

## [18D.00.01] Universal Social Charge

### Universal Social Charge

#### Part 18D (Sections 531AL – 531AAF) Taxes Consolidation Act 1997

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**Updated for Finance Act 2015 (Tax Year 2016)**

## 1. Introduction

The Universal Social Charge, (USC) is a tax payable on gross income, including notional pay, after any relief for certain trading losses and capital allowances, but before pension contributions.

All individuals are liable to pay the Universal Social Charge if their gross income exceeds the threshold of €13,000 p.a. [S531AM(2)].

For example (2017):

- Gross income of €12,500 – as the gross income is less than the exemption threshold of €13,000 no Universal Social Charge applies;
- Gross income of €13,500 – as the gross income exceeds the exemption threshold of €13,000 Universal Social Charge applies to the full €13,500.

## 2. Administration

USC is under the care and management of the Revenue Commissioners and Part 37 (Administration) TCA 1997 applies to USC as it applies to income tax [S531AAC].

USC operates as a tax on income; it is not 'income tax' within the meaning of the Tax Acts. It is applied in accordance with the provisions of Part 18D TCA 1997, with the supporting regulations as provided for in that Part and the application of relevant Parts of income tax legislation where appropriate [S531AM(1)].

## 3. Application of Income Tax Provisions

The provisions of the Taxes Consolidation Act relating to income tax have been applied, with any necessary modifications, to USC [S531AAA]. These are –

- Chapter 1 of Part 38 relating to the making of returns of income,
- Chapter 3 of Part 38 in relation to the keeping of records,
- Chapter 4 of Part 38 in relation to the making of enquiries and the exercise of the powers, duties and responsibilities provided for by that Chapter,
- Part 41A in relation to the making of assessments of income tax and the right of a Revenue officer to make enquiries,
- Chapters 1 and 4 of Part 42 in relation to the collection and recovery of unpaid income tax, and

- Part 47 in relation to penalties, offences, interest and other sanctions.

In relation to USC appeals, refer to the [Appeals folder](#). [Part 40A]

## 4. Rate of USC

### Standard Rates

The standard rates of Universal Social Charge are—

- |                             |  |
|-----------------------------|--|
| - 0.5% on the first €12,012 | <i>(1% on the first €12,012 for 2016)</i>  |
| - 2.5% on the next €6,760   | <i>(3% on the next €6,656 for 2016)</i>    |
| - 5% on the next €51,272    | <i>(5.5% on the next €51,376 for 2016)</i> |
| - 8% on the balance         | <i>(8% on the balance for 2016)</i>        |

[Part 1 of Table to S531AN]

However, these standard rates are modified in certain circumstances. In the case of an individual whose total income in the year does not exceed €60,000 and is either (i) aged 70 or over, or (ii) holds a full medical card, the 2.5% rate applies to all income over €12,012. [S531AN (1), (3) and Part 2 of Table]

Note - the rates apply to each spouse or civil partner's incomes individually. There is no aggregation.

### Week 53 Payment

For 2015 et seq., where PAYE income is paid on 31 December (or 30/31 December in a leap year) the USC rates bands are to be increased by 1/52 in the case of weekly pay and 1/26 in the case of fortnightly pay.

However, where the actual PAYE income on that pay day is less than the increase provided above, the increase is to be restricted to the actual amount of the PAYE income. [S531AN(5)].

Similarly, the €60,000 threshold referred to above is to be increased by 1/52 or 1/26 and the exemption threshold is to similarly increased. [S531AN(6)].

However, these increases will not apply for a year in which the pay day was changed either in that year or the previous year. [S531AN(7)].

### **Self-employed income exceeding €100,000**

There is a surcharge of 3% on individuals whose non-PAYE income exceeds €100,000 in a year. As such, a rate of 11% applies to the non-PAYE income that exceeds €100,000.

[S531AN(2)]

### **Certain Bank Bonuses**

A special USC rate of 45% applies to certain bank bonuses paid to employees of those financial institutions that have received financial support from the State. [S531AAD]

### **Property Relief Surcharge**

An additional rate of Universal Social Charge (property relief surcharge) of 5% applies on that part of an individual's taxable income which is sheltered by any of the property or area-based incentive reliefs. This includes all of the property-based capital allowances and the relief for residential lessors, commonly known as section 23-type relief. It applies to capital allowances made in or carried forward into the tax year 2012 and any subsequent tax year or to any losses carried forward into 2012 or a subsequent year, which are attributable to section 23-type relief. [S531AAE]

## **5. Payment of USC**

Employer/pension providers are responsible for deducting the Universal Social Charge from emoluments. Regulations for the deduction and paying over of USC from relevant emoluments are contained in the Universal Social Charge Regulations 2011 ([S.I. 658 of 2011](#)) [S531AO].

Self-employed individuals make a payment of Universal Social Charge along with their preliminary tax payment by 31 October with any balance payable by 31 October in the following year [S531AS].

## **6. Charge to Tax**

Income which is liable to USC consists of 'relevant emoluments' and 'relevant income' [Table to S531AM(1)].

### **Relevant emoluments**

Relevant emoluments are emoluments to which Chapter 4 of Part 42 TCA 1997 (i.e. the Income Tax PAYE system) applies and include:

- i. Any allowable contributions referred to in Regulations 41 and 42 of the PAYE Regulations 2001, (pension contributions)

- ii. The initial market value of shares appropriated to an individual under an approved profit sharing scheme, except where such shares were held by an employee share ownership trust, (ESOT) before 1 January 2011. (These shares are not charged to income tax on appropriation.)
- iii. The market value of the right to acquire shares in accordance with the provisions of a savings-related share option scheme. (The receipt of this right to acquire shares is not chargeable to income tax.)
- iv. Any gain exempted from income tax on the exercise of the right to acquire shares in a savings-related share option scheme or an approved share option scheme, after such a gain is reduced by the market value of the right referred to in the previous sub-paragraph, and,
- v. The 'specified amount' which can be deducted from the profits or gains to be assessed on an employee who makes a claim under the Special Assignee Relief Programme (SARP).

Relevant emoluments do not include:

- (a) Payments made under the Social Welfare Acts and payments which are of a similar character to social welfare payments which are made by
  - The Department of Education and Skills,
  - The Department of Agriculture, Food and the Marine
  - The Health Service Executive,
  - An Education and Training Board (EBT) in relation to attendance at a non craft training course funded by SOLAS
  - A sponsor in relation to participation in Jobs Initiative and Community Employment Schemes, or
  - Any other State or territory,
- (b) Emoluments gifted to the Minister for Finance (under S483),
- (c) Emoluments disregarded by an employer on the direction of an inspector in accordance with Regulation 10(3) of the PAYE Regulations 2001 (a PAYE exclusion order),
- (d) The basic exemption in respect of termination lump sum payments, standard capital superannuation benefit (SCSB), and the exemption of up to €10,000 as set out in paragraph 5.2 of Part 5.5.19 of the manual,
- (e) An amount paid in respect of pre-retirement access to AVCs (S782A), and
- (f) A PRSA contribution to a PRSA in respect of an employee.

**Relevant income**

'Relevant income' is income from all sources as estimated in accordance with the Tax Acts, other than the items of income listed at i, ii and iii below and without regard to any amount deductible in computing total income other than the deductions listed at iv to viii below-

Items of income not taken into account:

- i Relevant emoluments (as above),
- ii Any emoluments, payments, expenses or other amounts referred to in paragraphs (a) to (e) under the section on relevant emoluments above,
- iii Any gains, income or payments in connection with the following:
  - Deposit interest (Chapter 4, Part 8 TCA 1997)
  - Dividend payments from a credit union (Chapter 5, Part 8)
  - Foreign deposit interest (Chapter 7, Part 8)
  - Life policies (Chapter 5, Part 26)
  - Foreign life policies (Chapter 6, Part 26)
  - Investment undertakings (Chapter 1A Part 27), and
  - Certain offshore funds (Chapter 4, Part 27).

Deductions allowed:

- iv. In the case of an individual resident in the State but working outside the State who qualifies for "Cross-Border Relief" (S825A TCA 1997), a deduction equal to the amount that would have been deducted from total income in the absence of relief under Section 825A so as to arrive at the same tax liability as the liability due as a result of granting section 825A relief.
- v. Maintenance payments by a separated spouse or civil partner, or by a cohabitant on the ending of his or her relationship (as provided for in sections 1025, 1031J and 1031Q TCA 1997, respectively), other than in the case where the 2 individuals concerned may opt for and have opted for joint assessment.
- vi. Losses carried forward in respect of a trade or profession, and utilised in the year.
- vii. Industrial buildings writing-down allowances, wear and tear allowances, farm buildings allowances, or farm pollution control allowances in respect a trade or profession for the year or carried forward and utilised in the year other than where the allowance is made to an individual who is not an active partner in a partnership trade (within the meaning of section 904A TCA 1997) or is the subject to a claim under section 381.

viii. A deduction equal to the amount that a lessor of a property which qualified for tax incentives is deemed to have received as rent (on the sale of the property or on it ceasing to be a qualifying premises), but only where the individual received, or was entitled to receive relief in respect of the property on or after 1 January 2012.

There is no exemption from USC in respect of distributions out of profits or gains on stud and woodland fees, out of income from patent royalties, and out of mining profits. Income earned as a writer, composer or artist, profits from the use of woodlands, and income derived from patent royalties and leasing of farmland is also liable to USC.

There is also no deduction for –

- (a) Double rent allowances (certain urban renewal reliefs under section 324(2), 333(2), 345(3) or 354(3) TCA 1997),
- (b) 'Section 23' reliefs in computing the amount of a surplus or deficiency in respect of rent from premises in urban renewal areas, (sections 372AP and 372AU TCA 1997),
- (c) Donations to certain sports bodies, or
- (d) Donations to certain bodies such as charities and educational establishments.

USC arises on a balancing charge in respect of an asset, which if capital allowances were due, would be deductible in computing the USC liability.

## 7. Capital Allowances

Normal business expenses incurred in carrying on a trade are deductible before the Universal Social Charge is calculated. This includes allowances for capital expenditure incurred on providing certain items for the purposes of the trade, such as

- Plant and machinery
- Vehicles used for business purposes
- Certain types of buildings, such as factories or farm buildings.

Capital allowances (other than those used to create or increase a loss under section 392 TCA 1997) must actually be used in a tax year to be deductible [S531AU].

Only standard rate capital allowances are deductible. Apart from farm buildings, capital allowances that are written off over accelerated 7-year periods are not allowed.

Any capital allowances due to people that do not actively carry on a trade are not deductible. Therefore, lessors and other passive investors, such as non-active partners in a partnership trade, will pay the Universal Social Charge on gross income before the deduction of capital allowances.

See below for details of both deductible and non-deductible allowances in respect of the different types of buildings.

#### Deductible allowances

Type of building	Write-off period	Annual rate %	Notes
Factory, mill	25	4	
Dock undertaking	25	4	
Market gardening	10	10	
Intensive production of livestock	10	10	Outside of farming trade
Hotel & holiday camp	25	4	Previously 7 year write-off (up to 1 August 2008)
Tourist accommodation	25	4	Holiday hostels, caravan & caravan sites, guest houses
Airport	25	4	Airport runway & apron Airport buildings
Farm building	7	15	
Farm pollution control	3	33 $\frac{1}{3}$	EU Nitrates Directive Does not apply where expenditure incurred after 31 December 2010

#### Non-deductible allowances

Type of building	Write-off period	Annual rate %	Notes
Hotel & holiday camp	7	15	Now 25-year write-off (since 1 August 2008)
Holiday cottage	10	10	
Private hospitals	7	15	
Mental health centre	7	15	
Nursing home	7	15	
Nursing home residential unit	7	15	
Convalescent home	7	15	

Sports Injury Clinic	7	15	
Childcare facility	7	15	
Mid Shannon Tourism Infrastructure Scheme	7	15	
Living City Initiative	7	15	

## 8. Losses

Losses other than those arising from the carrying on of a trade or profession are not deductible before Universal Social Charge is charged. Nor can trading losses arising in a tax year reduce other non-trading income in that year. Where unused trading losses are carried forward, only that part of the losses that is actually used to reduce taxable income from the same trade in the tax year to which they have been carried forward, is deductible.

## 9. Balancing Allowances and Charges

In calculating liability to USC, certain capital allowances in respect of an individual carrying on a trade or profession are deductible in arriving at the figure for relevant income. (See Capital Allowances above)

Where a balancing charge arises in these circumstances it should be included as relevant income for USC purposes. Likewise a balancing allowance can be allowed as a deduction from relevant income for USC purposes. Unused allowances coming forward from previous years can also be allowed against balancing charges in calculating relevant income for USC purposes.

Where capital allowances are not deductible, (for example in Case V situations or in respect of property incentives – see paragraphs (vi) and (vii) in the section on relevant income above), balancing charges which might arise following the disposal of an asset are not to be considered as relevant income for the purposes of USC as the allowances which are being recovered by the balancing charge were not deductible for USC purposes in the first instance. In addition, the clawback of relief in the form of deemed rent in respect of ‘section 23’ deductions is not to be considered as relevant income for the purposes of USC. (See paragraph (viii) in the section on relevant income above.)

## 10. Maintenance Payments

Maintenance Payments made to spouse / civil partner

How maintenance payments are treated for Universal Social Charge purposes will depend on the nature of the maintenance payments arrangements in place, i.e. are they voluntary payments or legally enforceable payments.

### **Voluntary maintenance payments (payments paid under an informal arrangement)**

- (a) The spouse or civil partner making the payments does not receive exemption from the Universal Social Charge on the portion of their income which they pay as maintenance.
- (b) The spouse or civil partner who receives the payments is not subject to the Universal Social Charge on the maintenance payments they receive.

### **Legally enforceable maintenance payments (payable under legal obligation)**

- (a) The spouse or civil partner making the payments is entitled to receive an exemption from the Universal Social Charge on the portion of their income which they pay as maintenance either directly or indirectly to their spouse or civil partner. There is no Universal Social Charge exemption due in respect of any portion of the maintenance payments paid towards the maintenance of children.
- (b) An employee wishing to claim Universal Social Charge exemption in respect of legally enforceable maintenance payments throughout the year may either give the information required to their payroll office, or alternatively they can apply to Revenue at the end of the year to claim any refund of Universal Social Charge that may be due in respect of maintenance paid.
- (c) The spouse or civil partner who receives the payments is subject to the Universal Social Charge on the portion of the maintenance payments they receive in respect of themselves. Any portion of the maintenance payments paid towards the maintenance of children is not subject to the Universal Social Charge.

**Note:** In the case of a legally enforceable maintenance arrangement, where a separated couple has jointly elected to be treated as a couple in a marriage or in a civil partnership, for income tax purposes, the spouse or civil partner making the payments does not receive a deduction from the Universal Social Charge on the portion of their income which they pay as maintenance. The spouse or civil partner who receives the payments is not subject to the Universal Social Charge on the maintenance payments they receive. [S531AV]

## 11. Benefits in Kind, etc.

### Notional Pay / Benefits in Kind / Pension Lump Sums / Share Options / Permanent Health Insurance

Universal Social Charge applies to all emoluments of an employment, including anything treated as a taxable benefit-in-kind.

#### Personal Retirement Savings Account

An employer contribution to a Personal Retirement Savings Account (PRSA) is chargeable to income tax in the hands of the employee as a benefit-in-kind under section 118 of the Taxes Consolidation Act 1997. However, such contributions are exempt from USC [*paragraph (a)(VI) of the Table to S531AM(1)*].

It should be noted that while employer contributions to a PRSA are a taxable benefit in the employee's hands, these same contributions qualify for full tax relief subject to certain age-related limits. They are not subject to PAYE and are thus not chargeable to PRSI under the PAYE system, (both employer and employee share).

#### Retirement Lump Sums

There is a lifetime limit of €200,000 on the amount of retirement lump sums that are exempt from income tax. Amounts in excess of this limit are subject to income tax in two stages. The portion between €200,000 and €500,000 is taxable at a special 20% rate of income tax and any portion above that is taxable at the individual's marginal income tax rate.

Universal Social Charge is only payable on the portion above €500,000.

#### Share Options

USC is to be paid to the Collector-General with form RTSO1 on gains made on the exercise of share options and included with the amount of the RTSO in the "Total Tax Liability" box. A separate USC amount should not be inserted on the form. When the Form 11 is subsequently filed, the details of the amount of the gain and the amount of RTSO and USC paid with the RTSO1 should be entered.

#### Permanent Health Insurance

Universal Social Charge applies to an employer's contribution to a Permanent Health Insurance Scheme. Such a contribution is treated as a taxable benefit-in-kind.

## 12. Exemptions

- Income Threshold

Where an individual's total income for a year does not exceed €13,000.

- **All Dept. of Social Protection payments**
- **Similar Type Payments**

Payments that are made in lieu of Department of Social Protection payments such as payments for participation in Community Employment Schemes, Jobs Initiative Scheme or Back to Education Allowance paid by the Department of Education and Skills. [See List of Social Welfare like Payments]

- **Income already subjected to DIRT**
- **Exempt Income [see List below].**

Note: An individual who has no liability to income tax based on their entitlement to tax credits or by use of losses or capital allowances may still have a liability to the Universal Social Charge.

#### **List of Social Welfare-Like Payments**

Department of Social Protection

Rural Social Scheme

Farm/Fish Assist

Community Employment Scheme

Tús (community work placement initiative)

Job Bridge (internship scheme)

Job Initiative Scheme

Jobseeker's Allowance and Jobseeker's Benefit

Jobseeker's Transition Payment

One-Parent Family Payment

Widow(er)'s Pension

Disability Allowance

Adult Dependent of a recipient of the non-contributory State Pension

Domiciliary Care Allowance

Health Service Executive (HSE)

Blind Welfare Supplementary Allowance

Mobility Allowance

Department of Education and Skills

Vocational Training Opportunities Scheme (VTOS)

Youthreach Training Allowances

Senior Traveller Training Allowances

Back to Education Initiative (BTEI) Training Allowances paid to Youthreach, STTC or VTOS eligible participants on a pro-rata basis.

Vocational Education Committees' Scholarship Scheme

Fund for Students with Disabilities

Student Assistance Fund

Millennium Partnership Fund for Disadvantage

Department of Agriculture, Food and the Marine

Farm Retirement Pensions

Farm Retirement Workers Pensions

EBTs

Non apprentice payments for trainees attending a course that is funded by SOLAS

Foreign Governments

Social welfare-type payments received from another country.

**Exempt Income**

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- 204 Military & other pensions, gratuities and allowances
- 204B Compensation for certain living donors (donation for kidney transplant)
- 205 Veterans of war of independence
- 205A Magdalen laundry payments
- 216A Rent a Room relief
- 216B Scéim na bhFoghlaimoirí Gaeilge
- 216C Childcare service relief
- 782A Pre-retirement access to AVCs

#### **Foreign Employment Income on which Trans-border Relief is due**

The Universal Social Charge does not apply to that part of the income to which Section 825A applies i.e. Foreign Employment Income.

### **13. Medical Cards**

Individuals whose total income does not exceed €60,000 and who are entitled to a full medical card, including a Health Amendment Act card, only pay Universal Social at a maximum rate of 2.5%. This treatment does not apply to individuals who hold other types of 'medical card', such as a GP Visit Card, a Drugs Payment Scheme Card or a Long-Term Illness Scheme Card.

The individual does not need to hold the medical card for the full year to qualify for the 2.5% maximum USC. It is due as long as the individual holds a full medical card for some period during the year.

Certain individuals who are ordinarily resident in Ireland automatically qualify for an Irish medical card under EU Regulations. However, they are subject to the €60,000 income limit. The European Health Insurance Card which provides for access to hospital care similar to that provided in public hospitals is not regarded as a full medical card.

'Frontier workers' from another EU Member State, (including, Northern Ireland), who are not entitled to a full Irish medical card, are liable up to the normal maximum 8% USC rate, where they have sufficient income for this rate to apply.

The following paragraphs set out the position with regard to the different types of workers.

### Entitlement to a full medical card under EU legislation

Under EU legislation, individuals are subject to the social security scheme of a single Member State. Different rules apply depending on whether an individual is sent by his or her employer to work in another Member State for up to 24 months, (known as a "posted worker"), or travels from the Member State of residence to work in another Member State, returning home at least once a week (known as a "frontier worker"). These rules also apply in the case of a small number of non-EU countries, i.e. Iceland, Liechtenstein, Norway and Switzerland.

#### (a) "Posted workers" from EU Member States employed in the State

"Posted workers" generally continue to be subject to the social security scheme of the original Member State and not the State in which they are employed. They retain the rights and advantages acquired through social insurance contributions made in their home country and this includes access to healthcare services. The Health Services Executive (HSE) provides (on application) such individuals with full medical cards as evidence of this entitlement, provided they are not subject to Irish social security legislation, i.e. chargeable to PRSI in Ireland.

Certain forms that are obtained from the relevant public bodies in the original Member State are accepted as evidence of entitlement to a full medical card by the HSE. These are the form A1 (formerly E106) in the case of social security coverage and the form S1 (formerly E101) in the case of healthcare coverage.

Revenue has and will continue to accept the forms A1 and S1 as evidence of entitlement to a full medical card for the purposes of determining the rate at which USC is to be charged.

#### (b) "Frontier workers" resident in the State and employed in another EU Member State

'Frontier workers' who are resident in the State and who travel to another EU Member State to exercise the duties of their employment, returning to the State at least once a week, have entitlement to a full medical card under EU legislation.

Under a bi-lateral agreement with the UK, the usual forms A1 and S1 are not required and it is sufficient for an individual to provide evidence of employment in the UK (for example, by way of a payslip) and of not being subject to Irish social security legislation. However, establishing entitlement to a full medical card for the purposes of determining the rate at which USC is to be charged may not be relevant for these 'frontier workers' as their UK employment income is not chargeable to USC if they make a claim under section 825A Taxes Consolidation Act 1997 for "transborder relief".

Revenue will also accept evidence of employment in the UK as evidence of entitlement to a full medical card for the purposes of determining the rate at which USC is to be charged.

### **Entitlement to a full medical card under Irish legislation**

"Frontier workers" who are resident in other EU Member States and who travel to the State to exercise the duties of their employment may have entitlement to a full medical card under Irish legislation, but only if the HSE regards them as being ordinarily resident in the State. In addition, such entitlement is subject to a means test.

It is to be noted that, while the higher USC rates will apply, relief for USC paid in Ireland may be available where Ireland has entered into a tax treaty with the country in which the individual is resident for tax purposes and where that treaty contains a provision to the effect that the treaty will apply to any identical or substantially similar taxes that may be subsequently imposed by either State.

Where treaties contain such an article, Revenue has written to Ireland's treaty partners informing them of the introduction of the USC and accepting that it is a substantially similar tax to income tax and that it is covered by the treaty provisions, including relieving provisions.

## **14. Redundancy Payments**

Statutory redundancy payments are exempt from the charge. Statutory redundancy payments amount to 2 weeks pay per year of service plus a bonus week subject to a maximum payment of €600 per week.

In addition, ex-gratia redundancy payments in excess of the statutory redundancy amount are exempt from income tax, and, therefore, also the Universal Social Charge, up to certain limits. These limits are up to €10,160 plus €765 per complete year of service in excess of the statutory redundancy. This basic exemption can be further increased by up to €10,000 – see Paragraph 5.2 of Part 05-05-19. There is a lifetime tax-exempt limit of €200,000 on ex-gratia payments.

Any relevant emoluments paid which are in excess of these limits are subject to the Universal Social Charge. It should be noted that the charge applies after granting the statutory exemptions set out above and after granting any additional deduction for Standard Capital Superannuation Benefit (SCSB).

## 15. Directors

### **Income arising from having or exercising the public office of director of an Irish incorporated company**

The PAYE system applies to payments made to directors and, as such, USC is deductible by the company at the time of payment.

## 16. Residency

### **Universal social charge (USC) - employees resident and working in non tax treaty countries.**

Where an individual is not resident in Ireland for tax purposes for a relevant tax year (or part of a tax year in 'split year' cases) and where he or she exercises the duties of a private sector employment wholly outside Ireland, a charge to income tax on the employment income does not generally arise in Ireland. Where appropriate, Revenue will, on application, issue a PAYE Exclusion Order.

USC is also not payable in respect of the employment income of a non-resident individual that is attributable to duties exercised wholly outside Ireland, where there is no charge to income tax in Ireland.

### **Payment of arrears / bonus where 'split year' applies.**

Section 822 TCA 1997 provides for split year residence.

Where an individual—

- a. has left the State and is deemed to be resident only up to the date of leaving, and
- b. receives income, such as arrears of pay or a bonus, arising from the employment while s/he was resident in the State but which is paid after s/he has left the State,

the income is emoluments to which the PAYE system applies and is liable to USC in the year in which it is paid to the individual.

## 17. Certain Bank Bonuses

Employees of the six financial institutions that have received financial support from the State – Irish Life and Permanent, Bank of Ireland, AIB, Irish Bank Resolution Corp (formerly Anglo Irish Bank), EBS and Irish Nationwide Building Society – are chargeable to a special Universal Social Charge rate of 45% where they receive performance-related bonus payments.

Normal rates apply where the cumulative amount of any bonus payments does not exceed €20,000 in a single tax year. Where this threshold is exceeded, the full amount is charged at 45% and not just the excess over €20,000.

Regular salary that does not vary with the performance of the business or the employee is not subject to the increased charge. [S531AAD]

## 18. Property Relief Surcharge

### Introduction

Section 531AAE of the Taxes Consolidation Act 1997 provides for an additional rate of Universal Social Charge (property relief surcharge) of 5% on that part of an individual's taxable income which is sheltered by any of the property or area based incentive reliefs. This includes all of the property-based capital allowances and the relief for residential lessors, commonly known as section 23-type relief. It applies to capital allowances made in or carried forward into the tax year 2012 and any subsequent tax year or to any losses carried forward into 2012 or a subsequent year, which are attributable to section 23-type relief.

It applies to any form of income against which any of these reliefs can be ordinarily set, such as rental income and trading income. No distinction is drawn between passive, as distinct from active, partners or traders. The only property relief that is outside the ambit of this surcharge is the residential owner/occupier relief.

### Minimum Income Limit

Any individual who earns less than €100,000 in the tax year is not subject to the surcharge, no matter how much property reliefs are being claimed. There is no upper income limit. The threshold income limit is the "aggregate income" for the tax year, as defined in Part 18D. This does not necessarily equate with "taxable income" as it may not include certain reliefs, pension contributions and/or certain losses carried forward. In any event, the first step in determining how much, if any, surcharge is due to be paid is to quantify the income for USC purposes. It is only where this amount is €100,000, or more, that the possibility of the surcharge arises.

### Determination of Amount of Surcharge

The surcharge amounts to 5% on that part of the aggregate income of the individual, against which "specified property reliefs" have been used.

Specified property relief is defined in section 531AAE. The definition interacts with certain definitions in the High Earners Restriction. Under that restriction, certain reliefs, set out in Schedule 25C to the Taxes Consolidation Act 1997, are identified as "specified reliefs". Some, but not all, of these reliefs are property and area-based incentive reliefs and it is only the property related ones which are relevant in this surcharge context.

Any specified relief (within the meaning of the High Earners Restriction), which has been restricted in a tax year and carried forward into a subsequent tax year, is not classified as a specified property relief for the purpose of the surcharge.

For example, a person whose aggregate income, for USC purposes, is €150,000, and against which they can set €160,000 of specified property reliefs, will pay a property surcharge of €7,500 (5% of €150,000). In this example, it is assumed that the High Earners Restriction catches the person. The surcharge is based on €150,000 and not on €80,000 (the amount to which the use of specified reliefs is restricted for high earners). In the next tax year, the surcharge is based on €10,000 of specified property relief even though the individual's total available relief for tax purposes is €80,000 (€10,000 specified property relief plus €70,000 restricted relief).

In a comparable situation where the amount of specified relief available is made up of specified property relief (€100,000) and other specified relief (film relief, BES etc.) (€60,000), the amount of surcharge is €5,000 (5% of €100,000). The individual's use of reliefs has been restricted to €80,000 relief because of the High Earners Restriction and that person carries €70,000 of restricted relief as well as €10,000 of unused BES relief forward into the next tax year. No further surcharge is payable in that next year. Section 531AAE TCA 1997 includes a provision which deems specified property reliefs to have been used before other specified reliefs.

#### **Separation of Carried-Forward Losses and Reliefs**

On a year-on-year basis, it will be necessary for any individual who may be affected by this property surcharge to be able to separate losses and reliefs being carried forward so that the correct amount of surcharge is paid, if and when it is due. In a section 23-type relief situation, there may be ordinary rental losses, section 23-type losses, as well as wear and tear allowances in respect of plant and machinery, all of which are carried forward from one tax year into the next.

Depending on the order in which these losses and allowances are set against income in the current year, a greater or lesser amount of section 23-type relief will have been used.

Section 485C(3) of the Taxes Consolidation Act 1997, which is concerned with the High Earners' Restriction, specifies the order in which various reliefs are to be used. From 2007, regardless of whether an individual is subject to the restriction or not, a non-specified relief must be deducted in priority to a specified relief as follows:

- In relation to Case V, capital allowances carried forward are deducted in priority to capital allowances arising in the current year. Where the amount carried forward includes both capital allowances that are specified reliefs and ordinary capital allowances such as those for plant and machinery, the ordinary capital allowances are deducted from the net rent in priority to the capital allowances that are specified reliefs.
- Normal rental deductions, such as insurance and management expenses etc., are deducted from gross rent in priority to a specified relief such as section 23-type relief.
- Non-specified reliefs are deducted from total income in priority to specified reliefs. For example, health expenses are deducted in priority to film relief.

- Loss relief is given for a normal loss in priority to a loss that is referable to the use of specified reliefs.
- Normal business expenses, allowed in computing assessable Case I/II income, are deducted in priority to double rent allowance due under section 324, 333, 345 or 354 or paragraph 13 of Schedule 32.

This is the legislative basis for the order of set-off of various deductions and reliefs against income on a year to year basis. These rules apply to all taxpayers and not just to those to whom the High Earners Restriction applies. It is important in any individual case for an individual to track the use of these deductions and reliefs year-on-year. This is because the individual may not be subject to the property surcharge in every tax year, there may be gaps.

**Initial Segregation of Carried Forward Losses and Reliefs 2012.**

When the High Earners Restriction legislation was introduced with effect from the tax year 2007 it was necessary to provide for a methodology to separate cumulative losses and reliefs, which were to be carried-forward into that tax year, into the various categories for the purposes of the restriction.

Prior to that time there was no need to separately track these losses and reliefs from one year to the next. That same methodology is now imported into the property relief surcharge for the purposes of the application of the property surcharge in 2012.

The references to 2006 and 2007 are changed to 2011 and 2012, respectively, for this purpose.