

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

## **Finance Act 2018 edition**

### **Part 36 Miscellaneous Special Provisions**

**December 2018**



The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

## Part 36 Miscellaneous Special Provisions

- 836 Allowances for expenses of members of Oireachtas
- 837 Members of the clergy and ministers of religion
- 838 Special portfolio investment accounts
- 839 Limits to special investments
- 840 Business entertainment
- 840A Interest on loans to defray money applied for certain purposes
- 841 Voluntary Health Insurance Board: restriction of certain losses and deemed disposal of certain assets
- 842 Replacement of harbour authorities by port companies
- 843 Capital allowances for buildings used for third level educational purposes
- 843A Capital allowances for buildings used for certain childcare purposes
- 843B Capital allowances for buildings used for the purposes of providing childcare services or a fitness centre to employees
- 844 Companies carrying on mutual business or not carrying on a business
- 845 Corporation tax: treatment of tax-free income of non-resident banks, insurance businesses, etc
- 845A Non-application of *section 130* in the case of certain interest paid by banks
- 845B Set-off of surplus advance corporation tax
- 845C Treatment of Additional Tier 1 instruments
- 846 Tax free securities: exclusion of interest on borrowed money
- 847 Tax relief for certain branch profits
- 847A Donations to certain sports bodies
- 847B Tax treatment of return of value on certain shares
- 847C Tax treatment of return of value on certain shares where shareholders affected by postal delays
- 848 Designated charities: repayment of tax in respect of donations
- 848A Donations to approved bodies

## PART 36 MISCELLANEOUS SPECIAL PROVISIONS

### Overview

This Part contains a number of sections which provide for a range of unconnected taxation measures which apply to specific classes of persons or businesses. Some of the measures provide for tax reliefs or favourable taxation regimes for certain investments (for example, *section 838* provides for a favourable tax regime for investments in special portfolio investment accounts). Other measures are aimed at preventing tax loss, such as *section 840* (which restricts various tax reliefs where business entertainment is involved) and *section 840A* (which denies a trading deduction for interest payable on intra-group borrowings to purchase assets from a connected company).

### 836 Allowances for expenses of members of Oireachtas

This section provides that allowances payable to members of the Oireachtas under section 3 of the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act 1992, section 2 of the Oireachtas (Allowances to Members) Act 1938, section 5 of the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act 1964 and section 1 or 2 of the Oireachtas (Allowances to Members) Act 1962 are exempt from income tax. (1)  
(1A)

This section also provides that the parliamentary standard allowance payable under section 3 of the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices Act 2009 is exempt from income tax. (1B)

Those allowances are in full settlement of expenses which a member is obliged to incur in the performance of his/her duties as a member of the Oireachtas and which are not otherwise directly reimbursed. A member is not entitled to claim a deduction under *sections 114* or *115* in respect of those expenses even to the extent that the amount incurred exceeds the allowance payable. However, Ministers of the Government, Ministers of State and the Attorney General may claim a deduction under *section 114* in respect of expenses incurred in maintaining a second residence where the maintenance of a second home arises out of the performance of their duties as an office holder or member of the Oireachtas. Such expenses shall not include local property tax payable under section 16 of the Finance (Local Property Tax) Act 2012 or the charge for water services payable under section 21 of the Water Services (No.2) Act 2013. The deduction under *section 114* is restricted to TDs who represent constituencies outside the Dublin area or Senators whose main residence is outside that area. (2)

### 837 Members of the clergy and ministers of religion

This section provides that a member of the clergy or a minister of any religious denomination is entitled to deductions against his/her professional income in respect of —

- expenditure incurred wholly, exclusively and necessarily in the performance of his/her duties as a member of the clergy or minister of religion, and
- up to one-eighth of the rent paid on a dwelling any part of which is used mainly or substantially for the purposes of those duties.

### 838 Special portfolio investment accounts

## Summary

This section provides the tax regime for an equity/gilt investment product known as a special portfolio investment account (SPIA) operated on behalf of individuals by designated stockbrokers. The tax treatment of SPIAs is broadly similar to that which applies to special investment policies issued by life assurance companies and special investment schemes which are a type of unit trust – refer to the notes on *sections 723* and *737*, respectively. Certain investment criteria must be met by a SPIA, and income and gains – both realised and unrealised – arising from the investment are subject to an annual 20 per cent tax charge. This is a final tax.

These accounts can not be commenced after 5 April, 2001. In relation to accounts existing at that date, the requirement that investment be focused on Irish equities and bonds has been removed and there will no longer be a limit to the value of assets held in the account on every fifth anniversary of the date it was opened.

## Details

### *Definitions and construction*

“designated broker” defines the stockbrokers who operate the SPIAs. (1)(a)

“gains” means chargeable gains within the meaning of the Capital Gains Tax Acts and includes gains on gilts.

“qualifying shares” are ordinary shares listed on, or quoted on, the Irish Stock Exchange but excluding shares which are shares in an investment company or any kind of collective investment undertaking.

“relevant income or gains” identifies the investment return, net of expenses due to the broker, which qualifies for the 20 per cent rate – it covers, in addition to dividend income, capital gains (and losses) arising from a relevant investment.

“relevant investment” indicates the investments which may be held by a designated broker in a SPIA. These are either —

- fully paid-up qualifying shares and specified qualifying shares (the latter being qualifying shares in companies with an issued share capital valued at less than €255m at the time when the shares are acquired for the SPIA), or
- shares as above and certain securities.

It is a requirement that the broker acquires the relevant investment at market value by means of expending funds contributed by the individual investor by way of a specified deposit. Existing shares or securities held by the investor cannot be simply transferred to the SPIA.

Various terms used in the legislation governing deposit interest retention tax (DIRT) set out in *Chapter 4* of *Part 8* are linked to terms used in this section so that by virtue of *subsection (3)* the DIRT collection mechanism can be applied in broad terms to the collection of tax in respect of SPIAs. (1)(b)(i)

However, the provisions relating to the interim payment of DIRT are disapplied for the purposes of this section. (1)(b)(ii)

### *Special portfolio investment accounts (SPIAs)*

Despite the provisions of *subsection (3)* (which apply the DIRT provisions governing special savings accounts to special portfolio investment accounts), the conditions under which special savings accounts operate do not apply in full to SPIAs since some of them (1)(c) & (2)

have no relevance to those accounts. However, the following conditions are to apply to SPIAs —

- each special portfolio investment account and all assets held in such an account must be maintained separately from any other investment accounts operated by a designated broker;
- the amount which an individual can invest in a special portfolio investment account is limited to €63,500 – but this limit is increased by the amount invested in shares of companies quoted on the Developing Companies Market subject to a maximum increase of €12,700 (however, under *section 839* these limits may be varied in certain circumstances – see notes on that section for details). This increased limit applies to accounts opened before 6 April, 2000;
- on or after 1 February, 1996 and before 31 December, 2000 certain investment criteria must be met, namely, funds in the special portfolio investment account must be invested as to 55 per cent in Irish equities and as to 10 per cent in specified qualifying shares.

These accounts cannot be commenced on or after 6 April, 2001.

### ***Application of DIRT legislation***

SPIAs are linked into the DIRT legislation as it applies to special savings accounts and in particular as regards the tax rate on those accounts. (3)

### ***Special tax rules***

Provision is made for special rules in relation to the tax treatment of SPIAs which apply so as to overrule any other provision of the Tax Acts or the Capital Gains Tax Acts. These rules are as follows — (4) & (5)

- any unrelieved losses of the SPIA at the time of its closing can be appropriated by the holder of the SPIA as if they were his/her own losses and offset against gains in the same year of assessment or a later year;
- indexation relief, the exemption of Government securities and the annual capital gains tax exemption available to individuals do not apply;
- there is to be no tax advantage from the timing difference between the generation of a capital loss on the disposal of securities and taking into account any income received in respect of those securities;
- there is to be a deemed disposal and reacquisition of all assets of a SPIA on 31 December each year so that gains and losses – both realised and unrealised – can be brought into the computation of relevant income and gains for each year of assessment;
- generally dividends received from Irish resident companies in a year of assessment are taken into account in calculating “relevant income or gains”;
- income and gains arising from investment in certain BES type shares are not taken into account in computing the tax liability – losses, however, are allowable.

A designated broker is deemed to have made a payment on 31 December in each year of assessment of the amount of relevant income or gains for that year of assessment. This triggers a tax charge on that amount to which the 20 per cent tax rate is to be applied. The tax is due on or before 31 October in the following year of assessment. The broker is indemnified against any claim that the income or gains should be accumulated without deduction of tax for the benefit of the investor. Furthermore, if there are not sufficient funds within the SPIA to pay the tax (this can arise since there is a tax liability on unrealised gains) any shortfall made up by the broker is to be a debt due from the investor to the broker. (6)

**Bar on BES relief**

Investments in shares held in a SPIA cannot in addition qualify for BES relief. (7)

**839 Limits to special investments**

**Summary**

This section is concerned with investment in the following classes of investment products —

Special Savings Accounts	“SSAs”	(section 256)
Special Investment Policies	“SIPs”	(section 723)
Special Investment Schemes	“SISs”	(section 737)
Special Portfolio Investment Accounts	“SPIAs”	(section 838).

The provisions in relation to each class of investment set out a €63,500 limit to the amount that may be invested, whether separately or jointly, in that class of investment. Generally, only one investment of a class is permitted but, in the case of married couples or civil partners, 2 joint investments are permitted neither of which are to exceed €63,500.

This section amends these investment limits in certain circumstances.

**Note:** For accounting periods ending in 2003 and subsequently, the funds underlying special investment policies were merged with the relevant life company’s ordinary life business fund and the tax treatment of special investment policies equated to that of ordinary life policies. The limits to the various investment products set out in this section, from that time, no longer apply in respect of special investment policies.

**Details**

There is a general prohibition on an investor having at the same time an investment in more than one of the classes of investment products set out above. (1)

However, this general prohibition is over ridden by **subsection (2)** which allows investment in more than one class of investment product provided certain investment limits are adhered to. Furthermore, **subsection (4)** permits an increased limit where there is an investment only in one product other than an SSA – for joint investors the limit is increased for each of 2 products other than an SSA. The position for individual and permitted joint investment is as follows — (2) to (4)

Individual investment		Joint investment	
SSA	Other product	SSA	Other products
€31,750	and €63,500	€63,500(2)	and €63,500(1)
€63,500	and €31,750	€63,500(1)	and €63,500(2)
€Nil	and €75,250	€31,750(2)	and €31,750(2)
€95,250	and €Nil	€31,750(2)	and €31,750(2)
		€Nil	and €95,250(2)
		€95,250(2)	and €Nil)

Note that under **section 838(2)(b)**, where the other product is a SPIA, the investment limit is increased by the amount invested in shares quoted on the Developing Companies

[Type here]

Market, subject to a maximum increase of €12,700. This increase applies to SPIAs opened before 6 April 2000.

Where in the provisions relating to these savings products a reference is made to the value of the investment not exceeding €63,500 at a particular time then that reference should be taken as a reference to €31,750 where the investment limit for that product is, under the foregoing also €31,750.

The Revenue Commissioners are empowered to require investors to supply information (5) for the purposes of compliance with this section.

## **840 Business entertainment**

### **Summary**

This section ensures that business entertainment expenses are not allowed as a deduction for the purposes of income tax or corporation tax. Entertainment expenses include expenses incurred on the provision of accommodation, food, drink or any other form of hospitality. The section also provides that capital allowances are not granted in respect of assets used for entertainment for income or corporation tax purposes. The section applies in relation to the provision of a gift in the same way as it applies in relation to business entertainment expenses.

### **Details**

#### ***Definitions and construction***

“business entertainment” is defined very broadly and covers any form of hospitality (1) provided directly or indirectly by a trader, a member of his/her staff or someone acting on behalf of the trader. The definition extends to cover expenses incurred in or assets used for providing anything incidental to the provision of entertainment, but does not include anything provided for genuine members of staff (for example, Christmas party). This exclusion for staff members does not apply if the provision of entertainment to them is incidental to its provision also to others.

“staff” includes employees, directors of a company and other persons engaged in the management of a company.

The restrictions provided for by this section extend to trades, businesses, professions and employments.

The section applies to the provision of gifts as it applies to the provision of entertainment. (5)

#### ***Restrictions***

The main restrictions are that —

- business entertainment expenditure incurred is not deductible in determining the profits of any trade, profession, business or employment, and (2)
- capital allowances are not available in relation to any assets used in the provision of business entertainment. (3)

The non-deductibility of expenses also applies to all payments and expense allowances placed at the disposal of employees (including directors) for the purposes of business entertainment. (4)

Where payments for services include amounts in respect of business entertainment these amounts are not deductible. The inspector is to determine the amount, and this determination may be amended by the Appeal Commissioners or the Circuit Court. (6)

## **840A Interest on loans to defray money applied for certain purposes**

### **Summary**

This section is an anti-avoidance provision that denies a trading deduction for interest payable on intra-group borrowings to purchase assets from a connected company.

### **Details**

#### ***Definitions***

The definition of “assets” does not include intellectual property that qualifies for capital allowances or trading stock within *section 89*. Revenue eBrief No. 11/11 provides guidance on the types of assets that will be treated as trading stock. **(1)(a) & (b)**

#### ***Interest on a loan from a connected company***

Interest on a loan from a connected company to purchase an asset from a connected company is not deductible in computing the profits or gains chargeable to corporation tax under Schedule D. **(2)**

#### ***Interest on a loan to acquire a trade***

Interest on a loan to acquire a trade, which prior to its acquisition was not within the charge to corporation tax, may be deducted in computing a company’s profits up to the amount of the income from the acquired trade. **(3)**

The acquisition of part of a trade is treated as if that part of the trade were itself a separate trade. **(4)**

Where the company begins to carry on an acquired trade or an acquired part of a trade as its own trade, the acquired trade or part of a trade is treated as a separate trade for the purposes of determining the limit to which interest can be deducted. The profits of that trade should be apportioned on a just and reasonable basis in order to determine the profits or gains of the separate trade. **(5)**

#### ***Interest on a loan to a leasing company***

Interest on a loan to a leasing company to acquire an asset, which, prior to its acquisition was not in use for the purposes of a trade carried on by a company within the charge to corporation tax, may be deducted in computing a company’s profits up to the amount of income from the acquired asset. **(6)(a)**

In order to determine the profits or gains of a trade attributable to an acquired asset, it will be necessary to apportion the expenses and receipts of that trade. **(6)(b)**

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

Provision is made against the use of back-to-back loans with unconnected persons which prevents companies circumventing this section. **(7)**

#### ***Securitisation companies***

Securitisation companies are dealt with in *section 110* and are not within the scope of this section. **(8)**

#### ***Schemes or arrangements for the making of loans***

Loans made under schemes or arrangements whereby a connected person loans or provides funds to an unconnected person and that unconnected person then makes a loan **(9)**



to the investing company, shall be treated as having been made by a connected person.

### **841 Voluntary Health Insurance Board: restriction of certain losses and deemed disposal of certain assets**

This section contains provisions consequential on the removal of the exemption from corporation tax of the Voluntary Health Insurance Board.

Losses incurred in an accounting period ending before 1 March, 1997 cannot be set off under *section 396* by the Voluntary Health Insurance Board against income arising after that date.

Unrealised gains on financial investments which arose before the 1 March, 1997 are not to be taxable when they are disposed of. This is achieved by deeming the assets to have been disposed of and immediately reacquired at their market value on 28 February, 1997.

### **842 Replacement of harbour authorities by port companies**

The Harbours Act, 1996 provided for the establishment by the Minister for the Marine of new port companies. As and from specific vesting dates all the assets and liabilities of the existing harbour authorities are to be transferred to these new port companies which then assume the rights and responsibilities of the harbour authorities which they replace. After the transfer of all rights and property to the port companies, the harbour authorities are dissolved automatically.

This section and *Schedule 26* create a tax neutral effect for this transfer by ensuring that no capital gains tax charge, or capital allowances balancing charge or allowance arises on such transfers of assets. Any property or other assets transferred are, for capital gains tax and capital allowances purposes, regarded as having been acquired by the port company at the time and cost at which they were acquired by the harbour authority.

This section and *Schedule 26* apply from 1 March, 1997, that is, the date immediately before the establishment of the first of the new port companies.

### **843 Capital allowances for buildings used for third level educational purposes**

#### **Summary**

The section provides for a scheme of capital allowances in respect of capital expenditure incurred on certain buildings or structures used for the purposes of third level education, including third level health and social services education or training. Such expenditure must be approved by the Minister for Education and Science or, as may be appropriate, the Minister for Health and Children, and it must also have the consent of the Minister for Finance. The measure covers both construction expenditure and expenditure on the provision of machinery or plant. Capital allowances are provided in respect of qualifying expenditure incurred in the qualifying period at the rate of 15 per cent per annum for 6 years with the balance (10 per cent) being written off in year 7.

The qualifying period for the scheme commenced on 1 July 1997 and ends on 31 December 2006 or, where work to the value of 15 per cent of the constructions costs of the building or structure involved is carried out by that date, it ends on 31 July 2008.

Where a project qualifies for the extension to 31 July 2008, the amount of qualifying expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 is restricted to 75 per cent and 50 per cent respectively of the amount attributable to the period involved.

To be eligible for the allowances, the premises must be in use for the purposes of third

level education or, as respects expenditure incurred on or after 1 October 1999, associated sporting or leisure activities provided by an approved institution and must be let to that institution. In addition, the approved institution must have raised a sum of money (none of which has been met directly or indirectly by the State) before construction begins which is equivalent to at least 50 per cent of the total qualifying expenditure. The Minister for Finance must certify that this has happened and that the sum is to be used solely for the purpose of paying interest, rent and eventually buying back the new premises at the end of the lease period. A certificate must be issued by the Minister before the start of construction. No certificate may be issued unless an application was made before 1 January 2005.

With effect from 6 April 1999, there is provision for the delegation to An tÚdarás of the powers and functions of the Minister for Education and Science and the Minister for Finance in relation to certain institutions where both those Ministers agree to such delegation.

It should be noted that the €31,750 annual limit on the amount of capital allowances which an individual passive investor may set off against non-rental income applies to capital allowances given under this section (see *section 409A* for details). Owner-operators and corporate investors are not affected by this limit.

## Details

### *Definitions*

“approved institution” effectively means third level institutions which are not publicly funded as well as those which receive public funding and provide courses to which the higher education grant schemes approved by the Minister for Education and Science apply (for example, universities, DITs and RTCs). With effect from 6 April 2001, the definition also includes bodies providing third level health and social services education or training which are approved by the Minister for Health and Children and are in receipt of public funding in respect of the provision of such education or training. (1)

“qualifying expenditure” covers not only capital expenditure on the construction of new buildings or structures but also capital expenditure on machinery or plant for any such project. The expenditure must be approved by the Minister for Education and Science or, as may be appropriate, the Minister for Health and Children and have the consent of the Minister for Finance.

“qualifying period” is the period commencing on 1 July 1997 and ending on 31 December 2006, or where the conditions of *subsection (1A)* are met, it ends on 31 July 2008.

“qualifying premises” means a building or structure which is let to a third level educational institution and which is used for the purposes of third level education or, as respects capital expenditure incurred on or after 1 October 1999, associated sporting or leisure activities. The leasing arrangement allows the lessor to claim the capital allowances provided for in the section.

### *Extended termination date of 31 July 2008*

An extended termination date of 31 July 2008 will apply in cases where work to the value of at least 15 per cent of the actual construction costs of a building or structure is carried out by 31 December 2006. The person who carried out the work or, where that person sells the building or structure involved, the person who is claiming the capital allowances must be able to show that this 15 per cent condition was satisfied. (1A)

***Entitlement to capital allowances and amount of expenditure which may qualify***

Industrial buildings capital allowances are applied to qualifying expenditure as if the qualifying premises were a factory or similar type of premises in which a trade is carried on. Qualifying expenditure in so far as it is met by way of grants does not have to be excluded. (2)(a) & (b)

Allowances for qualifying expenditure incurred will be given only in so far as the expenditure is incurred in the qualifying period. (2A)

Qualifying expenditure incurred in the qualifying period is to be written off at 15 per cent per annum for 6 years and 10 per cent in year 7. (3)

Capital expenditure incurred on the construction of a qualifying premises will be treated as having been incurred in the qualifying period only to the extent that such expenditure is attributable to work on the construction of the premises which is actually carried out during the qualifying period. (9)

***Qualifying expenditure limited to 75 per cent of amount incurred in 2007 and 50 per cent of amount incurred in the period 1 January 2008 to 31 July 2008***

The application of law relating to industrial buildings or structures is subject to the provisions of *sections 270(4), 270(5), 270(6)* and *section 316(2B)*. Under those sections, any capital expenditure incurred in the year 2007 and in the period 1 January 2008 to 31 July 2008 is subject to respective reductions to 75 per cent and 50 per cent of the relevant amount for the period involved. Where a building or structure is sold and *section 279* applies, that section is applied in a modified way to reflect the restrictions. Finally, capital expenditure on the construction of a qualifying premises is treated as incurred in a period only to the extent that it is attributable to work actually carried out in that period (see notes on *sections 270* and *316*). (2)

***Private funding and Ministerial certification***

The entitlement to capital allowances is conditional on an approved institution raising or securing a sum of money which is at least equivalent to 50 per cent of the qualifying expenditure for the project. This sum must be raised from private sources (i.e. none of it may be met directly or indirectly by the State) in advance of the start of any construction and is separate from the actual qualifying expenditure. The Minister for Finance must be able to certify that the money has been raised or secured and that it is to be used solely for the following purposes — (4)

- paying interest on borrowings used to fund the construction and equipping of the qualifying premises,
- paying rent on the qualifying premises for such time as it is leased by the approved institution, and
- buying back the qualifying premises at the end of the lease period.

The Minister for Finance (or An tÚdarás where authority has been delegated) may not issue a certificate unless an application has been made prior to 1 January 2005. (7)

***Balancing charge***

Where a sale or other event which normally might give rise to a balancing charge under *section 274* occurs in relation to a qualifying premises, a balancing charge is not to be made if that event occurs more than 7 years after the qualifying premises was first used. (5)

***Commencement***

The section operates from 1 July 1997. (6)

### ***Delegation of authority***

With effect from 6 April 1999, the Minister for Education and Science and the Minister for Finance may agree to delegate to An tÚdarás the powers and functions conferred on them in relation to the scheme as it applies to institutions under the aegis of the Minister for Education and Science. The delegation of authority may be a general one or may be more specific relating to a particular project or premises. (8)

## **843A Capital allowances for buildings used for certain childcare purposes**

### **Summary**

This section provides for a scheme of capital allowances in respect of capital expenditure incurred in the period from 1 December 1999 to 30 September 2010 or, where certain qualifying conditions are met, 31 March 2011 or 31 March 2012 on the construction, refurbishment or conversion of a building or part of a building used as a qualifying childcare facility.

Qualifying expenditure is written off over a 7-year period by way of annual allowances at the rate of 15 per cent per annum for 6 years and 10 per cent in year 7. Moreover, an initial allowance of 100 per cent is available to both owner-operators and lessors of qualifying premises, while accelerated annual allowances (free depreciation) of up to 100 per cent are available to owner-operators of such premises.

In relation to qualifying premises that are first used (or first used after refurbishment) on or after 1 February 2007, the tax life of these and their holding period for balancing allowance and balancing charge purposes is increased to 15 years. However rates of allowances remain unchanged.

In certain circumstances, property developers are excluded from qualification for the scheme of allowances as are persons connected with property developers as respects expenditure incurred on or after 1 January 2008.

It should be noted that the €31,750 annual limit on the amount of capital allowances which an individual passive investor may set off against non-rental income applies to capital allowances given under this section (see *section 409A* for details). Owner-operators and corporate investors are not affected by this limit.

### **Details**

#### ***Definitions***

“property developer” means a person whose trade consists wholly or mainly of the construction or refurbishment of buildings or structures with a view to their sale. (1)

“qualifying expenditure” is capital expenditure incurred on the construction, conversion or refurbishment of a qualifying premises.

“pre-school child”, “pre-school service” and “qualifying premises”: These definitions serve to identify the type of childcare facility which qualifies for the scheme of capital allowances. To qualify for the allowances, a childcare facility must meet the requirements of the Child Care Act 1991 in relation to a pre-school service which it provides and, in particular, the operator of such a facility must be in a position to show that he or she has, in accordance with the Child Care (Pre-School Services) (No. 2) Regulations 2006, formally notified the local health board that he or she has set up or is operating such a service. The Child Care Act 1991 focuses on children under the age of 6 and includes any pre-school, play group, day nursery, crèche, day-care or other similar service for those

children. Therefore, childcare facilities must cater for children under the age of 6 if they are to qualify for the allowances. However, facilities catering for children aged over 6 will also qualify for the allowances as long as they also cater for children under 6.

“qualifying period” means the period commencing on 1 December 1999 and ending –

- (a) on 30 September 2010, or
- (b) where *subsection (6)(a)* applies, on 31 March 2011, or
- (c) where *subsection (6)(b)* applies, on 31 March 2012.

### ***Entitlement to capital allowances***

Subject to *subsections (2A) to (5)*, the law governing industrial buildings capital allowances is applied to qualifying expenditure as if the qualifying premises were a factory or similar type premises in which a trade is carried on. (2)

### ***Capital allowances available***

Only qualifying expenditure incurred in the qualifying period can qualify for capital allowances. (2A)

### ***Annual allowances and tax life***

Qualifying expenditure incurred in the qualifying period may be written off over 7 years at the rate of 15 per cent per annum for the first 6 years and 10 per cent in year 7. For qualifying premises that are first used (or first used after refurbishment) on or after 1 February 2007, the tax life of these buildings and structures is increased to 15 years in line with the 15-year holding period for balancing event purposes. However, the period over which expenditure is written-off (and rates) remains at 7 years. (3)

### ***Initial allowance and free depreciation***

An industrial building allowance (“initial allowance”) of 100 per cent is available under *section 271* in respect of qualifying expenditure incurred in the qualifying period. (3A)(a)

Alternatively, accelerated annual allowances (“free depreciation”) of up to 100 per cent are available under *section 273* in respect of similar qualifying expenditure. (3A)(b)

### ***Balancing events***

Where a sale or other event which might give rise to a balancing allowance or charge under *section 274* occurs in relation to a qualifying premises, a balancing allowance or charge is not to be made if that event occurs more than 10 years after the qualifying premises was first used or, in a case where the qualifying expenditure is expenditure on refurbishment, more than 10 years after the expenditure on refurbishment of the qualifying premises was incurred. (4)

For qualifying premises that are first used, or first used after refurbishment on or after 1 February 2007, the holding period for balancing allowance and balancing charge purposes is increased to 15 years from first use or first use after refurbishment. (4A)

A balancing charge may also arise where a childcare facility ceases to be a qualifying one (see *section 274(2A)*). This provision applies to such facilities that are first used (or first used after refurbishment) on or after 1 January 2006. For the purposes of calculating the balancing charge to be made, *section 318(e)* deems an amount of money to have been received.

### ***Exclusion of property developers and connected persons***

As respects qualifying expenditure incurred in the qualifying period, a property developer (5)

who holds the relevant interest (within the meaning of *section 269*) in a qualifying premises is not entitled to capital allowances under this scheme where either the property developer or a person connected (within the meaning of *section 10*) with the property developer incurred the qualifying expenditure on the qualifying premises.

As respects qualifying expenditure incurred on or after 1 January 2008, a person who holds the relevant interest (within the meaning of *section 269*) in a qualifying premises is not entitled to capital allowances under this scheme where he or she is connected with a property developer and the qualifying expenditure on the qualifying premises is incurred by either the connected person or the property developer, or by some other person connected with the property developer.

### ***End dates of qualifying period***

This section applies to determine the termination date for incurring qualifying capital expenditure in relation to the construction, refurbishment or conversion of certain childcare facilities. (6)

The termination date for the scheme is 30 September 2010, unless certain qualifying conditions are met, in which case the termination date for qualifying expenditure on pipeline projects is extended. These qualifying conditions depend on the type of work to be carried out and whether or not the work requires planning permission.

Where the work to be carried out does not require planning permission as, for example, certain types of refurbishment work, the termination date will be 31 March 2011 so long as at least 30% of the construction, refurbishment or conversion costs have been incurred on or before 30 September 2010. Where the work to be carried out requires planning permission, the termination date will be 31 March 2012 so long as a full and valid application for planning permission has been submitted on or before 30 September 2010 and is acknowledged by the relevant planning authority.

### ***Determining qualifying expenditure***

This provision ensures that it is not possible to circumvent the termination dates by making advance payments for work that will be carried out after those dates by providing that only the amount of the expenditure that is attributable to work actually carried out before those dates will qualify for capital allowances. (7)

## **843B Capital allowances for buildings used for the purposes of providing childcare services or a fitness centre to employees**

### **Summary**

This section provides for a scheme of capital allowances in respect of capital expenditure incurred on or after 1 January 2019 by employers on the construction or refurbishment of a building or structure used for the provision of childcare services or the facilities of a fitness centre to employees. The building must be for the exclusive use of the claimant's employees but where the claimant is a company, employees of a connected company may also use the services and facilities.

Qualifying expenditure is written off over a 7-year period by way of annual allowances at the rate of 15 per cent per annum for 6 years and 10 per cent in year 7.

## Details

### *Definitions*

“childcare services” are defined as any form of childminding services or supervised activities to care for children, whether or not they are provided on a regular basis. These services must meet the requirements (as applicable) of the Child Care Act 1991 (Early Years Services) Regulations 2016. (1)

“construction” has the same meaning as it has in section 270 and includes refurbishment.

“fitness centre” is defined as a gymnasium used exclusively for the provision of a range of facilities designed to improve and maintain the physical fitness and health of participants.

“qualifying expenditure” is defined as expenditure incurred on the construction of a qualifying premises by an employer, carrying on a trade or a profession.

“qualifying premises” is defined as a building or structure in use for the purposes of providing childcare services or fitness centre facilities to employees of an employer, which is not accessible nor available for use by the general public and, where the employer is a company, the employees of that company or a company connected with that company.

### *Entitlement to capital allowances*

The provisions governing industrial buildings capital allowances are applied to qualifying expenditure as if the qualifying premises were a factory or similar type premises in which a trade is carried on. (2)

### *Annual allowances and tax life*

Qualifying expenditure incurred may be written off over 7 years at the rate of 15 per cent per annum for the first 6 years and 10 per cent in year 7. The tax life (the period during which the relief attaching to the premises can be transferred to a new owner) of a qualifying premises in relation to qualifying expenditure incurred on its construction is 7 years from its first use subsequent to the incurring of that expenditure. (3)

### *Balancing events*

Where a sale or other event which might give rise to a balancing allowance or charge under *section 274* occurs in relation to a qualifying premises, a balancing allowance or charge is not to be made if that event occurs more than 7 years after the qualifying premises was first used subsequent to the incurring of the qualifying expenditure. (4)

### *Provision against double relief*

Relief shall not be given in respect of capital expenditure incurred on the construction of a qualifying premises, under any other provision of the Tax Acts where relief is given by virtue of this section. (5)

### *Undertakings in difficulty*

Undertakings in difficulty are excluded in accordance with the 2014 EU Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. (6)

## 844 Companies carrying on mutual business or not carrying on a business

## Summary

This section deals with distributions made by a company carrying on mutual businesses or not carrying on any business. It provides that distributions made by such a company are not to carry tax credits except to the extent that the distributions are made out of profits charged to corporation tax or out of franked investment income. The section ensures that a tax credit is not given in respect of a distribution made out of a surplus arising from mutual trading as such a surplus does not attract liability to corporation tax. However, other income of a company carrying on a mutual trade, for example, bank interest or investment income, is liable to corporation tax and accordingly a tax credit attaches to distributions out of such income.

## Details

Where a company carries on a business of mutual trading or mutual insurance or other mutual business, the provisions of the Corporation Tax Acts and Schedule F relating to distributions (see *section 20* and *Part 6*) apply to any distributions made by such a company but only to the extent to which the distributions are made out of the profits of the company brought into charge to corporation tax or out of franked investment income. (1)

Distributions by a mutual life office (for example, bonuses on policies) are not to be regarded as distributions. If the business includes the granting of annuities, the annuities are to be treated as charges only to the extent that they would be so treated if the company were not a mutual one. This ensures that the annuities are treated as charges on income only to the extent that they do not exceed the investment income of the annuity fund. (2)

The fact that distributions are made out of the surplus arising from mutual activities is not to affect the character of the receipt for tax purposes in the hands of a member of that mutual concern participating in the mutual activities. It is provided in *subsection (1)* that the provisions of the Corporation Tax Acts and Schedule F relating to distributions (see *section 20* and *Part 6*) apply to distributions made by a mutual trading company to its members but only to the extent that the distributions are made out of profits chargeable to corporation tax and franked investment income.

The distribution provisions of *Part 6* do not apply to the remaining part of any distribution. The balances of any such distribution, however, continues to rank as trading receipts where the recipient's participation in the mutual business is an activity of a trade carried on by the recipient. An example would be a mutual fire and accident insurance company established by a group of traders to provide insurance in connected with their trading activities. Distributions out of the surplus of such a company would be regarded as trading receipts of those traders. (3)

In the case of a company which has never carried on a trade or has never carried on a business of holding investments and which was not established for those purposes (for example, incorporated members' clubs), any distributions by such companies are to be treated as distributions for tax purposes only to the extent that they arise from profits charged to tax or from franked investment income. (4)

## 845 Corporation tax: treatment of tax-free income of non-resident banks, insurance businesses, etc

### Summary

This section brings into charge to corporation tax foreign interest and dividends arising to a non-resident bank, insurance company or other person carrying on a business of dealing in stocks, shares or securities in the State through a branch or agency where the foreign



securities are attributable to the branch or agency. In the absence of such a provision income exempt from income tax in the hands of non-residents under *section 35* or *63* (exemption from income tax of certain dividends payable to non-residents) would be exempt from corporation tax because of *section 76* which exempts from corporation tax any income which is exempt from income tax. The section also provides for a restriction of expenses in computing profits or losses, or management expenses, where interest on certain Government, etc securities is excluded in computing income or profits for corporation tax purposes and the expenses are attributable to those securities.

### Details

It is made clear that “insurance business” is to include assurance business within the meaning of section 3 of the Insurance Act, 1936. (1)

The term “tax-free securities” for the purposes of this section and *section 846* means securities to which *section 43, 49* or *50* apply and which were issued with a condition that the interest will not attract liability to tax in the hands of non-resident holders of the securities. (2)

Interest and income from foreign securities stocks and shares attributable to the Irish branch of a non-resident bank, insurance company or company dealing in investments are to be included in computing for corporation tax purposes the profits or losses of the Irish branch business and, in the case of an insurance company, in computing the profits or losses arising from its pension and general annuity businesses under *section 715*. (3)

Expenses (but not interest) referable to “tax-free securities” are not to be allowed in computing for corporation tax purposes the branch profits of non-resident banks, insurance companies or companies dealing in securities where the interest on such securities is excluded from the profits. The subsection also provides that profits and losses on the realisation of such securities are not to be taken into account for corporation tax purposes. (4)

In computing under *section 726* the proportion of the investment income of the life assurance fund of a non-resident insurance company to be charged to corporation tax, foreign interest and dividends to which *sections 35* and *63* apply are to be taken into account. (5)

## 845A Non-application of *section 130* in the case of certain interest paid by banks

### Summary

This section allows interest paid by banks to their foreign parents and other associated companies (which would under normal corporation tax rules be treated as a distribution by virtue of *section 130(2)(d)(iv)*) not to be so treated, provided certain conditions are met. The effect of not treating interest paid in these circumstances as a distribution is that the bank paying the interest is entitled to a tax deduction which it might not otherwise be entitled to.

### Details

#### Definition

The definition of “bank” is more restrictive than in certain other provisions of the Taxes Consolidation Act, 1997 as this section is intended to have a limited scope. (1)

#### Qualifying interest

The type of interest which qualifies for the tax treatment is identified as interest which — (2)(a)

[Type here]

- is a distribution by virtue only of the rule in *section 130(2)(d)(iv)*;
- is payable by a bank carrying on a genuine banking business in the State and, if the rule in *section 130(2)(d)(iv)* did not exist, would be deductible as a trading expense in computing the profits of the bank from its banking business; and (2)(b)
- represents no more than a reasonable commercial return for the money loaned. (2)(c)

### ***Tax treatment***

Where a bank proves that interest payable by it meets the above criteria and the bank elects not to have the interest treated as a distribution under the rule in *section 130(2)(d)(iv)* then the interest concerned is not to be so treated. (3)

### ***Elections***

The election must be included in the bank's tax return for the period in which the interest is paid. (4)

## **845B Set-off of surplus advance corporation tax**

### **Summary**

The Advance Corporation Tax (ACT) regime was ended in 1999, this section allows for the continuing set-off of surplus ACT. Surplus ACT paid by a company in respect of distributions made by it in an accounting period before 6 April 1999 may be set off against the company's liability (if any) to corporation tax on its income (but not chargeable gains) in subsequent accounting periods.

### **Details**

#### ***Definition***

Surplus advance corporation tax is defined as ACT paid by a company (and not repaid) in respect of distributions made by it in an accounting period before 6 April 1999 and which has not been set off against the company's liability (if any) to corporation tax on its income (but not chargeable gains) of that period. (1)

#### ***Set-off of surplus ACT***

A company with surplus ACT (that is, where a company's ACT for an accounting period exceeds its corporation tax liability for that period) may claim to have that surplus set off against the company's liability to corporation tax for that period. (2)

Income of a company charged to corporation tax shall not include profits attributable to chargeable gains. Where there are charges, management expenses or other amounts which may be set off against profits of more than one description, they must be set against income and not chargeable gains. (3)

#### ***Returns under section 884***

For the purpose of this section notices required under *section 884* may require the inclusion of details of surplus advance corporation tax carried forward. (4)

#### ***Inspector raised assessments***

Where an excessive or erroneous set-off of ACT has been made, an inspector may raise such assessments as are necessary to ensure the collection of the correct tax due (including interest on such tax). (5)

## **845C Treatment of Additional Tier 1 instruments**

## Summary

This section provides for the tax treatment of Additional Tier 1 instruments issued by financial institutions to meet the regulatory capital requirements imposed by the Capital Requirements Directive IV and the Capital Requirements Regulations, which implement Basel III in the EU.

Additional Tier 1 instruments share features of both debt and equity which makes the tax treatment of such instruments uncertain. This section provides that Additional Tier 1 instruments are to be treated as debt instruments. Coupon payments in respect of the instruments are to be regarded as interest thereby enabling tax deductibility in respect of the coupon payments. The section also provides for an exemption from the obligation to deduct withholding tax in respect of coupon payments made under the instruments by deeming the instruments to be quoted Eurobonds for the purpose of section 64.

## Details

“Additional Tier 1 instrument” is defined by reference to the meaning given to it in the Capital Requirements Regulation. (1)

“Capital Requirements Regulation” means Regulation (EU) No. 575/2013 of the European Parliament and of Council of 26 June 2013<sup>1</sup> on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012<sup>2</sup>.

“coupon” means a distribution within the meaning of Article 4 of the Capital Requirements Regulation.

This subsection provides that an Additional Tier 1 instrument is to be treated as a debt instrument for tax purposes. (2)

Coupon payments in respect of Additional Tier 1 instruments are not distributions or charges on income for tax purposes but are to be treated as interest. (3)

Section 64 is deemed to apply to Additional Tier 1 instruments as it applies to a quoted Eurobond, thereby enabling coupon payments in respect of Additional Tier 1 instruments to be paid without deduction of tax where the provisions of section 64 are satisfied. (4)

The provisions of this section shall not apply to an Additional Tier 1 instrument which forms part of any arrangement or scheme of which the main purpose, or one of the main purposes, is to avoid liability to tax. (5)

## 846 Tax free securities: exclusion of interest on borrowed money

### Summary

This section prevents relief from tax being given in respect of interest on money borrowed for the purposes of a business carried on in the State by a non-resident bank, insurance company or company dealing in securities and used for the purchase of the exempt Government and certain other securities referred to in *section 845*. Such interest is not dealt with in *section 845(4)* and is therefore dealt with as a separate matter by this section which provides detailed rules for its exclusion, in computing for corporation tax purposes, the Irish branch profits of such a company.

---

<sup>1</sup> OJ No. L176, 27.6.2013, p.1

<sup>2</sup> OJ No. L201, 27.7.2012, p.1

## Details

The section applies where *section 845(4)* applies. It is therefore to have effect where a (1)  
non-resident bank, insurance company or company dealing in securities carries on  
business in the State through a branch or agency and holds tax free securities, as defined  
in *section 845(2)*, for the purposes of the business of the branch or agency.

Interest on money borrowed for the purposes of the business up to the amount determined (2)  
under the section (“the amount ineligible for relief”) is to be excluded in computing the  
profits or loss of the business (which includes in the case of an overseas life assurance  
company the annuity business or the pension business), and is to be excluded in arriving  
at the amount to be taken into account for the purposes of *section 243* (relief for charges  
on income).

In determining the amount ineligible for relief account is to be taken of all money (3)  
borrowed for the purposes of the business which is outstanding in the accounting period,  
up to the total cost of the tax-free securities held for the purposes of the business in the  
accounting period. Interest which, apart from *subsection (2)*, is not allowable or is not  
treated as a charge on income is to be disregarded. An example is interest charged to  
capital.

The interest ineligible for relief is to be one year’s interest on the amount borrowed and (4)  
taken into account under *subsection (3)* at the average rate of interest in respect of the  
whole of the money borrowed for the purposes of the business in the accounting period.  
Where, however, the accounting period is less than 12 months interest is to be calculated  
for that shorter period instead of for a year.

The cost of a holding of tax free securities where the holding has fluctuated during the (5)  
accounting period, for the purposes of the section, is to be the average cost of acquisition  
of the initial holding, and of any subsequent additions during the accounting period,  
applied to the average amount of the holding in the accounting period. This rule is to be  
applied separately to securities of different classes.

## 847 Tax relief for certain branch profits

### Summary

This section provides for exemption from corporation tax in respect of foreign branch  
income and from capital gains tax for foreign branch gains where the income or gains  
arise to a company which creates substantial employment in Ireland as a result of a  
substantial investment of permanent capital in the State.

In order to avail of the scheme, a company is required to submit an investment plan to the  
Minister for Finance setting out details of the proposed investment by it or by its  
associated company. If the Minister for Finance is satisfied that the plan is directed  
towards the creation of substantial employment in the State in trading operations here,  
that the investment will be made, that the creation of the employment will be achieved  
and that the maintenance of the employment in the State is dependent on the carrying on  
by the company of the foreign trading activities, the Minister can certify the company as a  
qualifying company.

Income and gains from foreign trading activities are exempted from tax only where the  
activities are carried out in a country specified in the certificate given by the Minister. The  
certificate may be given subject to conditions and, where the conditions under which it is  
given are not satisfied, the certificate may be withdrawn.

Where such a company disposes of an asset which consists of lands in the State, minerals

(or mineral rights) in the State, exploration or exploitation rights in the State or shares deriving their value from such assets the gain will be taxable here.

The Department of Finance has issued guidelines which set out in more detail the requirements regarding the levels of investment and employment.

This provision is effectively redundant as respects investment projects planned after 15 February 2001 as the Minister cannot certify a company as a qualified company for the purposes of the exemption after that date. However, the section permits a company to carry forward unused losses of a foreign branch that were disregarded under the section. The set off of such losses is restricted to future profits arising from the same branch.

## Details

### ***Definitions and construction***

An “investment plan” is a plan setting out details of the investment to be made in the State by the company seeking the exemption or by an associated company of that company. The plan is required to involve the investment of substantial permanent capital in the State and the creation of substantial new employment in the State in proposed trading operations here. The plan must be submitted to the Minister for Finance before it is implemented. (1)(a)

A “qualified company” is a company which has been certified (before 15 February 2001) by the Minister for Finance following consultation with the Minister for Enterprise, Trade and Employment and whose certificate has not been revoked.

“qualified foreign trading activities” are trading activities of the company carried on through its foreign branch. The state in which the activities are carried on must be specified in the certificate given to the company.

The circumstances in which a company is regarded as associated with another company are set out. Two companies are associated if one is a 75 per cent subsidiary of the other or if both are 75 per cent subsidiaries of a third company. The definition of a 75 per cent subsidiary is contained in **section 9** which provides that a company is a subsidiary if 75 per cent of its ordinary share capital is owned directly or indirectly by the other company. In determining whether the 75 per cent test is met no account is to be taken of share capital held if a sale of it would be treated as a trading receipt, whether that capital is held by the company directly or indirectly. (1)(b)(i)

**Sections 412 to 418** are adapted to ensure that a company can only be treated as a subsidiary of another company if that company has a 75 per cent entitlement in regard to the holding of shares, profits on a distribution and a share of assets on a winding up. **Section 411(1)(c)** which provides that only Irish resident companies can be taken into account in determining whether companies are in a 75 per cent relationship, is not to apply for the purposes of this section. (1)(b)(ii)

Where a trade carried on by a company consists partly of qualifying foreign trading activities and partly of other activities, the company is to be treated as carrying on two separate trades, one of the qualifying foreign trading operations and another of the other activities. (1)(b)(iii)

Each trade will have attributed to it the profits or gains which it would have made if each trade were carried on by independent persons acting at arm’s length. (1)(b)(iv)

Provision is made for the apportionment on a just and reasonable basis of profits or gains or losses, or charges, management expenses or any other amount which is available for set off against profits of more than one description as between two or more trades carried on (1)(b)(v)

by the company.

### ***Certification***

The Minister for Finance may certify a company as a qualified company where following the submission of an investment plan to the Minister for Finance and following consultation by the Minister with the Minister for Enterprise, Trade and Employment, the Minister for Finance is satisfied that — (2)

- the plan is an investment plan,
- the company (or its associated company) will make the substantial permanent investment in the State under the plan by the date specified in the plan and approved by the Minister,
- the substantial employment creation in the State under the investment plan will be achieved, and
- the maintenance of the employment so created will be dependent on the company carrying on the qualified foreign trading activities.

A certificate may be given subject to such conditions as the Minister for Finance, following consultations with the Minister for Enterprise, Trade and Employment, considers appropriate. (4)

A certificate may be revoked where any condition subject to which the certificate was given is not complied with. The Minister for Finance must consult with the Minister for Enterprise, Trade and Employment before forming an opinion that a certificate should be resolved. (5)

### ***Guidelines***

The Minister for Finance is required to draw up guidelines to set out criteria for the purposes of determining whether a company (or companies associated with it) will create substantial new employment in the State and whether it will make a substantial permanent capital investment in the State. (3)(a)

The guidelines may specify levels of employment and permanent capital investment in the State and may include such other criteria as the Minister for Finance considers appropriate. (3)(b)

These guidelines have been drawn up.

### ***Tax treatment***

Subject to ***subsection (6)*** profits or gains or losses from the qualified foreign trading operations are to be disregarded for corporation tax purposes. Profits or gains are not to be taxed and losses are not available for offset. (6)(a)

Charges, management expenses and other amounts available for deduction from or set-off against profits of more than one description are not available for deduction or set off to the extent that they are treated as if incurred for the purposes of qualified foreign trading activities. (6)(b)

A gain on the disposal of an asset used wholly and exclusively for the purposes of qualified foreign trading activities is not to be a chargeable gain unless the asset is an asset specified in ***paragraphs (a) to (d) of section 980(2)*** (that is, land in the State, mineral rights in the State, exploration or exploitation rights in a designated area or shares deriving their value from such assets). (7)

### ***Information***

An inspector is entitled to seek such information or particulars as may be necessary for (8)

the purposes of giving relief under the section.

### ***Termination of relief***

The relief will cease to apply after 31 December 2010. Accounting periods which cross (9)  
31 December 2010 are to be split into two periods, one before the date and one after it.  
The relief is then calculated separately for each of those periods.

### ***Carry forward of unused losses***

A loss incurred in carrying on the activities of a foreign branch (treated as a separate (10)  
trade) may be carried forward and set against future profits of that branch under **section  
396(1)**. However, the losses available for the set off against profits assessable in 2011 and  
subsequent years are the losses as reduced by any exempt branch profits arising  
subsequent to the accounting period in which the loss was incurred.

## **847A Donations to certain sports bodies**

### **Summary**

This section provides for a scheme of tax relief for donations to certain sports bodies for  
the funding of capital projects. To be eligible for this relief, the project must be approved  
by the Minister for Tourism, Sport and Recreation (currently the Minister for Arts, Sport  
and Tourism). The estimated aggregate cost of the project must not be greater than €40m.  
The sports body must hold a certificate from the Revenue Commissioners stating that the  
body is, in their opinion, a body of persons to which **section 235** applies, i.e. its income is  
exempt from tax because it is a body established for and existing for the sole purpose of  
promoting athletic or amateur games or sports and such income is applied solely for those  
purposes. The body must also possess a valid tax clearance certificate.

The relief for donations will apply at the taxpayer's marginal rate. It will be paid by the  
Revenue Commissioners to the beneficiary of the donation (i.e. the sports body) in the  
case where the donations are made by PAYE taxpayers. For example, if an individual  
who pays income tax at the higher rate – 41% – makes a qualifying donation of €590 to  
an approved sports body, that body will be deemed to have received €1,000 less tax of  
€410. The body will then be able to claim a refund of €410 from Revenue at the end of  
the year.

Taxpayers, who are individuals taxed on the self-assessment system, will be able to claim  
the relief on their annual tax returns as a deduction from total income. A similar  
arrangement will apply in the case of companies who will claim a deduction for the  
donation as if it were either a deductible trading expense or an expense of management  
deductible from total profits.

The minimum qualifying donation in any year to any sports body will be €250. The  
provision has effect from 1 May 2002.

### **Details**

**Section 847A** provides for a scheme of tax relief for donations to certain sports bodies for  
the funding of capital projects to be approved by the Minister for Tourism, Sport and  
Recreation (currently the Minister for Arts, Sport and Tourism).

The section applies from 1 May 2002 and contains 20 subsections:

The definitions used in the section are as follows: (1)

The word “Acts” is defined as the Tax Acts (i.e. the Income Tax Acts and the Corporation  
Tax Acts), the Capital Gains Tax Acts and the Value-Added Tax Consolidation Act 2010

and the enactments amending or extending that Act, and any instrument made under any of those Acts.

The definition of “appropriate certificate”, which is applicable in relation to relevant donations made by individuals who are not within the self assessment system, largely mirrors the definition of the similar term in *section 848A* which deals with tax relief for donations to approved charities.

An “approved project” is a project for which the Minister for Tourism, Sport and Recreation (Arts, Sport and Tourism) has given a certificate under *subsection (4)*, which certificate has not been revoked.

An “approved sports body” is a body which holds —

- a certificate from the Revenue Commissioners certifying that the body is, in the opinion of the Commissioners, a body of persons to which *section 235* applies, i.e. it is a body established for the sole purpose of promoting athletic or amateur games or sports whose income is exempt from tax where it is applied solely for those purposes, and
- a valid tax clearance certificate.

However, excluded from the ambit of the definition is any body to whom the Revenue Commissioners have given a notice under *subsection (1)* of *section 235*. The effect of such a notice is to withdraw the tax exemption from the body.

The word “Minister” means the Minister for Tourism, Sport and Recreation (currently the Minister for Arts, Sport and Tourism).

The word “project” sets out the type of capital projects of an approved sports body in respect of which donations may attract tax relief, namely —

- purchasing, constructing or refurbishing a building or structure or part thereof for use for sporting or recreation activities provided by the approved sports body,
- purchasing land for use by the approved sports body in providing sporting or recreation facilities,
- purchasing permanently based equipment (excluding personal equipment) for use by the approved sports body in providing such facilities,
- improving the playing pitches, surfaces or facilities of the approved sports body, and
- repaying money borrowed (and paying interest on such money) by the approved sports body on or after 1 May 2002 for any of the above-mentioned purposes.

A “relevant accounting period” is the accounting period in which a relevant donation is made by a company.

The definition of “relevant donation” is based on the definition of the similar term in *section 848A*. It is provided that the de minimis limit of €250 on qualifying donations will be proportionately reduced in the case of a company which has an accounting period of less than 12 months in length.

A “relevant year of assessment” is the year of assessment in which a relevant donation is made by an individual.

The term “tax clearance certificate” refers to the certificate to be issued by the Collector-General under *subsection (3)*.

In the case of donations by individuals who are not within the self assessment system, the grossed up amount (of a donation) is the amount, which after deducting income tax at the standard rate or the higher rate or partly at the standard rate and partly at the higher rate leaves the amount of the donation. The subsection largely mirrors *subsection (1)(a)* of (2)



**section 848A.**

On application by a body, the Collector-General is to issue a tax clearance certificate for the purposes of the section provided the body is in compliance with certain obligations imposed on that body by the Acts. The obligations concerned are the payment or remittance of any taxes, interest or penalties required to be paid under the Acts to the Revenue Commissioners, and the making of all returns required by the Acts. The subsection is modelled on **section 1095(2)** which relates to tax clearance certificates for public sector contracts. (3)(a)

The provisions of **subsections (5) to (9)** of **section 1094**, which deal with tax clearance certificates for certain licences, will apply to an application for a tax clearance certificate under **subsection (3)(a)**. The provisions in question relate to the prescribing of application forms for tax clearance certificates, the period for which the certificate is valid and appeals against refusal by the Collector-General to issue a tax clearance certificate. (3)(b)

For a project to be considered an approved project, the approved sports body concerned must apply to the Minister for Tourism, Sport and Recreation (Arts, Sport and Tourism) for approval in respect of the project. That Minister gives an approval certificate. (4)(a)

The application must be in such form and contain such information as the Minister directs. (4)(b)

The Minister may revoke a certificate previously given by notice in writing and the project will cease to be an approved project for the purposes of the relief from the date of the Minister's notice. (4)(c)

No approval certificate shall be given in respect of a project which will cost in excess of €40,000,000. (4)(d)

A donation will satisfy the requirements of this subsection if —

- it is made to the approved sports body for the sole purposes of funding an approved project, (5)
- it is or will be applied by that body for that purpose,
- it is not otherwise deductible in computing the profits or gains of a trade or profession or deductible as an expense of management in computing the profits of a company,
- it is not a relevant donation relievable under **section 848A** which deals with relief for donations to approved charities,
- it is not liable to be repaid,
- neither the donor nor any person connected (defined for the purposes of the Tax Acts and the Capital Gains Tax Acts in **section 10**) with the donor receives a benefit, whether directly or indirectly, as a result of making the donation,
- the donation is not conditional on or related to the acquisition of property by the approved sports body (otherwise than by way of gift) from the donor or any person connected with the donor, and
- (in the case of a donation made by an individual) the individual is resident in the State for the year of assessment in which the donation is made, and in the case of a taxpayer who is not within the self assessment system, the individual has given an appropriate certificate to the approved sports body in relation to the donation and has paid the tax referred to in such certificate and is not entitled to a repayment of that tax or any part of that tax.

Where it is proved to the Revenue Commissioners' satisfaction that a person has made a relevant donation, the provisions of **subsection (7), (9) or (11)** will apply. (6)

Where a relevant donation is made by a company, it is treated for corporation tax (7)

purposes as a deductible trading expense of a trade carried on by the company, or an expense of management deductible from the total profits of the company, for the accounting period in which it is made.

A claim by a company under the section is to be made along with the company's corporation tax return under self assessment for the accounting period in which the relevant donation is made. (8)

Where an individual who pays tax under the self assessment system makes a relevant donation, the amount of the donation is to be deducted from the total income of the individual chargeable to income tax. The amount of the donation is not however to be taken into account in reducing the income of the individual or the individual's spouse or civil partner for the purposes of quantifying the relief for qualifying premiums for a retirement annuity. (9)

A claim for relief by an individual within the self assessment system must be made with the individual's income tax return for the year of assessment in which the relevant donation is made. (10)

Where a donation is made by an individual who is not within the self assessment system (viz. a PAYE taxpayer), the approved sports body will be able to claim back from the Revenue Commissioners the tax of the individual donor associated with the relevant donation on a grossed-up basis. (11)

The approved sports body must give to the Revenue Commissioners the certificate seeking the repayment of tax of such an individual donor in an electronic format. (12)

Where an approved body does not have the facilities to send the claim for repayment of the tax in an electronic format, then the claim for repayment must be made on a form approved by the Revenue Commissioners for this purpose. (13)

The Minister may request in writing a return of the aggregate of relevant donations received by any approved sports body. (14)

The Revenue Commissioners may consult with the Minister concerning certain matters arising under the section. (15)

Approved sports bodies are required to issue receipts to persons making relevant donations which must contain specified details. (16)

An approved sports body is not obliged to issue such a receipt to an individual donor who is not within the self assessment system. As such an individual will not be the beneficiary of the tax relief (rather the approved sports body will be claiming back the tax of that individual associated with the donation), he or she will not need any receipt for tax purposes. Neither is a receipt necessary in the case of a relevant donation to which **subsection (18)** applies. (17)

Relief under this section will not be given in respect of a relevant donation to an approved sports body where that sports body had already received relevant donations of €40,000,000 in respect of the approved project. (18)

Where relief has been granted under this section and the donation concerned has not been used for the purpose of the approved project or where the relief was otherwise found not to have been due, the relevant donation in respect of which the relief was granted will be regarded as taxable income in the hands of the sports body concerned. (19)

The Revenue Commissioners may delegate their powers and functions under this section to nominated officers. (20)

## **847B Tax treatment of return of value on certain shares**

### **Summary**

This section, inserted by section 47 of the Finance Act 2014, provides a measure of relief for individuals who hold small shareholdings in Vodafone plc and who inadvertently found themselves subject to an unintended liability to income tax, PRSI and Universal Social Charge, rather than a NIL capital gains tax liability, arising from a return of value made to them by Vodafone in February 2014.

It is clear that many small shareholders in Vodafone plc did not understand the choices open to them in relation to the return of value received. As a result, those who made the wrong choice found themselves subject to an unnecessary and unintended exposure to this liability as, had they opted to receive the return of value as a capital payment, they would have no tax liability on the return of value.

This relief is confined to small shareholders who received a return of value of €1,000 or less and the section provides that unless they elect otherwise, the receipt by them of a return of value from Vodafone in February 2014, will be treated as the receipt of a capital sum, which will be subject to capital gains tax rules. Because the base cost of the shares (having their origin in Eircom shares) is higher than the amount received, no capital gains tax will be payable.

### **Details**

Subsection (1) defines –

“company” as being Vodafone plc

“relevant legislation” as being Part 26 of the UK Companies Act 2006. This is the legislation under which Vodafone made a return of value and related share consolidation on or about 21 February 2014.

“return of value” is defined as the special dividend paid by Vodafone plc in respect of fully paid bonus C shares issued to shareholders (who did not opt to received bonus B shares) under the terms of the return of value.

Subsection (2) provides that a return of value of €1,000 or less received by way of special dividend in respect of C shares will be treated as the receipt of a capital sum, which will be subject to capital gains tax rules, unless an individual shareholder elects otherwise.

Subsection (3) provides that if an individual wishes to have the return of value treated as income, he or she can include the return of value as “income” on his or her tax return for the year ended 31 December 2014 and this will be regarded as an election to have the amount treated as an income amount.

## **847C Tax treatment of return of value on certain shares where shareholders affected by postal delays**

This section provides that Irish shareholders in Standard Life whose forms electing to take B shares in relation to a return of value by the company in 2015 were delayed in the post will be treated as having received a capital payment from the company for tax

[Type here]

purposes. The effect of this provision is that Irish shareholders who had elected to take the return of value as a capital payment, but who would have been liable to income tax on those payments as a result of postal delays, will be liable to capital gains tax rather than income tax in respect of those payments.

## **848 Designated charities: repayment of tax in respect of donations**

This section was repealed by *section 848A(13)* as inserted by the Finance Act 2001 with effect from 6 April 2001.

### **848A Donations to approved bodies**

#### **Summary**

This section provides for a uniform scheme of tax relief for donations to approved bodies. The list of approved bodies is set out in *Schedule 26A* and includes eligible charities, schools, colleges and universities, bodies approved for education in the arts as well as a number of other specified organisations. The donation must be in the form of cash or quoted securities. Where such securities are donated and relief under this section is claimed, the capital gains tax relief for donations of assets to charities, provided for in *section 611*, does not apply.

Donations from all individuals are treated in the same manner, with tax relief in all cases being repaid directly to the approved body\*. Relief is given at the “specified rate” of 31 per cent regardless of the donor’s marginal tax rate. For example, if an individual makes a donation of €690 to an approved body, this equates in all cases to a grossed up amount of €1,000 when it is regrossed at the specified rate, i.e. (€690 + €310). The donor completes an annual certificate or an enduring certificate containing the necessary details – amount of donation, Personal Public Service Number (PPSN) etc. and gives it to the approved body to allow the body to make their repayment claim to Revenue. An enduring certificate, which lasts for 5 years, allows an approved body claim tax relief in respect of donations made by the donor during the lifetime of the certificate without the need to obtain an annual certificate.

\*For donations made prior to 1 January 2013, the relief was granted to self-assessed individuals by way of a deduction from income in the tax year in which the donation was made.

In the case of corporate donations, the company claims a deduction for donations to an approved body as if it were a trading expense. There is no grossing up arrangement in this case.

In order to qualify for the relief, the minimum donation in any year to any one approved body is €250.

There is a limit on the amount of tax relief which is given in respect of donations by individuals, where the individual is either a member or employee of the approved body or of an associated approved body. The limit ensures that no tax relief is given on the excess of donations above 10 per cent of the individual’s income for that year. The limit is based on the aggregate of such donations so that it will not be possible to donate say a proportion of income to a number of associated approved bodies and get relief on all of it. Approved bodies are associated with each other if the same person or a similar group of persons has control over or can direct the activities of the bodies.

There is also an overarching upper limit of €1,000,000 which applies to the amount of

donations made by individuals in a year of assessment which can be tax-relieved under this section.

### Details

The definitions used in the section are as follows:

(1)(a)

“annual certificate”, means a certificate, in a form prescribed by the Revenue Commissioners, which may be used by a donor who does not wish to provide an enduring certificate to an approved body. It contains the donor’s personal public service number and the following statements -

- (a) that the donation satisfies the requirements of **subsection (3)**,
- (b) that the donor has or will pay the proper amount of tax referable to the donation, and
- (c) an acknowledgement that the donor is aware that the provisions of **subsection (9B)** apply to a repayment of tax to an approved body.

Included in this definition is an annual certificate which has been renewed by the donor with the approved body in a manner approved by the Revenue Commissioners.

The list of “approved bodies” is set out **in Part 1 of Schedule 26A**.

“designated securities” means quoted shares and debentures.

“enduring certificate”, which lasts for 5 years, means a certificate, in a form prescribed by the Revenue Commissioners, containing the year of assessment from which the certificate applies, the donor’s personal public service number and the following statements —

- (a) that the donor is aware that a donation made during the “specified period”, i.e. the period covering the year of assessment from which the certificate applies and the 4 immediately succeeding years of assessment, must satisfy the requirements of **subsection (3)**,
- (b) that the donor has paid or will pay the proper amount of tax referable to donations made during the specified period, and
- (c) an acknowledgement that the donor is aware that the provisions of **subsection (9B)** apply to a repayment of tax to an approved body.

Included in this definition is an enduring certificate which has been renewed by the donor with the approved body in a manner approved by the Revenue Commissioners.

‘personal public service number’ has the same meaning as in section 262 of the Social Welfare Consolidation Act 2005.

“relevant accounting period” means the accounting period in which the donation is made.

“relevant donation” means, subject to **subsection (3A)**, a donation which satisfies the conditions of **subsection (3)**, in the form of either or both a sum of money and designated securities amounting in aggregate to at least €250 in a tax year which is made by an individual or a company.

“relevant year of assessment” means the year of assessment in which the donation is made.

“specified period”, in relation to an enduring certificate means, a period covering the year of assessment from which the certificate applies and the 4 immediately succeeding years of assessment.

“specified rate” means 31 per cent, and is the rate of relief to be given regardless of the donor’s marginal tax rate.

The reference to the grossed up amount of a donation in relation to a donor, who is an (1)(b)

individual, means an amount which after deducting tax at the specified rate of 31 per cent leaves the amount of the donation. For example, a donation of €690 by an individual becomes a grossed up amount of €1,000 when it is regrossed at the specified rate, i.e.  $(€690 \div 69 \times 100 = €1,000$  (the grossed-up amount) - €690 (the donation) = €310 (the amount of the refund claim).

Renewed annual and enduring certificates are deemed to contain the statements referred to in paragraphs (i) and (ii) respectively of the definitions of those certificates. (1)(ba) &

(1)(bb)

**Section 848A** is to be construed together with **Schedule 26A**. (1)(c)

Where it is proved to the Revenue Commissioners that a person has made a relevant donation, **subsection (4)** or **(9)** will apply. These subsections provide the mechanism for giving relief in respect of donations made by a company or an individual. (2)

A donation is a relevant donation if it satisfies all of the following requirements: (3)

- (a) it is not repayable,
- (b) no benefit accrues to the donor or a connected person by virtue of the donation,
- (c) the donation is not linked to the transfer of property to the approved body other than by way of gift,
- (d) it is not otherwise tax deductible, and
- (e) in the case of an individual, the person -
  - (i) is resident in the State in the year the donation is made,
  - (ii) has given an annual certificate, or, as the case may be, an enduring certificate in relation to the donation to the approved body, and
  - (iii) has, for the relevant year of assessment, paid the tax referred to in the annual certificate or enduring certificate and is not entitled to have it refunded.

An overarching upper limit of €1,000,000 applies to the aggregate amount of donations made by individuals in any year of assessment which can be tax-relieved under this section. (3A)(a) (i)

Where the aggregate amount of all donations made by an individual in any year of assessment to approved bodies with which he/she is associated exceeds 10 per cent of his/her total income for that year, the excess of the donation above 10 per cent will not be a relevant donation for tax relief purposes. (3A)(a) (ii)

An individual is associated with an approved body if at the time the donation is made he/she is an employee or member of the approved body, or of another approved body which is associated with the first approved body. (3A)(b) (i)

One approved body is associated with another approved body if it could reasonably be considered that — (3A)(b) (ii)

- (I) the activities carried on by both approved bodies, are or can be directed by the same person or by broadly the same group or groups of persons, or
- (II) the same person or broadly the same group or groups of persons exercise or can exercise control over both approved bodies.

Where the Revenue Commissioners withdraw the authorisation of an approved body (which is an “eligible charity”) by notice in writing in accordance with **paragraph 7 of Part 3 of Schedule 26A**, a donation made in good faith to the body by a company, or a self-assessed individual (entitled to a deduction from their income in respect of donations made prior to 1 January 2013), in the period from the date from which the withdrawal of the authorisation becomes effective to the date of the notice of withdrawal, is treated as a relevant donation made to an approved body. This is notwithstanding that the donation (3B)

may have been made after the effective date of the withdrawal of the authorisation from the body in question.

A company which makes a relevant donation claims the relief by treating the donation as a trading expense or a deductible expense of management for the accounting period in which the donation is made. (4)

The claim is to be made with the company’s tax return for the period in question (*Chapter 3 of Part 41A*). (5)

Where the accounting period is less than 12 months the de minimis amount of a donation shall be correspondingly reduced. (6)

In the case of a relevant donation by an individual it is the approved body which claims relief under this section. The approved body is deemed to have received income equal to the grossed up amount of the donation, from which tax has been deducted at the specified rate. Where the tax paid by a donor is less than the amount of the deemed tax attaching to a donation, the tax relief is limited to the amount of tax actually paid by the donor. (9)

Where designated securities are donated to an approved body and a claim to relief under this section is made, the capital gains tax relief which normally applies to donations of assets to charities, which is provided for in *section 611*, does not apply. (9A)

Where a repayment of tax has been made to an approved body under this section, the amount of tax repaid is not to be regarded as tax paid by the donor in the event of a repayment claim by the donor under *section 865*, or any other provision of the Income Tax Acts. (9B)

The details contained in the annual certificate or, as the case may be, enduring certificate must be given to the Revenue Commissioners in an electronic format in the context of a claim for repayment of tax by that approved body. The approved body must also declare that the claim is correct and complete. (10)

Where the Revenue Commissioners are satisfied that the approved body does not have the facilities to send them the details referred to in *subsection (10)* in an electronic format they may be sent in a written form agreed by the Revenue Commissioners. Such details must also be accompanied by a declaration that the claim is correct and complete. (11)

The elements of *section 764* providing for tax relief for payments to Irish universities or other approved bodies carrying on scientific research are repealed as this section provides relief in respect of donations to these organisations. (12)

The following provisions were repealed by the Finance Act 2001. (13)

<i>Section</i>	<i>Subject</i>
88	Deduction for gifts to Enterprise Trust Ltd
484	Relief for gifts to the arts
485	Relief for gifts to 3rd Level Institutions
485A	Relief for gifts to Designated Schools
485B	Relief for gifts to the Scientific and Technological Education (Investment) Fund
486	Relief for gifts to First Step
486A	Corporate Donations to Eligible Charities
767	Payments to Universities and other approved bodies for research in, or teaching of, approved subjects

**792(1)(b)(ii) & (iii)** Income under dispositions for short periods of:

Universities or Colleges

Human Rights Organisations

**792(3)** Income under dispositions for short periods of:

Funds for Schools, Colleges or Universities.

(**Section 792** covers what are known as covenants.)

**848** Designated Charities – Repayment of tax in respect of Donations.

Any organisation which at the time of enactment of the Finance Act 2001 had a valid **(14)** authorisation either as an approved body for education in the arts or an eligible charity continued to hold that authorisation for the purposes of this section.