

**Notes for Guidance - Taxes Consolidation Act
1997
Finance Act 2023 edition**

**Part 18E
Defective Concrete Products Levy**

December 2023



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Part 18E - DEFECTIVE CONCRETE PRODUCTS LEVY

Overview

This Part provides for the introduction of a Defective Concrete Products Levy. The levy is calculated at 5% of the open market value of the products in scope of the levy on the date of their first supply. The concrete products within the scope of the levy are concrete that is ready to pour and two types of masonry units which are required to comply with certain Harmonised European Standards as referenced in the Official Journal of the European Union (or any adopted national version of such Harmonised European Standard). The legislation provides that a person in the State making the first supply of a concrete product within scope of the levy will be a chargeable person in respect of the levy and will be accountable for and liable to pay the levy and to make returns to the Revenue Commissioners. The legislation requires chargeable persons to register with the Revenue Commissioners for the levy, prior to their first supply of a concrete product after the commencement of the legislation. The legislation provides that a specified person may make a declaration to a chargeable person for a supply of ready to pour concrete to be used in the manufacture of precast concrete products with effect from 1 January 2024. Where a declaration is made by a specified person the ready to pour concrete so used will not be chargeable to the levy. Chargeable persons are required to file bi-annual returns electronically with the Revenue Commissioners declaring their liability to the levy and to pay those amounts to the Collector General. All books, records and linking documents used in ascertaining the basis for the liability for the levy must be retained by the chargeable person. The levy operates on a self-assessment basis and the legislation includes provisions for the making and amending of assessments, the making of enquiries and for the right of appeal. The levy applies to the first supply of concrete products made on or after 1 September 2023. A specified person, who has incurred the levy on ready to pour utilised in the manufacture of a precast concrete, in the accounting period 1 September 2023 to 31 December 2023, may make a claim for a repayment of the levy.

531AAG Interpretation (Part 18E)

Summary

This section contains the definitions used in *Part 18E* in relation to the defective concrete products levy.

Details

‘accounting period’ means the period from 1 September 2023 to 31 December 2023 and thereafter a period of 6 months beginning on 1 January 2024;

‘chargeable person’ is a person who makes the first supply of a concrete product;

‘chargeable supply’ for a concrete product is the supply –

- within the meaning of *paragraph (a)* of the definition of ‘supply’ of a concrete product in the course of a business carried on in the State by a person,
- within the meaning of *paragraph (b)* of the definition of ‘supply’ of a concrete product by a person in the State, or
- within the meaning of *paragraph (c)* of the definition of ‘supply’ of a concrete product by a person in the State;

‘concrete’ means material formed by mixing cement, coarse or fine aggregate (or any combination thereof) and water, with or without the incorporation of admixtures, additions or fibres, which develops its properties by hydration;

‘concrete product’ means –

- a product:
 - that contains concrete, and
 - is of a type that is required to comply with the standard specified in column (1) of **Schedule 36**, and is a type as set out in **Schedule 36**
- or
- concrete that is ready to pour ;

‘connected person’ has the meaning assigned to it by **section 10**;

‘defective concrete products levy’ is as set out in **section 531AAH**;

‘electronic means’ has the meaning assigned to it by **section 917EA(1)**;

‘first supply’ means a chargeable supply of a concrete product where there has been no previous supply;

‘linking documents’ has the meaning assigned to it by **section 886(1)**;

‘precast concrete product’ means a product that:

- contains concrete
- is manufactured in a specially equipped facility through a process of casting the concrete in a reusable mould or form and curing the concrete in a controlled environment
- following manufacture is transported from the facility—
 - to a premises or place in or on which the product is made available for wholesale or retail sale,
 - a construction site or
 - its final destination of use,
- and
- is manufactured as part of a trade which consist of the manufacture of such products, for supply to customers, where the trade is ordinarily carried on in a facility in which manufacturing process takes place;

‘records’ has the meaning assigned to it by **section 886(1)**;

‘self-assessment’ means an assessment by a chargeable person of the amount of defective concrete products levy payable by that person in accounting period;

‘specified person’ means a person who acquires a first supply of ready to pour concrete which is used by that person in the manufacture of a precast concrete product;

‘supply’ for a concrete product means –

- the transfer of ownership by agreement or sale,
- the assignment of the product for use in a business other than as set out in **paragraph (a)**, or
- the use, either privately or in a business, in the State of a concrete product;

‘supply date’ is the date of first supply of a concrete product.

‘tax reference number’ has the meaning assigned to it by *section 891B* or the meaning assigned by *section 891F* to a **TIN**.

531AAH Charging of defective concrete products levy

Summary

This section contains the main charging provisions for defective concrete products levy and requirements regarding the issuing and retention of certain documents and records.

Details

A levy to be known as the defective concrete products levy shall be charged and paid by a chargeable person on the first supply of a concrete product. (1)

The defective concrete products levy shall be charged on the supply date and the chargeable person is accountable for and liable to the levy. (2)

Where a chargeable person makes a first supply of a concrete product within the meaning of *paragraph (a)* of the definition of ‘supply’ they shall issue a document to the person they made the supply to stating – (3)

- the amount of levy which has arisen due to the supply of the product,
- the supply date of the product, and

the name of the chargeable person.

Where a chargeable person makes a first supply within the meaning of *paragraph (b)* or *(c)* of the definition of ‘supply’, they shall make a record stating – (4)

- the amount of the levy which has arisen due to the supply of the product, and
- the supply date of the product.

Where a chargeable person fails to comply with either *subsection (3)* or *(4)* they shall be liable to a maximum penalty of €500 for each failure. (5)

Where a chargeable person fails to comply with *subsection (2)* they shall be liable to – (6)

- pay the levy that should have been charged, and
- a maximum penalty of €4,000.

531AAI Amount of defective concrete products levy

This section provides that the levy is charged at a rate of 5% on the open market value of the concrete product on the supply date.

531AAJ Obligation to register

Summary

This section sets out the registration obligations placed on chargeable persons.

Details

Every chargeable person is required to register with Revenue for the levy prior to making their first supply of an in scope concrete product. (1)

In order to register with Revenue for the purpose of the levy each chargeable person is required to provide the following information to Revenue – (2)

- their name,
- their tax reference number, and
- their business address.

Every chargeable person register with Revenue for the levy must notify Revenue when they cease to be a chargeable person for the purpose of the levy, and they shall provide the date of such cessation. (3)

Revenue shall keep and maintain a register of all chargeable persons for the purpose of the levy. (4)

531AAJA First supply of ready to pour concrete to a specified person

Summary

This section sets out the obligations placed on a specified person in respect of making a declaration on the acquisition of ready to pour concrete to be utilised or so much of the ready to pour concrete to be utilised in the production of precast concrete products.

Details

A specified person may make a declaration, satisfying the requirement specified in *subsection (3)*, to a chargeable person on the first supply of ready to pour concrete or any part of that supply to be used in the manufacture of precast concrete products. (1)

Where a declaration is made under *subsection (1)* the defective concrete products levy will not be chargeable on a first supply or so much of that first supply of ready to pour concrete that is utilised in the manufacture of precast concrete products, to which the declaration relates. (2)

A declaration under *subsection (1)* applies to first supplies on or after 1 January 2024 and must be in a form prescribed by Revenue and contain the following— (3)

- the specified persons tax reference number, name and address (including Eircode)
- the chargeable persons tax reference number, name and address (including Eircode)
- the delivery address (including Eircode) for the ready to pour concrete
- the date of the supply of the ready to pour concrete
- the open market of the ready to pour concrete
- a declaration that the ready to pour concrete that the declaration relates to is to be used in the manufacture of a precast concrete product
- a declaration that the information provided is correct and complete
- any other information prescribed by the Revenue Commissioners.

When requested by the Revenue Commissioners a specified person must provide any evidence required to satisfy the Revenue Commissioners that the supply of ready to pour concrete was so used in the manufacture of precast concrete products. (4)

A chargeable person must retain the original copy of the declaration provided by a specified person. (5)

A specified person must retain a copy of the declaration provided to a chargeable person. (6)

Where a specified person makes a false, incorrect or misleading declaration and the defective concrete products levy is not charged, levied or paid, that person shall be liable to a penalty not exceeding €4,000 and to pay the amount of the defective concrete products levy which would have been chargeable for the ready to pour concrete. (7)

A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person – (8)

- knowingly or wilfully delivers an incorrect declaration or statement or knowingly or wilfully furnishes any incorrect information in connection with this section or a declaration under *subsection (1)* in relation to any person, or
- knowingly aids, abets, assists, incites or induces another person to make or deliver knowingly or wilfully an incorrect declaration or statement or to furnish any incorrect information knowingly or wilfully in connection with this section or a declaration made under *subsection (1)*.

The provisions of *subsections (3) to (10)* of *section 1078* and *section 1079*, with any necessary modifications, shall apply for the purposes of this subsection. (9)

Where a Revenue officer determines a person is liable under *subsection (7)*, the Revenue officer shall notify them in writing. A person may appeal the determination made under this subsection to the Appeals Commissioners within 30 days after the date of the determination. (10)

531AAJB Repayment of defective concrete products levy

Summary

This section sets out the requirements for a specified person to make a claim for a refund of the defective concrete products levy paid on ready to pour concrete used in the manufacture of precast concrete products in the period 1 September to 31 December 2023.

Details

A specified person may make a claim for a refund of any defective concrete products levy paid on ready to pour concrete used in the manufacture of precast concrete products in the accounting period 1 September 2023 to 31 December 2023. (1)

Subject to the time limit of making a claim under this section, where a person makes a claim under *subsection (1)* and satisfies Revenue that they are a specified person, that used the ready to pour concrete in the manufacture of precast concrete products in the accounting period 1 September 2023 to 31 December 2023 and has complied with the provisions of this section, that person shall be entitled to a repayment of any such levy incurred. (2)

A claim under *subsection (1)* shall be made on a form prescribed by Revenue which contains— (3)(a) & (b)

- the specified persons tax reference number, name and address (including Eircode)
- the name of the chargeable person
- the supply date of the ready to pour concrete
- the amount of the refund being claimed
- a declaration that the information on the form is correct and complete, and
- any other information as Revenue may prescribe.

A person shall also provide, for each supply, the invoices or other documents issued under Chapter 2 of Part 9 of the Value-Added Tax Consolidation Act 2010. A person shall also provide any documents issued under *section 53IAAH (3) and 53IAAH(4)*, that is, the document issued for the purposes of charging the levy. (3)(c)

Where requested by the Revenue Commissioners a specified person must provide documentary evidence to satisfy the Revenue Commissioners that the supply of ready to pour concrete, in respect of which a claim is made, was used in the manufacture of precast concrete products. (3)(d)

A claim for a refund must be made within four calendar months of the end of the accounting period, that is, 31 December 2023. (4)

A person who makes a claim under this section in relation to ready to pour concrete not used in the manufacture of precast concrete products or who makes an incorrect or fraudulent claim under this section shall be liable to a penalty not exceeding €4,000 per claim and to repay the amount of the refund received. (5)

A refund under this section can only be claimed on a total amount of more than €125. (6)

A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person – (7)

- knowingly or wilfully delivers an incorrect claim or statement or knowingly or wilfully furnishes any incorrect information in connection with this section or a claim under *subsection (1)* in relation to any person, or
- knowingly aids, abets, assists, incites or induces another person to make or deliver knowingly or wilfully an incorrect claim or statement or to furnish any incorrect information knowingly or wilfully in connection with this section or a claim made under *subsection (1)*.

The provisions of *subsections (3) to (10) of section 1078 and section 1079*, with any necessary modifications, shall apply for the purposes of this subsection.

Any amount payable by the Revenue Commissioners shall be deemed to be an overpayment of tax for the purposes of 960H(2). (8)

Where a person is liable under *subsection (5)* a Revenue officer shall notify them in writing. A person may appeal any determination made under this subsection to the Appeals Commissioners within 30 days after the date of the determination. The reference to the Taxes Act in paragraph (a) of the definition of ‘Acts’ in *section 949A* shall be taken as including this section. (9)

531AAK Returns and payments by chargeable persons

Summary

This section sets out the obligations placed on chargeable persons in relation to returns and payments with respect to the levy.

Details

A chargeable person is required to make a self-assessed return and payment of all amounts of the levy that were due to be charged in an accounting period within 23 days of the end of that accounting period. (1)

The following details are to be included on returns made by chargeable persons – (2)

- the total of the open market value of all concrete products supplied during the accounting period
- the amount of the levy due for the accounting period,
- the sum of the open market value on the supply date of ready to pour concrete supplied by the chargeable period in respect of which a declaration was made under *section 53IAAJA* in the accounting period, and
- the number of specified persons that made a declaration under *section 53IAAJA* in the accounting period.

A return shall be made by a chargeable person for each accounting period even if there is no levy due by that chargeable person for that accounting period. (3)

Every return shall be in a form prescribed by the Revenue Commissioners and shall include a declaration that the return is correct and complete. (4)

Every return shall be made electronically. (5)

Where an error or omission is discovered on a return, an amended return shall be made by the chargeable person. (6)

Where a chargeable person fails to file a return, they shall be liable for a maximum penalty of €4,000 for each failure. (7)

531AAL Assessments, enquiries and appeals

Summary

This section adapts certain provisions of *Chapter 5 of Part 41A* relating to assessments, enquiries and appeals for the purpose of the defective concrete products levy.

Details

Sections 959Y, 959Z, 959AA, 959AC, 959AD and 959AE apply to the defective concrete products levy with the following modifications – (1)

- a reference to a ‘person’ or a ‘chargeable person’ shall be construed as including a chargeable person for the purpose of the defective concrete products levy;
- a reference to a ‘chargeable period’ shall be construed as including an accounting period for the purpose of the defective concrete products levy;
- a reference to ‘tax’ shall be construed as including the defective concrete products levy;
- a reference to ‘amount of income, profits or gains, or, as the case may be chargeable gains’ shall be construed as including the open market value of a concrete product;

- a reference to a ‘return’ shall be construed as including a return for the purpose of the defective concrete products levy.

A chargeable person aggrieved by an assessment, or an amended assessment has a right of appeal. An appeal must be lodged within 30 days of the notice of assessment or amended assessment and must be made to the Appeal Commissioners in accordance with **section 949I**. (2)

531AAM Interest on overdue defective concrete products levy

Summary

This section provides for interest to be charged on underpaid defective concrete products levy.

Details

A rate of interest of 0.0219 per cent is charged for each day or part of a day that a defective concrete products levy amount remains unpaid, and on any amount payable under **sections 531AAJA(7)(b)** and **531AAJB(5)(ii)**.

Subsection (3) to (5) of section 1080, which relates to interest on overdue tax, apply to defective concrete products levy as they apply to income tax, corporation tax and capital gains tax.

531AAN Obligation to keep certain records

Summary

This section sets out the obligations placed on chargeable persons and specified persons in relation to the records they are required to keep for the purposes of the defective concrete products levy.

Details

Chargeable persons and specified persons are required to retain, or cause to be retained, records and linking documents to enable a full and true return, claim or declaration to be made to Revenue. (1)

The records to be retained, both in paper and electronic form, shall include records relating to – (2)

- each first supply of concrete products during an accounting period including
 - o invoices, delivery and purchase records,
 - o specific information regarding the concrete products which will enable the identification of the types of concrete product,
 - o documentation recording the open market value of the concrete products,
- the calculation of the liability and the payment of the levy in an accounting period,
- where applicable the document or record required under **section 531AAH(3)** and **531AAH(4)**,
- a declaration made for the purposes of section 531AAJA, and
- any documentary evidence that ready to pour concrete was used in the manufacture of precast concrete products.

The records are to be retained in the following format – (3)

- in written form in an official language of the State, or
- in electronic format, subject to the requirements of *section 887(2)*.

The books and records should be retained for a period of 6 years after the end of an accounting period in which a return has been submitted. (4)

Where a chargeable person or a specified person is a company, and the company is – (5)

- wound up, the liquidator, or
- is dissolved without the appointment of a liquidator, the last directors of the company shall retain the records for 5 years from the date the company is wound up or dissolved.

The executor or administrator of a deceased chargeable person or a deceased specified person shall retain records for a period of 5 years after the date of death of the chargeable person or specified person. (6)

A penalty of €3,000 for a failure to retain the necessary books and records can be imposed. (7)

531AAO Care and management of defective concrete products levy

Summary

This section confirms that the defective concrete products levy is under the care and management of the Revenue Commissioners.

Details

Defective concrete products levy is placed under the care and management of the Revenue Commissioners. (1)

Part 37 (Administration) applies to defective concrete products levy as it applies to income tax, corporation tax and capital gains tax. (2)

531AAP Valuation procedures

Summary

This section provides the valuation procedures the Revenue Commissioners can follow with respect to the open market value of a concrete product.

Details

Where the Revenue Commissioners are not satisfied with the open market value of a concrete product included on a return or where no return has been made Revenue can estimate the open market value of a concrete product. (1)

The Revenue Commissioners can obtain an open market value of a concrete product by whatever means they think appropriate and can authorise a suitable qualified person to do so. (2)

Where the Revenue Commissioners authorise a suitably qualified person to obtain a valuation any costs in regard to the valuation will be defrayed by the Revenue Commissioners. (3)

531AAQ Application of Part 18E

Summary

This section sets out the date from which Part 18E is applicable.

Details

Part 18E applies to the first supply of a concrete product on or after 1 September 2023, subject to *subsection (2)*. (1)

Part 18E shall not apply to the supply of a concrete product if they first supply was before 1 September 2023, subject to *subsection (3)*. (2)

Where measures have been taken by a chargeable person to avoid application of the defective concrete products levy by having a first supply of a concrete product before 1 September 2023 then those measures will be regarded as not arising, this is an anti-avoidance provision. (3)