

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2018 edition

PART 18A INCOME LEVY

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PART 18A INCOME LEVY

531A Definitions (*Part 18A*)

531B Charge to income levy

531C Rate of charge

531D Deduction and payment of income levy on relevant emoluments.

531E Record keeping

531F Power of inspection

531G Estimation of income levy due for income tax months and for year

531H Assessment, collection, payment and recovery of income levy on relevant income

531I Married couples

531J False statements

531K Repayments

531L Restriction on deduction

531M Application of provisions relating to income tax

531N Care and management

531NA Cessation of charge to income levy

PART 18A

INCOME LEVY

Overview

Part 18A provides for the income levy on aggregate income from all sources with effect from 1 January 2009.

With effect from 1 January 2009 the annual rate of charge of income levy is as set out in **section 531C**.

The income levy applies to gross income without the application of relieving provisions and specific exemptions provided for in the Income Tax Acts. Therefore, the income levy applies on the income from, for example, income from patent royalties, income from mining operations, profits from woodlands and the exempt earnings of writers, composers and artists. The income levy is also applied before the deduction of capital allowances, relief for pension contributions, double rent allowance, film relief, donations as an expense or section 23 type reliefs. The income levy does, however, allow for the deduction of normal expenses associated with a trade.

All social welfare payments and similar type payments made by other State agencies are excluded from the income levy. Holders of full medical cards are also exempt from the income levy.

There are a number of minor income sources that are statutorily provided with an exemption in the Income Tax Acts, and these exemptions also apply in relation to the income levy.

With effect from the year of assessment 2011 and subsequent years of assessment income levy shall cease to be charged, subject to **section 531AY**.

531A Definitions (*Part 18A*)

Summary

This section details the definitions to be used in **Part 18A** in relation to the income levy.

Details

“aggregate income for the year of assessment” means the aggregate of the individual’s relevant emoluments in the year of assessment, including relevant emoluments that are in whole or in part in respect of a year other than the year in which they are paid, and relevant income for the year of assessment. (1)

“Collector-General” has the same meaning as it has in **section 851**.

“employee” and “employer” have the same meanings as they have in **section 983**.

“excluded emoluments” mean emoluments gifted to the Minister for Finance under **section 483**.

“income levy” has the meaning assigned to it by **section 531B**.

“income tax month” means a calendar month.

“PAYE Regulations” means the Income Tax (Employments) (Consolidated) Regulations 2001.

“relevant emoluments” and “relevant income” shall have the meanings construed in accordance with *paragraphs (a) and (b)* of the Table to *section 531B(1)*.

“similar type payments” means payments which are of a similar type to payments made under the Social Welfare Acts but which are made by -

- The Health Service Executive,
- The Department of Community, Rural and Gaeltacht Affairs,
- The Department of Enterprise, Trade and Employment,
- The Department of Education and Science,
- The Department of Agriculture, Fisheries and Food,
- An Foras Áiseanna Saothair (FAS) in respect of -
 - Non-craft training courses provided by, or approved of by An Foras Áiseanna Saothair,
 - Participation in Community Employment Schemes,
 - Participation in the Job Initiative programme,
- Payments of a similar type made by any other state or territory.

“social welfare payments” means payments made under the Social Welfare Acts.

“year of assessment” means a year of assessment within the meaning of the Tax Acts

Words and expressions used in this Part have the same meaning as in the Tax Acts, (2) except where an other meaning is provided, or the context otherwise requires.

531AA Interpretation (Part 18C)

Summary

This section contains definitions of the various terms used in this Part.

Details

This section contains a large number of definitions of terms used throughout this Part. (1) The more important of these are:

“discretionary trust” means any disposition whereby property is held on trust to apply the income or capital or part of the income or capital of the property for the benefit of any person or persons or any one or more of a number or of a class of persons whether at the discretion of the trustees or any other person and notwithstanding that there may be a power to accumulate all or any part of the income;

“Irish property”, in relation to an individual and a valuation date, means all property situate in the State to which the individual is beneficially entitled in possession on the valuation date excluding —

- shares in a company which exists wholly or mainly for the purpose of carrying on a trade or trades,
- shares in a holding company which derive the greater part of their value from subsidiaries which wholly or mainly carry on a trade or trades;

“liability to income tax”, in relation to an individual and a tax year, means the amount of income tax due and payable by the individual for the tax year in accordance with the Tax Acts;

“relevant individual”, in relation to a tax year, means an individual —

- who is domiciled in the State in a tax year,
- whose world-wide income for the tax year exceeds €1m,
- whose liability to Irish income tax for the tax year is less than €200,000, and
- the market value of whose Irish property on the valuation date in the tax year is in excess of €5m;

“world-wide income”, in relation to an individual, means the individual’s gross income (1A) without regard to any reliefs, exemptions or deductions such as capital allowances or losses. However, a deduction will be allowed for payments made on foot of legally enforceable arrangements made in the State or in any other jurisdiction under which payments are made by an individual to another individual by virtue of the annulment or dissolution of a marriage or of a separation that is likely to be permanent or where a civil partnership has been dissolved or a relationship between cohabitants ends. A deduction will not be allowed for payments made under maintenance arrangements where permanently separated and, in certain circumstances, divorced couples or couples whose civil partnership has been dissolved or where a relationship between cohabitants ends elect to be assessed jointly for income tax purposes under *section 1018* or *section 1031K*;

“valuation date”, in relation to a tax year, means 31 December in that year.

Subject to *subsection (3)*, an individual will be deemed to be beneficially entitled in (2) possession on the valuation date to —

- all property situate in the State which the individual has disposed of or transferred (a) to his or her spouse/civil partner or minor children/minor children of his or her civil partner for less than market value on or after 18 February 2010,
- all property situate in the State which the individual has disposed of to a (b) discretionary trust for less than market value on or after 18 February 2010, and
- all property situate in the State which the individual has disposed of or transferred (c) to a foundation for less than market value on or after 18 February 2010.

Subsection (2)(a) will not apply to a maintenance arrangement within the meaning of (3)(a) *section 1025, 1031J* or *1031Q*.

Subsection (2)(b) and *(c)* will not apply to a discretionary trust or a foundation, as the (3)(b) case may be, which is shown to the satisfaction of the Revenue Commissioners to have been created exclusively —

- for purposes which, in accordance with the law of the State are charitable, or (i)
- for the benefit of one or more named individuals and for the reason that such (ii) individual, or all such individuals, is or are because of age or improvidence or of physical, mental or legal incapacity incapable of managing that individual’s or those individuals’ affairs.

For the purposes of this Part, where the whole or the greater part of the market value of (4) any share in a company incorporated outside the State that would be a close company if it were incorporated in the State is attributable, directly or indirectly, to property situate in the State, that share will be deemed to be property situate in the State.

No deduction will be made from the market value of property for any debts or encumbrances for the purpose of estimating such market value. (5)

References in this Part to the Revenue Commissioners shall be construed as including references to any of its officers. (6)

531B Charge to income levy

Summary

This section contains the main charging provisions of income levy. It also sets out in detail income tax exemptions that are rescinded for the purposes of income levy and the exemptions that apply.

Details

Subsection (1) contains the main charging provision describing the “income levy” as a “tax”. The Schedule to the section details the income which is subject to the levy. (1)

Paragraph (a) of the Table to **subsection (1)** defines “relevant emoluments” as all income within the charge to Schedule E but excluding- (1)(a)

- social welfare pension and similar type payments made by other Departments or other states or territories,
- expenses of an employee which an employer would disregard in accordance with Regulation 10(3) of the PAYE Regulations,
- income which has been gifted to the Minister for Finance under **section 483** (excluded emoluments),
- payments made on termination of an office or employment to the extent that they are covered by the basic and increased exemptions and relieving provisions of the Standard Capital Superannuation Relief as set out in **section 201(5)(a)**, and **paragraphs 6** and **8** of **Schedule 3**, or
- schedule E emoluments which are being paid to an individual who is resident in a country which has signed a double taxation agreement with Ireland, and where Revenue have issued a PAYE Exclusion Order in relation to that payment.

Paragraph (b) of the Table to **subsection (1)** defines “relevant income” as all other income other than that dealt with by **paragraph (a)**, and similarly excluding social welfare pension and similar type payments made by other Departments or other states or territories, and also income which has been gifted to the Minister for Finance under **section 483**. This confirms that income levy applies to all income before deduction of losses, capital allowances or any other deduction from, or deduction allowed in computing total income. The legislation makes some specific inclusions which would otherwise be outside the tax net. (1)(b)

Subparagraph (i) disregards the exemptions which would normally apply in relation to exempt income under- (1)(b)(i)

- **section 140** – distributions out of profits or gains from stallion fees, stud greyhound services fees and occupation of certain woodlands,
- **section 141** – distributions out of income from patent royalties,
- **section 142** – distributions out of profits of certain mines,
- **section 143** – distributions out of profits from coal, gypsum and anhydrite mining operations,
- **section 195** – exemptions of certain earnings of writers, composers and artists,
- **section 231** – profits or gains from stallion fees,
- **section 232** – profits from occupation of certain woodlands,

- **section 233** – stud greyhound service fees,
 - **section 234** – certain income derived from patent royalties, and
 - **section 664** – relief for certain income from leasing of farm land,
- to bring all this income within the charge to the levy.

- Subparagraph (ii)** disregards some specific allowable deductions, namely-
- the double rent allowance deduction in **sections 324(2), 333(2), 345(3) and 354(3)**; **(1)(b)(ii)**
 - the deduction for lessors under **section 372AP**; **(1)(b)(ii)(I)**
 - the deduction for lessors under **section 372AU**; **(1)(b)(ii)(II)**
 - a donation to a sports body under **section 847A**; and **(1)(b)(ii)(III)**
 - a donation to an approved body under **section 848A**. **(1)(b)(ii)(IV)**

Subparagraph (iii) excludes from the levy financial products that are subject to the increased DIRT regime. **(1)(b)(V)**

Subparagraph (iv) provides for a deduction from income levy in respect of maintenance payments made under **section 1025** to a separated spouse, provided there has been no claim for joint assessment under **section 1026**. **(1)(b)(iii)**

Subparagraph (iva) provides for any reduction arising as regards the application of **section 825A** for certain income earned outside the State. **(1)(b)(iv)**

Subparagraph (ivb) provides for a deduction from income levy in respect of capital allowances arising under **section 659** in respect of capital expenditure which farmers were obliged to make in relation to satisfying the Nitrates Directive (Council Directive 91/676/EEC of 12 December 1991). **(1)(b)(ivb)**

Subsection (2) provides for- **(2)**

- (a) An exempt threshold of €15,028. A higher exemption of €18,304 provided for in Finance (No. 2) Act 2008 was revised with effect from 1 May 2009. **(2)(a)**
- (b) An exemption for those who have full entitlement to medical card services, and **(2)(b)**
- (c) An individual exemption for persons over 65 years of age who have income less than €20,000. The joint limit of €40,000 is addressed by the repayment provisions in **section 531K**. **(2)(c)**

Subsection (3) provides that where someone has utilised a proportion of the original exemption in the period up to 30 April 2009, then in applying the new lower limit to the income for the year of assessment 2009, any underpayment of levy arising in the period to 30 April 2009 as a result of that higher exemption for that short period will be disregarded. **(3)**

Subsection (4) paragraph (a) provides for a specific “ring-fencing” provision to ensure that where redundancy payments made in the period from 1 January 2009 to 30 April 2009 were subjected to the levy that they specifically will not be subjected to the composite annual rate of income levy. **(4)(a)**

Paragraph (b) provides that the levy charge at the rates in force at date of payment which fall between 1 January 2009 and 30 April 2009 will be the final amount of levy that will be due in respect of such redundancy payments. These rates are- **(4)(b)(i)**

- (I) 1 per cent on the first €100,100 of such emoluments,
- (II) 2 per cent on the next €150,020 of such emoluments, and
- (III) 3 per cent on the remainder of such emoluments.

Such emoluments which form part of an ex-gratia payment made in the period 1 January 2009 to 30 April 2009 shall not be reckoned in computing relevant emoluments for 2009 **(4)(b)(ii)**

for any other purpose of this Part.

Paragraph (c) allows for an individual to elect in writing that the provisions of **subsection (4)** shall not apply. If there is no election then the subsection will automatically apply. **(4)(c)**

531C Rate of charge

Summary

This section details the rate of charge to apply for income levy purposes to an individual's aggregate income. It sets out the composite rates which apply for 2009 and the rates applicable to 2010.

Details

Subsection (1) provides a Table setting out the composite annualised rates of levy to be applied for the year of assessment 2009. Using a composite rate for the year of assessment averages out the rate of levy payable and ensures that employees will not be charged levy for the year in excess of the levy deducted under the rates applying before and after 1 May. **(1)**

The composite rate for the year of assessment has been determined as:

<i>Revised composite band</i>	<i>Composite rate</i>
The first € 75,036	1.67%
The next € 25,064	3%
The next € 74,880	3.33%
The next € 75,140	4.67%
The balance	5%

Subsection (2) sets out a further Table of rates of income levy that will apply for 2010 and subsequent years of – **(2)**

<i>Part of aggregate income</i>	<i>Rate of income levy</i>
The first € 75,036	2%
The next €99,944	4%
The balance	6%

531D Deduction and payment of income levy on relevant emoluments.

Summary

This section details the deduction and payment obligations of an employer in relation to the operation of the income levy.

Details

Subsection (1) places the primary obligation on an employer to operate the levy; **(1)**

Subsection (2) detailing the structure of the payroll bands of levy deduction. This is set out over 2 paragraphs – **(2)**

Subparagraph (a) details the rates of payroll deduction as they applied for the period from 1 January 2009 to 30 April 2009 i.e. 1%, 2% and 3%, together with the appropriate weekly threshold which applied at each rate. **(2)(a)**

Subparagraph (b) details the new higher rates of payroll deduction that apply from 1 May 2009 to 31 December 2009 i.e. 2%, 4% and 6%, together with the appropriate weekly threshold to apply at each rate. **(2)(b)**

The levy applies irrespective of whether the relevant emoluments refer in whole or in part to the current or some other year of assessment.

Subsection (3) applies the rule of operation of PAYE to operation of the levy. In general the provisions of Part 4 of the PAYE Regulations will apply and an employer may only deduct income levy in accordance with the Regulations. **(3)**

An employer must remit income levy within 14 days from the end of the month in which it is deducted. **(4)(a)(i)**

The Collector-General may authorise an employer to remit income levy in respect of longer periods than one month subject to the period not exceeding one year. **(4)(a)(ii)**

A period of 23 days from end of month may be authorised by the Collector-General if income levy is remitted electronically. However, if the employer fails to make the payment electronically within the 23 days the lower time limit of 14 days is then applied. **(4)(a)(iii)**

Subsection (4)(b) provides for the Collector-General to issue a receipt for each instalment of income levy remitted, or alternately one receipt for all payments made in the specified period. **(4)(b)**

Subsection (5)(a) sets out the time limits that apply in respect of the making returns of income levy details to the Collector-General by employers who are ceasing to be employers; **(5)(a)**

Subsection (5)(b) requires that returns made by a body corporate are signed by the secretary or director of the body; **(5)(b)**

Subsection (6)(a) outlines the Revenue requirements in relation to returns and documents to be given to employees on the operation of the levy. In particular the employer is required to provide each employee after the end of the year with a certificate showing details of - **(6)(a)**

- The total amount of the levy deducted;
- Dates of commencement of the employee;
- The rate of levy payable by each employee; and
- The amount of relevant emoluments;

Subsection (6)(b) sets out the administrative requirements for documentation that must be supplied to employees who cease employment during the year. These are- **(6)(b)**

- The total amount of the levy deducted on behalf of the employee;
- Dates of commencement and cessation;
- The rate of levy payable by the employee; and
- The amount of relevant emoluments.

531E Record keeping

Summary

This section details the obligations of employers in relation to record keeping on the operation of the income levy.

Details

In particular the employer is required to record-

(1)

- A breakdown of payments to which levy applied;
- The amount of levy deducted from each payment;
- The total amount of the levy deducted; and
- Dates of commencement and cessation of employees.

Subsection (2) provides the records shall be in a form approved by the Revenue Commissioners and kept for 6 years after the end of the year of assessment. (2)

531F Power of inspection

Summary

This section provides for the powers of inspection as set out in **section 903** and Regulation 32 of the PAYE Regulations will apply.

Details

The provisions of **section 903** and regulation 32 of the PAYE Regulations, particularly in relation to the inspection of records by an authorised officer of the Revenue Commissioners, shall apply with such necessary modifications as are required, to particulars which an employer is required to record, as they apply to PAYE records generally.

531G Estimation of income levy due for income tax months and for year

Summary

The estimates provisions in **sections 989, 990** and **990A** apply in a similar manner to income levy as they apply to PAYE.

Details

The provisions providing for-

- Estimation of tax due for income tax months (**section 989**),
- Estimation of tax due for the year (**section 990**), and
- Generation of estimates by electronic, photographic or other process (**section 990A**)

apply to income levy in the same manner as they apply to income tax.

531H Assessment, collection, payment and recovery of income levy on relevant income

Summary

This section addresses the issues of assessment, collection, payment and recovery of the levy.

Details

Subsection (1) refers to “aggregate income for the year of assessment” to ensure that both relevant income and relevant emoluments are within the charge if an assessment is required. It provides that the levy shall be assessed, charged and paid as if it were income tax. It shall be charged on the individual income of each spouse without reference to the other spouse, but in the overall statement of liability for the year of assessment may be accumulated with income tax due for the same period, even if there is no other income tax liability for the year of assessment. (1)

Where an officer of the Revenue Commissioners makes an assessment to levy based on that officer's best judgement, the provisions of the Tax Acts in relation to assessment, collection, recovery of tax, and payment of interest on unpaid tax, shall also apply. (2)

Where income levy applies for 2009 there shall be a payment of income levy made at the same time as the preliminary income tax payment, calculated as if income levy was in force for 2008. (3)

The Revenue Commissioners are empowered to make regulations for the proper administration and implementation of income levy including provision for assessment, collection, recovery and repayment of income levy. (4)

531I Married couples

Summary

This section provides that in joint assessment cases where liability to levy in respect of relevant income arises the assessment made on the assessable spouse may incorporate the levy due by the non-assessable spouse.

Details

Where an election for joint assessment was made under *section 1018*, or is deemed to have been made, any income levy payable by the non-assessable spouse shall be charged collected and recovered from the assessable spouse, as if such income levy payable was payable by that assessable spouse.

531J False statements

Summary

The provisions of *section 1056* in relation to false statements apply to the income levy as they apply to income tax.

Details

The penalties and fines set out in *section 1056* in relation to the making of false returns, declarations and statements shall apply to income levy, with any necessary modifications, in the same way as they are applied to income tax.

531K Repayments

Summary

This section makes provision for repayments that arise in relation to income levy.

Details

Any underpayments of income levy due shall be paid to, and any repayments due will be issued by the Collector-General. (1)

Specific provision is made for repayments arising in circumstances where the exemptions in *section 531B* apply but where income levy has already been deducted. These include- (2)

- Persons with income less than the exemption limit of €15,028,
- Persons who have full entitlement to medical card services, and
- Persons over the age of 65 years who have an income of less than €20,000.

Subsection (3) provides for repayments arising to couples over 65 years, who, at the end of the year have a joint income less than twice the personal exemption of €20,000 (in **section 531B**) but one of whom may have suffered levy charges, provided the couple are dealt with under joint assessment. (3)

531L Restriction on deduction

Summary

Income levy is in addition to other tax liabilities and cannot be used as a credit for other tax liabilities due.

Details

Subsection (1) provides that the income levy paid in a year of assessment is in addition to other tax liabilities and cannot be used as a credit to reduce other tax liabilities due for that year of assessment. (1)

Subsection (2) provides that excess tax credits or reliefs that an individual may have cannot be set off against, or used in any manner, to reduce an individual's liability to the income levy. (2)

531M Application of provisions relating to income tax

Summary

The existing provisions of the Tax Acts in relation to interest and penalties apply in relation to income levy as they apply to income tax.

Details

Subsection (2) applies the existing income tax penalties, offences, interest and other sanctions in **Part 47 - sections 1052 to 1086** inclusive - in a similar manner to income levy as they apply to income tax. (2)

The provisions of **section 865** – the application of the 4-year rule - apply to claims for repayment of income levy as they apply to income tax. (3)

The provisions of **section 987**, in relation to penalties for breaches of regulations, apply with any necessary modifications, in a similar manner to income levy as they apply to income tax. (4)

531N Care and management

Income levy is under the “care and management” of the Revenue Commissioners and the Revenue Commissioners may do all such acts as are deemed necessary and expedient to raise, collect, receive and account for income levy as they are authorised to do for all other duties that they are responsible for.

531NA Cessation of charge to income levy

With effect from the year of assessment 2011 and subsequent years of assessment income levy shall cease to be charged, subject to **section 531AY**.