not be fixed for a period greater than 12 months. (e)
  - dividends paid or payable must not be linked to or determined by changes in the price/value of shares on a stock exchange etc. (f)
  - an account could not be opened/held by a member under the age of 16. (g)
  - the account had to be opened and held in the name of the member beneficially entitled to the dividends. (h)
  - a joint account may be held by not more than 2 individual members. (i)
  - a member could not simultaneously hold a special term account (i.e. a special 3 or 5 year deposit account) or another special term share account, except in the case of married persons who may hold 2 joint accounts. (j) & (k)
  - the maximum amount of monthly subscription for shares must not exceed €635, but when the account was opened a member could transfer his/her savings with the same credit union to the account, and shares costing up to €7,620 may also be added once during the term of the account. (l), (m) & (n)
  - dividends or rebate of loan interest credited to an account is not to be regarded as a subscription for shares for the purposes of the €635 monthly limit but such amounts may not be withdrawn unless they are withdrawn within 12 months from the date credited. (o)
  - shares may not be withdrawn from an account, otherwise than on the death of an account holder, within 3 years from the date of subscription in the case of a medium term share account, and 5 years from the date of subscription in the case of a long term share account. (p)
  - a member who is over the age of 60 may make a single withdrawal from an account within the 3 / 5 year limits above without breaching the conditions of the account provided the account was opened by him/her before reaching the age of 60. (q)
  - a transfer of shares by a credit union to reduce a loan balance of a member will not be treated as a withdrawal where the shares were pledged as security, the default is for 6 months or more and the credit union has followed standard procedures to recover the loan. (r)

### ***Declarations in relation to special term share accounts***

The declaration in relation to a special term share account had to be a declaration in writing to the credit union which: (2)

- was made by the member who holds the account,
- was signed by the declarer,
- was in a form prescribed by the Revenue Commissioners,
- declared that relevant conditions (those in *paragraphs (g), (h), (j) and (k) of subsection (1)*) in relation to the account are satisfied,
- contained the full name and address of the declarer,

- contained an undertaking that if the relevant conditions of **subsection (1)** cease to be satisfied the declarer will notify the credit union, and
- contained any other information required by the Revenue Commissioners.

The provisions of **section 263(2)**, in relation to the retention and examination of declarations, apply in relation to declarations under this section. (3)

## **267E Returns of special term share accounts by credit unions**

### **Summary**

This section provides that each credit union had to make a return to the “appropriate inspector” by 31 March each year giving details of new special term share accounts opened in the previous year of assessment. The section also applies the provisions of **sections 1052** and **1054**, relating to penalties for failure to make certain returns, to the failure to deliver a return under the section.

### **Details**

#### **Definition**

“appropriate inspector” is defined as the inspector who gives notice in writing to the credit union that he or she is the inspector to whom the return is to be delivered or alternatively, where there is no such inspector, the inspector of returns. This is the inspector nominated by the Revenue Commissioners whose name is published annually in Iris Oifigiúil. (1)

#### **Returns of special term share accounts by Credit Unions**

A return of special term share accounts must be made by each credit union, by 31 March in each year of assessment, to the “appropriate inspector”. The return must be in a form prescribed or authorised by the Revenue Commissioners and must specify: (2)

- the name and address of the holder or holders of each special term share account opened in the previous year of assessment,
- whether the account is a medium term or long term share account, and
- the date the account was opened.

The section applies the provisions of **sections 1052** and **1054** dealing with penalties to the failure to deliver a return under the section as they apply to a failure to deliver a return referred to in **section 1052**. (3)

## **267F Supplementary provisions (Chapter 5)**

This section contains supplementary provisions for the purposes of **Chapter 5** of **Part 8**. The section provides that:

- the provisions of **section 904A**, which deal with powers of inspection in relation to relevant deposit takers, are applied in like manner to credit unions who are treated as paying relevant interest as they apply to other relevant deposit takers. (1)
- **subsection (2)** was deleted by section 36 of the Finance Act 2012. (2)
- dividends on special share accounts and dividends on special term share accounts treated as relevant interest are not to be reckoned in computing total income, except for the purposes of a repayment claim under **section 267(3)**. (3)

## CHAPTER 6

### *Exemption from tax for certain Interest and Royalty payments*

#### **Overview**

This Chapter gives effect to the EU Directive of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States.

The Directive was implemented in December 2003 by the European Communities (Abolition of Withholding Tax on Certain Interest & Royalties) Regulations 2003<sup>1</sup>. The Chapter repeals the regulations and implements the Directive into primary law.

The Interest and Royalties Directive provides for the abolition of withholding tax on business interest and royalty payments made by a company in one Member State to its associated company resident in another Member State. It applies to such a payment whether it is made by an Irish resident company or by a company resident in another EU Member State if the payment is made for the purposes of the trade carried on by the company through a permanent establishment in the State.

Greece, Portugal and Spain are entitled to continue to apply withholding tax to interest and royalty payments under a derogation in the Directive. The Member State of the recipient company is obliged to give credit for such withholding tax against corporation tax on the payments in the hands of the recipient.

#### **267G Interpretation (Chapter 6)**

##### **Summary**

This section is the interpretation section for *Chapter 6*. It contains definitions of terms used throughout the Chapter. It also sets out the rules under which a company will be regarded as an associated company of another company and the circumstances under which a permanent establishment of a company in a Member State is to be treated as the beneficial owner of interest or royalties.

##### **Details**

###### **Definitions**

“arrangements” means a double taxation convention. (1)

“bilateral agreement” means arrangements, protocol or other agreements between the Government and the government of another State.

“permanent establishment” means a fixed place of business of a Member State company which is situated in a territory other than that Member State.

“company” is a company of a Member State.

“company of a Member State” is a company registered under a Member States’ company law.

“interest” means interest from any debt-claim and includes income from securities, bonds or debentures but does not include penalty charges for late payments.

“Member State” is a Member State of the European Communities.

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<sup>1</sup> S.I. No. 721 of 2003.

“royalties” covers certain copyright royalties, patent royalties, payments for the right to use trademarks, designs, plans etc., payments for information concerning industrial, commercial or scientific experience and payments for the right to use certain equipment.

“tax” in relation to an EU Member State, other than the State, is tax that corresponds to corporation tax in the State.

“the Directive” means Council Directive 2003/49/EC<sup>2</sup> of 3 June 2003, as amended.

### ***Associated companies***

A company will be regarded as an associated company of another company (2)(a) throughout an uninterrupted 2 year period throughout which it controls not less than 25 per cent of the voting power of the other company, or where a third company directly controls not less than 25 per cent of the voting power in each company.

### ***Permanent establishments***

A permanent establishment of a company in a Member State is to be treated as the beneficial owner of interest or royalties if the asset in respect of which the payment is made is property or rights held by the permanent establishment and the interest or royalty payment is part of the permanent establishment’s taxable income. (2)(b)

Any word or expression used in this Chapter and in the Directive, has the same meaning in this Chapter as in the Directive, unless the contrary intention appears. (2)(c)

## **267H Application (Chapter 6)**

### **Summary**

This section contains provisions regarding the application of the Chapter. It sets out the conditions under which relief from double taxation applies to interest and royalty payments.

### **Details**

The relief from double taxation applies to interest or royalty payments if the following conditions are met — (1)

- the payment must be made by an Irish resident company or a non-resident company that trades in Ireland through a permanent establishment provided, in the case of such a permanent establishment, that the payment is tax deductible in Ireland under *section 81* (case I deduction), or *97* (case V deduction), or *Part 8* (charges on income), (a)
- the payment must be for the benefit of - (b)
  - a company resident in another Member State, or
  - a permanent establishment in another Member State of a company of a Member State, andthe paying and receiving companies are associated companies.

The following payments are not covered —

- interest and royalties paid to a company for a permanent establishment of that company which carries on a trade in the State or in a non EU Member State, (2)(a)(i)
- interest and royalties paid by a company for the purposes of its permanent (2)(a)(ii)

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<sup>2</sup> OJ No. L157, 26.6.2003, p. 49.

- establishment situated in a non EU Member State,
- interest on debt-claims, which contain no provision for repayment of the principal amount or where repayment is due more than 50 years after the date of issue. (2)(b)
- so much of any royalties as are not paid at arm's length. (2)(c)

## **267I Exemptions from tax and withholding tax**

### **Summary**

This section provides relief for interest and royalty payments made by a company in one Member State to its associated company in another Member State.

### **Details**

#### ***Abolition of withholding tax in certain cases***

Interest and royalty payments made by a company in one Member State to its associated company in another Member State are to be free of withholding tax. **Sections 238, 246(2) or 257**, which generally impose an obligation to deduct tax from certain interest and royalty payments, are disappplied. (1)

Interest and royalty payments received by a company which is resident for tax purposes in a Member State other than the State are exempt from tax. The exemption does not apply where that interest and royalties is paid to the company in connection with a trade which is carried on in the State through a permanent establishment of that company. (2)

## **267J Credit for foreign tax**

### **Summary**

This section provides credit for foreign tax suffered on interest and royalty payments received by an Irish resident company from an associated company in Greece, Portugal or Spain in accordance with derogations given to those Member States under the Directive.

### **Details**

Credit is to be allowed for withholding tax suffered on interest and royalties received by an Irish resident company from an associated company in Greece, Portugal or Spain in accordance with derogations given to those Member States under the Directive. (1)

The mechanism in **Schedule 24** applies for the purpose of giving such credit relief. (2)

This relief applies without prejudice to a provision of a bilateral agreement. (3)

## **267K Miscellaneous**

### **Summary**

This section is an anti-avoidance section. It provides that relief under the Chapter will only apply to interest and royalty payments made for bona fide commercial reasons and which do not form part of any arrangement or scheme the purpose of which is the avoidance of tax.



## Details

### *Anti-avoidance provision*

The relief provided by the Chapter will only apply to interest and royalty payments (1) made for bona fide commercial reasons and which do not form part of any arrangement or scheme the purpose of which is the avoidance of tax.

If the requirements for exemption cease to be fulfilled, the receiving company is (2) obliged to inform the paying company.

## **267L Application of this Chapter to certain payments made to companies in Switzerland**

### Summary

This section provides benefits comparable to those in the 2003 EU Interest & Royalties Directive to companies resident in Switzerland.

The background to this is the agreement between the EU and Switzerland under which Switzerland undertook to adopt equivalent measures to those in the EU Savings Directive.

Implementation of the Savings Directive was conditional on, amongst other things, agreements being entered into with certain countries, including Switzerland. An agreement was concluded between the EU and Switzerland in 2004. One of the terms of the agreement with Switzerland was that Swiss companies would be afforded the benefits of the 2003 Interest & Royalties Directive. This section provides for this.

Under the agreement with Switzerland, interest and royalty payments of the type covered by the Directive made by companies in Ireland to certain Swiss companies are to be paid without deduction of tax. The conditions under which they are to be paid in full are set out in the section.

The principal conditions are:

- the recipient must be a company resident in Switzerland (and not resident outside the EU or Switzerland under a tax treaty) or be a Swiss branch of a company of another Member State,
- the recipient must be liable to tax in Switzerland, and
- the company must be a type of company specified in the agreement with Switzerland.

The new rules apply from 1 July 2005.

## Details

The section applies to payments of interest and royalties, as defined in *section 267G*, made to certain companies as follows:

- payments made for the benefit of a permanent establishment in Switzerland through which a company (meaning a company of a Member State – see *section 267G*) carries on business in Switzerland provided that, under the terms of the Directive, the permanent establishment would be treated as being the beneficial owner of the interest or royalties. (1)(b)
- in any other case, payments to a company which satisfies three criteria:
  - it is the beneficial owner of the interest or royalties, (1)(a)(i)
  - it is tax resident in Switzerland, and (1)(a)(ii)

- it is not treated under a tax treaty entered into by Switzerland as being resident in a country other than Switzerland or an EU Member State. (1)(a)(iii)

**Sections 267G to 267I** apply to payments within the scope of the section and as outlined in **subsection (1)**. Those sections implement the EU Interest & Royalties Directive. **Section 267J** is not applied because giving credit for tax deducted is not relevant in the context of Switzerland. (2)

**Sections 267G to 267I** are applied subject to certain modifications. Firstly, they apply as if any reference in these sections to an EU Member State includes a reference to Switzerland. (2)(a)

Secondly, they apply as if any reference in these sections to a company of a Member State includes reference to companies of the types mentioned in the agreement between the EU and Switzerland. (2)(b)

Finally, they apply as if a reference in those sections to tax includes tax in Switzerland that corresponds to income tax or corporation tax in the State. (2)(c)

**Section 267K**, which denies relief from withholding tax unless it can be shown that the transaction concerned is a bona fide commercial transaction and is not part of a tax avoidance arrangement, applies also to the provisions of the section. (3)

The section applies as respects a payment made on or after 1 July 2005. That is the date on which the EU Savings Directive came into effect.

## CHAPTER 7

### *Certain interest from sources outside the State*

#### **Overview**

This Chapter deals with the tax rate applicable to deposit interest received by individuals from sources-

- within the European Union,
- outside the European Union.

#### **267M Tax rate applicable to certain deposit interest received by individuals**

##### **Summary**

This section provides that, in respect of EU sourced deposit interest, tax will be charged at the rate set out in **section 256** (i.e. 39% in respect of interest paid or credited on or after 1 January 2017).

This section also sets out how non-EU sourced deposit interest, which is comparable with Irish-sourced deposit interest, tax will be charged.

##### **Details**

##### **Definitions**

“foreign deposit interest” means interest arising in a non-EU territory which would be deposit interest subject to deposit interest retention tax (DIRT) if it were payable in Ireland.

Under the DIRT provisions in **section 256**, relevant deposit takers are defined as certain lending institutions. These hold relevant deposits (also defined), which are subject to DIRT. For the purposes of “foreign deposit interest” the definitions of (a)

“relevant deposit taker” and “relevant deposit” are adapted to apply to interest arising from any source (as distinct from an EU or Irish source).

“foreign territory” means a territory other than an EU Member State.

“specified interest” means interest arising in an EU Member State which would be deposit interest subject to deposit interest retention tax (DIRT) if it were payable in Ireland.

Under the DIRT provisions in **section 256**, relevant deposit takers are defined as certain lending institutions. These hold relevant deposits (also defined), which are subject to DIRT. **Subsection (1)** adapts the definitions of “relevant deposit taker” and “relevant deposit” to an EU, as opposed to an Irish-only, situation.

The definition of “relevant deposit” for the purposes of “specified interest”:

- **Section 256(1)(c)** excludes deposits held at non-Irish branches of Irish lending institutions from the scope of the section (e.g. UK branch of Irish bank). The equivalent **paragraph (c)** for the new provision excludes deposits held at non-EU branches of EU lending institutions from the scope of the new section (e.g. the Australian branch of a French bank). (1)(a)(i)
- **Section 256(1)(d)** excludes deposits held at non-Irish branches of non-Irish lending institutions from the scope of the section (e.g. UK branch of UK bank). The equivalent **paragraph (d)** for the new provision excludes deposits held at non-EU branches of non-EU lending institutions from the scope of the new section (e.g. Australian branch of Japanese bank). (1)(a)(i)
- **Section 256(1)(g)** relates to Irish currency deposits of foreign residents – this is not relevant to the new provision. (1)(a)(ii)

The definition of “relevant deposit taker” is adapted for the purposes of “specified interest”. **Section 256(1)** defines this as meaning a bank (which already includes EU banks), a building society (which is defined separately in **section 256(1)** to include EU building societies), a trustee savings bank, a credit union or the Post Office Savings Bank. The provisions of **section 256(1)** are extended to provide that bodies in other EU Member States that are equivalent to trustee savings banks, credit unions or Post Office Savings Banks are also brought within the definition of “relevant deposit taker”. (1)(b)

“Tax”, for the purposes of determining residence of the lending institutions in the replacement **paragraphs (c)** and **(d)** of the definitions of “relevant deposit” above, means tax in a Member State that is equivalent to income tax or corporation tax in the State. (1)

### **EU sourced deposit interest**

Tax paid under **section 256** is a final liability tax. This is achieved by charging the part of taxable income equal to the EU sourced interest (“specified interest”) at the rate of DIRT specified in the definition of “appropriate tax” in **section 256** ( (2)(a)(i)

39% in respect of paid or credited on or after the 1<sup>st</sup> January 2017

37% in respect of paid or credited on or after the 1<sup>st</sup> January 2018

35% in respect of paid or credited on or after the 1<sup>st</sup> January 2019

33% in respect of paid or credited on or after the 1<sup>st</sup> January 2020

However, the provisions of **subsection (2)(a)(i)** only apply where the taxpayer has discharged his or her tax liability by the return filing date for the year concerned.

***Non-EU sourced deposit interest***

Non-EU sourced deposit interest (“foreign deposit interest”) is charged to tax as **(2)(a)(ii)** follows-

- in the case of a standard rate taxpayer, at the rate specified in ***Section 256(1)***:  
39% in respect of paid or credited on or after the 1<sup>st</sup> January 2017  
37% in respect of paid or credited on or after the 1<sup>st</sup> January 2018  
35% in respect of paid or credited on or after the 1<sup>st</sup> January 2019  
33% in respect of paid or credited on or after the 1<sup>st</sup> January 2020
- in the case of a non-standard rate taxpayer at the higher rate of 40%

The extent to which the Non-EU sourced deposit interest of a standard rate taxpayer is taxed at the rate specified in ***section 256(1)*** is limited to the amount of the unutilised standard rate band available for offset against the Non-EU sourced deposit interest. Accordingly if the Non-EU sourced deposit interest exceeds the unutilised standard rate band the amount of the Non-EU sourced deposit in excess of the unutilised standard rate band will be taxed at the higher rate of 40%.

However, the rate specified in ***Section 256(1)*** only applies where the taxpayer has discharged his or her tax liability by the return filing date for the year concerned. Where it has not, the interest will be charged at the higher rate of 40%.